

Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

Summary of Public Comments and Administration's Response on
Parts I and II of the Securities and Futures Bill

Clause no.	Respondent	Respondent's comments	Administration's response
<i>Part I – Preliminary</i>			
<i>Part II – Securities and Futures Commission</i>			
4(a) regulatory objectives	HKISD	The efficiency of the industry should be a matter for the relevant exchanges. As long as a competitive market is maintained, it should be left to the market to seek the best efficiency. This has always been the free market spirit adopted in Hong Kong.	We believe that the SFC should have a role in maintaining and promoting an efficient market. With globalization, it would especially be the case that a market cannot be competitive if it is not efficient. It would be illogical if the SFC were to have a role in the competitiveness of the market, but not its efficiency. In addition, the exchanges are commercial enterprises whereas one of the SFC's primary functions is to safeguard the interests of investors.
4	Charles Schwab	The regulatory objectives for the SFC are agreed.	Noted.
5(1)(c)*	HKSBa	One of the functions of the SFC is to promote and develop an appropriate degree of self-regulation in the securities and futures industry. There is however no shadow of self-regulation in the SF Bill. HKSBa believes that promotion and development of the securities and futures industry should be best performed by people closest to the market or carrying on a business in it, such as the recognized exchange controller and the intermediaries. The SFC, playing its regulatory role, should stand at arm's length as a safeguard to the welfare of the whole industry.	So far as the SFC is expected to promote and develop an appropriate degree of self-regulation in the securities and futures industry, the legislation provides the essential mechanism for the delegation of responsibility to allow for self-regulation. For example, the SFC has always relied upon the Stock Exchange to perform listing functions and, to that extent, has delegated relevant responsibility with adequate safeguards. Self-regulation need not be exercised by a formally established self-regulatory organisation. The two most important practical examples of self-regulation in Hong Kong are in the areas of takeovers and mergers and collective investments. The Takeovers and Mergers Panel and the Committee on Unit Trusts are both overwhelmingly comprised of industry practitioners who, in effect, set the standards for behaviour in takeovers and in the types of collective investments that may be offered to the public in Hong Kong and who may offer them.

* Response to comments not incorporated in Paper No. 2C/01 when last issued.

Clause no.	Respondent	Respondent's comments	Administration's response
			<p>The SFC's role as a regulator makes it well placed to facilitate business and the promotion of the market. It will not, generally, be the instigator of new products or business models but its support and constructive and facilitative approach to regulation are often essential to the success of new products and business models, consistent with investor protection. There are many recent examples including the SFC's support of electronic IPOs, its close work with the industry in facilitating internet based services through a review of regulation, etc.</p>
5(1)(m) (i) & (ii)	HKISD	<p>A suitable system should be put in place so as to ensure that when the SFC enforces these provisions, it should in principle take into account the business turnover and staff size of the regulated entity in formulating appropriate internal controls and risk management systems for the company. It is because excessive internal controls and risk management systems will substantially increase the operational costs of the stockbroker concerned, thus making it more difficult for the stockbroker to conduct its business.</p>	<p>We agree that the appropriateness of internal controls and risk management systems should be a function of, among other things, business turnover and staff size of, and cost to, the relevant regulated entity. By way of illustration, internal control procedures and risk management systems are prescribed under clause 128(2)(c) as one of the relevant factors in determining whether an intermediary is "fit and proper". The factors referred to are covered in the Management, Supervision and Internal Controls Guidelines, published by the SFC in May 1997, which are in line with international standards.</p>

Clause no.	Respondent	Respondent's comments	Administration's response
5 and 6	Charles Schwab	<p>Certain of the items listed in clauses 5 (Functions and powers of Commission) and 6 (General Duties of Commission) should be elevated to the status of regulatory objectives (clause 4). This is particularly true of promoting an 'understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor'.</p> <p>Similarly we feel that 'facilitating innovation' is so central to the health and development of the financial markets that it, too, should be identified as one of the SFC's regulatory objectives.</p>	<p>We have carefully calibrated the contents of clauses 4, 5 and 6. Clauses 5 and 6 seek to support the implementation of clause 4. The regulatory objectives of the SFC cover the regulatory focus in broad terms, presentation of which is consistent with, for example, that of the Financial Services Authority prescribed in the recently enacted Financial Services and Markets Act. The regulatory objectives are to be achieved through the exercise of the more detailed functions referred to in clause 5, and in the manner as set out in clause 6.</p> <p>By way of illustration, the function referred to in the market comment is in connection with the broad objective to promote understanding by the public of the operation and functioning of securities and futures industry.</p> <p>As for the facilitation of innovation, we do not consider that it should itself be a primary focus of exercise of regulatory functions by the SFC. Facilitating particular areas of innovation would however be a by-product of exercise by the SFC of its regulatory functions if they are conducive to the maintenance and promotion of the efficiency and competitiveness of the securities and futures industry, which is a regulatory objective of the SFC. Clause 6(2)(b) requires that in pursuing its regulatory objectives and performing its functions, the SFC should have regard to the desirability of facilitating innovation in connection with financial products and activities regulated by the SFC under any of the relevant provisions. We are of the view that this clause puts the regulator's role in the facilitation of innovation in an appropriate perspective.</p>

Clause no.	Respondent	Respondent's comments	Administration's response
5 and 6	Charles Schwab	Each reference to the 'securities and futures industry' in the clause should be reformulated to refer to the 'securities and futures market'. Use of the word 'industry' might be too narrowly interpreted as a reference limited to the providers of financial services. It is felt that the SFC has a wider range of concern that includes persons who are not licensees – whether sanctioning individual officers or directors of an issuer engaged in insider dealing or educating investors about the risks of information learned in an online 'chat room' sponsored by a non-licensed entity.	<p>“Securities and futures industry” is defined in Schedule 1 of the SF Bill to mean “the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants”.</p> <p>This definition should have addressed the concern of the respondent.</p>
11*	HKISD	It is not necessary for the Chief Executive (CE) to consult the Chairman of the SFC (C/SFC) before issuing a written direction to the SFC.	The requirement would provide an opportunity for the CE to discuss with C/SFC the reasons why he is considering issuing a direction and to listen to views of C/SFC thereon. It would also allow the SFC to consider taking appropriate action on its own.

* Response to comments not incorporated in Paper No. 2C/01 when last issued.

Details of Submissions referred to in the Comment/Response Table

Date Received	Organization/Party
29 January 2001	Charles Schwab Hong Kong (“Charles Schwab”)
30 January 2001, 27 April 2001	Hong Kong Institute of Securities Dealers (“HKISD”)
15 February 2001	Hong Kong Stockbrokers Association (“HKSbA”)

Financial Services Bureau
5 June 2001