

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000  
Supervision of Staff Employed by  
Authorised Institutions for Securities Business**

At the Bills Committee meeting on 23 February 2001, some Members were concerned about how the fit and proper criteria for persons licensed by the Securities and Futures Commission (SFC) would be applied to Authorized Institutions (AIs) and their relevant staff. It was also pointed out that the registration arrangement for staff of AIs engaged in regulated activities is different from the licensing regime for representatives of corporations licensed by the SFC. This paper seeks to address Members' concern by explaining in greater detail the regulatory framework proposed for AI staff.

**“Register” Proposal for AI Staff**

2. Under the framework proposed in the Securities and Futures Bill and the Banking (Amendment) Bill 2000, the Hong Kong Monetary Authority (“HKMA”) will maintain a register of individuals employed by AIs to perform any regulated function in a regulated activity. The register will cover such information as the name and business address of individual staff, the name of the AI concerned, the capacity of such individuals and the date on which their involvement in the regulated activity commences. To enable members of the public to ascertain whether a person he is dealing with is an AI staff engaged in a regulated activity, the HKMA will make available the register for public inspection.

3. The HKMA will require the senior management of AIs (including the executive officers to be appointed by AIs for regulated activities<sup>1</sup>) to ensure that staff included in the register are fit and proper for the regulated activity concerned. In this regard, the HKMA will require AIs to apply the same set of

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<sup>1</sup> Under clause 9 of the Banking (Amendment) Bill 2000, an exempt AI is required to appoint not less than 2 executive officers to be responsible for directly supervising the conduct of the business by the exempt AI that constitutes a regulated activity. The appointment is subject to the consent of the HKMA.

Fit and Proper Criteria promulgated by the SFC for comparable staff of licensed corporations. The latest set of Fit and Proper Criteria will come into effect on 1 April 2001. Under the present regulatory set up, the HKMA will issue a guidance note to advise AIs to observe the same set of criteria<sup>2</sup> from that date onwards in respect of their relevant staff.

4. In future, after the new regulatory framework is established, the HKMA will carry out relevant background checks (such as with the SFC) on AI staff included in the register. The conduct of the securities staff of AIs will also be reviewed during on-site examinations by the HKMA. Any improper practice by AI staff may lead the HKMA to doubt the fitness and properness of the staff concerned.

5. Where the HKMA forms the opinion that a staff member of an AI is not fit and proper for inclusion in the register (e.g. if he/she breaches the SFC Code of Conduct), it will require the senior management of the AI to remove such staff member from the register. Failure by an AI to do so will be a relevant consideration for the HKMA on whether the AI is conducting its business with integrity, prudence and the appropriate degree of professionalism. It will also throw the fitness and properness of the executive officers of the AI concerned into question. If necessary, the HKMA can recommend the SFC to attach conditions to the declaration of exemption for the AI, or even to revoke the declaration.

## **Comparison with the SFC Regime**

6. The framework described above differs from the regime for licensed representatives administered by the SFC in two major aspects. First, for representatives of licensed corporations, the SFC is responsible for, among other things, vetting the competence of and approving an applicant. In the case of bank staff, the HKMA will require the senior management of AIs to ensure that their securities staff meet the requisite requirements on education,

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<sup>2</sup> or instance, as part of the entrance requirements, the SFC will require an individual applying for a representative licence on or after 1 April 2001 to obtain a recognised industry qualification and to pass a local regulatory framework paper before he is granted a licence. Recognised industry qualification can be obtained through specified courses or examinations organised by the Hong Kong Securities Institute or organised/recognised by specified overseas regulators. All the courses and examinations for this purpose have to be approved by the Academic and Accreditation Advisory Committee set up by the SFC and made up of representatives from the market and the academia. HKMA will impose the same set of requirements on AIs with effect from 1 April 2001 and require comparable staff of the AIs to obtain the same qualification, among other things, before such staff are allowed to perform regulated functions of any regulated activity.

examination and experience laid down in the SFC Fit and Proper Criteria. Secondly, whereas the SFC imposes a fee on licensed representatives, the HKMA charges institution-based fees on AIs.

### ***Vetting and approval of staff***

7. Like other banking regulators, the HKMA has traditionally focussed on the role of directors and senior management in ensuring that AIs are properly run and that staff with the proper qualification/experience are recruited to run the business. Individual front-line staff of AIs are not subject to the approval of the HKMA. This supervisory approach has functioned very well so far. There are no strong grounds for requiring bank employees acting as agents for processing securities orders to be licensed individually given that no such regime is necessary for other banking staff, including those handling client money or conducting other banking businesses on a day-to-day basis. That said, to avoid any perceived regulatory advantages for AIs in conducting securities business, the framework stipulated in the two Bills actually seeks to reconcile the HKMA's supervisory approach with that of the SFC. The various arrangements to be put in place, as explained in the preceding paragraphs, will further underscore the requirement that AIs should ensure only properly qualified staff will be allowed to conduct their securities business.

### ***Fee structure***

8. In line with the supervisory approach adopted by the HKMA, the annual fees charged on AIs are based on individual institutions/branches. No fees are imposed on the front-line staff of AIs. It is nevertheless relevant to note that the fee levels for AIs are much higher than that imposed by the SFC on licensed corporations and licensed representatives (see comparison at Annex). Furthermore, once granted a declaration of exemption, an AI has to pay to the SFC an annual fee for maintaining the declaration. The level of this annual fee will also be higher than that for licensed corporations. It is difficult to draw any direct comparison of the fee structure and scale applicable to AIs and brokers. The HKMA will nevertheless keep the charging structure for AIs under review in the light of experience in supervising their securities business.

9. Apart from the above differences, the two regimes to be administered by the SFC and the HKMA are comparable in other aspects. The most important point is that the same set of Fit and Proper Criteria will be used in assessing the fitness and properness of staff of AIs and brokers. As in the case of the SFC, the HKMA will conduct relevant background checks on staff

included in the proposed register. The HKMA will also assess the on-going competence of AI staff during on-site examinations. In cases where a staff member of an AI is found to be not fit and proper, the HKMA will exercise its power to require the removal of such member of staff from the register. This is, in effect, equivalent to revoking the licence of a representative approved by the SFC.

10. We believe that the two regimes will provide the same level of protection to investors. The proposed framework is consistent with the way in which the HKMA supervises AIs. As it will take full account of the need to ensure that the same regulatory standards are applied to AI staff, the arrangement will not give rise to any regulatory advantage for AIs over brokers.

Financial Services Bureau  
28 February 2001

**Comparison of Fee Scale  
applicable to AIs and SFC Registered Persons**

	<b>HK\$</b>
<b>AIs</b>	
<b>(under the Banking Ordinance)</b>	
Banking licence	474,340 p.a.
Restricted banking licence	384,270 p.a.
Deposit Taking Company (“DTC”) registration	113,020 p.a.
A local branch of licensed bank	22,400 p.a.
A local branch of restricted licence bank or DTC	19,110 p.a.
<b>SFC registered persons</b>	
<b>(under existing securities and futures ordinances)</b>	
Dealer (including a Dealing Director of a corporate Dealer)	4,900 p.a.
Dealer representative	1,850 p.a.
Exempt dealer – first registration	23,500
Exempt dealer – renewal of registration	14,000 p.a.