

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

**Securities and Futures Bill
Part IX – Discipline, etc**

INTRODUCTION

Part IX of the Securities and Futures Bill (the “SF Bill”) concerns the disciplinary functions of the Securities and Futures Commission (the “SFC”) in relation to the regulation of licensed persons and exempt authorized financial institutions (“exempt AIs”). It covers the types of disciplinary sanctions and their application, the relevant procedural safeguards and other ancillary matters. The Banking (Amendment) Bill 2000 (the “BAB”) and the Banking Ordinance (the “BO”) supplement the provisions of the SF Bill regarding the discipline of exempt AIs.

2. This paper outlines the key proposals under Part IX of the SF Bill and the corresponding proposals in the BAB. At **Annex A** is a table comparing respectively the disciplinary sanctions that may be imposed on a licensed corporation and an exempt AI. At **Annex B** is a table comparing the provisions in Part IX with existing legislation.

POLICY OBJECTIVES AND MAJOR PROPOSALS

3. The current provisions governing the power of the SFC to discipline securities, futures and leveraged foreign exchange trading intermediaries for misconduct¹ or for conduct that reflects on their fitness and properness are dispersed over the Securities Ordinance (Cap.333), the Commodities Trading Ordinance (Cap.250) and the Leveraged Foreign Exchange Trading Ordinance (Cap.451).

4. The major guiding principles in revising the disciplinary framework are:

¹ Misconduct is defined under Part IX of the SF Bill to mean: a contravention of any of the relevant provisions, or any of the terms and conditions of a licence or an exemption imposed under the Securities and Futures [Ordinance], or a contravention of any other condition imposed under or pursuant to any provision of the Securities and Futures [Ordinance]; or an act or omission relating to the carrying on of any regulated activity for which a person is licensed or exempt which, in the opinion of the SFC, is or is likely to be prejudicial to the interest of the investing public or to the public interest. For the BAB, misconduct is similarly defined.

- (a) to protect investors by ensuring that licensed persons and exempt AIs conduct themselves properly and do not abuse their privileged position; and
- (b) to put in place adequate safeguards to ensure that the disciplinary functions are exercised fairly, transparently and consistently.

Part IX consolidates, revises and expands the existing disciplinary framework accordingly. The BO is also revised by the BAB to supplement the disciplinary framework for exempt AIs.

Application of disciplinary sanctions

5. Under existing legislation, the SFC is empowered to reprimand privately or publicly a licensed² representative, a licensed corporation and its officers; as well as to suspend or revoke the licence granted to a licensed representative or a licensed corporation. Disciplinary sanctions may be invoked where a person is guilty of misconduct or where a person is not fit and proper.

6. The SF Bill has introduced two broad types of changes regarding the discipline by the SFC of officers of a licensed corporation. First, the SF Bill replaces the current automatic attribution to an officer of the misconduct³ of a licensed corporation with a higher standard of proof of misconduct by the SFC as having occurred with his consent or connivance or attributable to his neglect (see clause 186(2)). Secondly, the disciplinary sanctions against corporate officers have been extended to include disciplinary fines (see paragraphs 11-12 below).

7. There is currently no express provision with respect to the disciplinary sanctions that may be imposed on an exempt AI. To rectify this, the BAB empowers the Hong Kong Monetary Authority (the “HKMA”) as the frontline regulator to reprimand an exempt AI for its misconduct (clause 5 of the BAB); and the SF Bill empowers the SFC as the ultimate authority in the regulation of the securities and futures industry to revoke the exemption granted to an exempt AI (clause 190 of the SF Bill). Moreover, the management of an exempt AI has to cease, either voluntarily or if necessary in accordance with the request of the HKMA, to engage any employee

² There are two broad types of mechanism under current legislation for permitting the conduct of the various activities regulated by the SFC, namely “registration” and “licensing”. The difference is just one of terminology. Under the existing law, sole proprietors, partnerships and corporations may be licensed or registered as principals and their staff as representatives. Under the Bill, the term registration is done away with and only licensing used. Further, only corporations will be able to be licensed as principals. Therefore, for simplicity, in this paper reference is made only to “licensed representative” and “licensed corporation”, etc.

³ In practice, the SFC only reprimands in this manner people who are involved in the management of a licensed corporation but not themselves licensed if it can prove certain extent of failure on their part (for example, the conduct occurred with their knowledge or owing to their negligence). Under existing law, the SFC would, however, be acting lawfully if it automatically reprimanded every officer of a corporation it intended to discipline, regardless of their degree of personal fault.

in the performance of any regulated function, should the employee be considered not fit and proper or not in compliance with the requirements imposed on him under the Business Conduct Rules or the Business Conduct Codes made by the SFC. The name of the relevant employee must then be removed from the register maintained by the HKMA under clause 4 of the BAB. The effect of such action is similar to the revocation of a licence of a licensed representative by the SFC. Please refer to paragraph 10 of Paper 5/01 for the detailed regulatory arrangement for the relevant employees of an exempt AI.

8. We have explained in paragraph 12 of Paper 5/01 the “executive officer” concept introduced for ensuring that the controlling minds of a licensed corporation and an exempt AI are competent to discharge their supervisory roles. Each licensed corporation and exempt AI must have at least two executive officers approved respectively by the SFC under clause 124 of the SF Bill and the HKMA under clause 9 of the BAB. An executive officer of a licensed corporation approved as a responsible officer under clause 124 of the SF Bill will be subject to disciplinary sanctions in line with those applying to other licensed persons (clause 187). Furthermore, his approval may be withdrawn if he has been found guilty of misconduct or not fit and proper to remain as a responsible officer (clause 187(1)(ii)). The SFC may also make an order prohibiting him from applying again for approval to become a responsible officer (see paragraph 13 below). The HKMA may withdraw the consent to the appointment of an executive officer of an exempt AI approved under clause 9 of the BAB if it is no longer satisfied that he is fit and proper to be or has sufficient authority within the exempt AI to be, an executive officer.

Wider range of disciplinary sanctions

9. Enforcement experience of the SFC reveals that the disciplinary sanctions under current legislation are limited and do not provide the SFC with the flexibility to deal with a wide range of improper conduct and circumstances. We have accordingly introduced in Part IX three new types of intermediate disciplinary sanctions as outlined in paragraphs 10 to 13 below.

Partial suspension or revocation of licence

10. The existing power of the SFC to revoke or suspend a licence is framed in such a way that the SFC can only suspend or revoke a licence completely or not at all. As a result, any suspension or revocation of a licence may constitute drastic action with far-reaching implications for the concerned licensed person, its employees and clients. Moreover, licensed corporations are increasingly conducting a diverse range of activities and the improper conduct might have affected only a certain part of its business activities. A blanket suspension or revocation may thus not always be warranted, especially with the introduction of the single licence to cover a maximum of nine regulated activities. Clause 187(1) therefore provides the SFC with the flexibility to tailor the scope of suspension and revocation. For instance, the SFC may

suspend the licence of a licensed corporation with respect to engaging in dealing in futures contracts without affecting the securities operation of the corporation.

Disciplinary fines

11. The SFC may under clause 187(2) of the SF Bill impose disciplinary fines on a licensed representative, a licensed corporation and its officers (including responsible officers and those involved in the management of a corporation but not themselves licensed). The SFC will principally fine in situations which do not warrant a revocation or suspension as it is too harsh in the circumstances, but which warrant more than a mere reprimand as it is too lenient. The SF Bill empowers the SFC to, where it considers appropriate, fine when an intermediary has profited from its improper conduct. We take the view that the proposed disciplinary fines will serve as an effective deterrent against misconduct, as understandably, the SFC may for the reasons given above be inhibited in suspending or revoking the licence of a licensed corporation. The availability of fining power is in keeping with the practice in other leading jurisdictions (see **Annex C**).

12. In order to ensure the transparency of the criteria upon which the decisions of the SFC regarding fines would be based, clause 187(7) provides that the SFC must publish guidelines on how it will make such decisions before it may use its power to impose fines. The SFC has already drafted fining guidelines for public consultation. In the course of drafting these guidelines, it has sought the views of a working group made up of directors and in-house lawyers of intermediaries, a solicitor and a representative of the Consumer Council. The SFC will expose the proposed guidelines for public consultation shortly. In sum, the SFC proposes to take a range of factors into consideration in imposing fines, and the major ones include the following-

- (a) impact of the conduct on integrity of financial markets, including whether public confidence in those markets has been damaged;
- (b) the level of intent including whether it was premeditated or involved substantial planning;
- (c) duration and frequency of the conduct;
- (d) the loss to or the cost on the affected parties, and / or the benefit to the party responsible for the conduct;
- (e) whether the conduct involved a breach of fiduciary duty;
- (f) whether the concerned person would be able to pay the level of penalty associated with the particular conduct, or would be in financial difficulties;
- (g) the previous disciplinary records;
- (h) the practice of the industry and whether the conduct is a subject of guidance issued by the SFC;

- (i) the degree of co-operation with the SFC and other authorities including admission of fault;
- (j) any remedial actions taken since the conduct was identified; and
- (k) what action the SFC has taken in previous similar cases.

Prohibition order

13. Clause 187(1)(b)(iv) empowers the SFC to prohibit a licensed representative or a licensed corporation from applying to be licensed, and a person from applying to be approved as a responsible officer of a licensed corporation for a specified period, if they have been guilty of misconduct or are found not fit and proper.

14. These three new intermediate disciplinary sanctions (with the exception of partial revocation) have no application to an exempt AI. In this connection, we have received a comment from some market participants that disciplinary fines should be extended also to an exempt AI. We take the view that such would be unnecessary as the HKMA is already empowered under the BO to take supervisory actions to deal with misconduct or non-compliance issues by an authorized financial institution. These include issuing directions under section 52 of the BO to order remedial actions, restricting business of an exempt AI, and attaching conditions to the authorization of an exempt AI concerned. We take the view that the current range of supervisory powers, coupled with the proposed power to issue reprimand and the stringent liabilities for breaches of requirements stipulated in the BO (for example, failure to comply with the direction issued under section 52 constitutes an offence), already provide strong deterrent against misconduct.

Other circumstances for disciplinary action

15. Clauses 188 and 190 of the SF Bill contain provisions detailing other circumstances in which a licence, an exemption or an approval as a responsible officer may be revoked or suspended, which are primarily modelled on existing law applying to a licensed corporation or representative. Such circumstances include (if applicable) where a licensed person or an exempt AI:

- (a) is facing financial difficulties;
- (b) has committed a crime;
- (c) has ceased the business for which it is licensed or exempted;
- (d) has requested the revocation or suspension itself;
- (e) has failed to pay an annual fee within three months of the original due date;
- (f) in respect of a corporation licensed or exempt to provide automated trading services, having been requested by the SFC, has failed to make,

or has not been successful in its application for an authorization under clause 95 of the SF Bill to provide automated trading services; and

- (g) has ceased to exist or in the case of an exempt AI, to be an authorized financial institution.

16. The SFC may also suspend or revoke the licence of a licensed corporation if any of its directors is affected by mental illness⁴. This ground is not extended to an exempt AI because the securities and futures business is not the core operation of an exempt AI and the influence of one of the many directors is unlikely to be overly significant to the conduct of the securities and futures business⁵. In addition, the licence of a licensed person will be deemed suspended and subsequently revoked if he fails to submit an annual return within three months of the original due date. Such a provision does not apply to an exempt AI as the substance of the annual return requirement has been achieved through the half-yearly return submitted in accordance with the BO, failure to comply with which is a criminal offence. Failure to submit annual returns does not attract criminal sanction under the SF Bill.

Procedural requirements

17. As mentioned in paragraph 4 above, a guiding principle in designing the disciplinary framework is to put in place adequate safeguards to ensure that the disciplinary functions are exercised fairly, transparently and consistently. In this connection, clauses 189 and 191 of the SF Bill as well as clauses 5 and 9 of the BAB prescribe the requisite procedural requirements. In order to ensure that any disciplinary decision is informed, balanced and transparent, the SFC and the HKMA, as the case may be, are required to –

- (a) provide the relevant party an opportunity of being heard before coming to the final decision; and
- (b) give written notice in respect of any disciplinary decision and the reason therefor.

18. Any party aggrieved by any of the disciplinary decisions of the SFC or the HKMA made in respect of him can appeal to the Securities and Futures Appeals

⁴ When there is a court finding that a director is mentally incapacitated within the meaning of the Mental Health Ordinance (Cap. 136), it does not mean that the licence of the relevant licensed corporation will be automatically suspended. Whether it needs to be suspended and should be suspended will depend largely on whether the incapacity of the director poses a risk to the investing public. Normally, it will not be the case as where justified, the director will be removed by the corporation and there will be other directors capable of managing the corporation. So, there will be no need to suspend or restrict operations. In fact there is a very similar provision under section 55(2)(a)(i) of the Securities Ordinance and it has never been used.

⁵ Under Schedule 7 to the BO, it is an authorization criterion that directors, etc are fit and proper. Pursuant to Schedule 8, failure to fulfil any authorization criteria is a ground for revocation. According to the guideline issued by the HKMA, the fitness and properness consideration with respect to directors, etc includes, among others, an assessment of the person's soundness of judgement.

Tribunal if a licensed person or an officer of a licensed corporation, and to the Chief Executive in Council if an exempt AI. This will be a subject of detailed consideration under Part XI of the SF Bill.

19. Presently, the SFC must conduct a disciplinary “inquiry” before imposing a sanction (for example, section 56 of the Securities Ordinance). However, the existing law does not specify how such an inquiry should be conducted. The inquiry requirement is therefore somewhat artificial, especially as disciplinary proceedings usually follow an investigation. As the SF Bill preserves the other procedural requirements, in particular the opportunity to be heard and the right of appeal, it dispenses with the artificial notion of an inquiry.

Ancillary matters

20. Clause 192 expands upon the existing law in relation to the effect of a suspension. It provides that for the period of the suspension of a person’s licence, approval or exemption, such person would not be authorised to conduct the activities for which they were licensed, approved or exempt. However, such person would need to comply with other applicable regulatory requirements as if still licensed, approved or exempt. The aim is to ensure that those who are suspended continue to observe all the provisions designed to protect their clients.

21. Clause 193 governs a range of miscellaneous matters, but most importantly gives the SFC the power to settle disciplinary proceedings (clause 193(3) and (4)). The clause codifies the existing practice of the SFC when it settles disciplinary proceedings.

22. Clause 194 imposes a new obligation on a person whose licence or exemption is suspended or revoked. Such a person would be required to comply with an SFC direction to transfer to, or to the order of, his client such records relating to the client’s assets or affairs. The purpose of the provision is to ensure that, when a licensed corporation or an exempt AI ceases business because of disciplinary action, its clients can monitor their affairs and move their assets to another licensed corporation or exempt AI more easily by being able to obtain the records of their investment affairs.

23. Clause 195 expands upon section 121X of the Securities Ordinance which only operates following the revocation or suspension of the registration of a registered margin financier or a registered margin financier’s representative. The clause empowers the SFC to issue a direction to a person or an authorized financial institution whose licence or exemption is suspended or revoked. Such a direction could enable: (if the licence or exemption is suspended) the continuation of business for the purpose of either essential action to protect clients’ interests or (if a representative) the interests of their employer; or (if the licence or exemption is revoked) the continuation of activities for the purpose of winding up the business.

Activities in compliance with a direction will not be taken as breaching the law against conducting regulated activities without a licence or exemption from the SFC.

MARKET COMMENTS AND CHANGES INTRODUCED

24. During the public consultation exercise, certain key areas of concern to the market in respect of Part IX were identified and addressed. They are discussed below.

Grounds for disciplinary sanctions

25. Some market participants advocated that the SFC should not discipline a person for not being fit and proper. We do not agree. A person is licensed or exempted on the basis that he is fit and proper to carry on a regulated activity. If he ceases to be fit and proper, the SFC must in the interest of investor protection have the power to suspend or revoke the licence or exemption. Similar grounds exist in current legislation and it is consistent with the practices in other leading jurisdictions (see **Annex C**).

Civil fines

26. Clause 187(2) empowers the SFC to impose disciplinary fines not exceeding the amount which is the greater of \$10m or 3 times the amount of the profit increased or loss avoided or reduced as a result of the relevant misconduct, or other conduct that leads to the disciplinary decision of the SFC. Some market practitioners submitted that fines should be imposed according to a pre-defined tariff. We consider the preparation of a pre-defined tariff artificial and extremely difficult (if not impossible), given the need to deal with a great variety of mischief committed in different circumstances. As mentioned in paragraph 12 above, the SFC is statutorily obliged to publish guidelines on the manner in which it proposes to exercise the fining power. Moreover, neither the US nor the UK regulators have adopted a strict tariff schedule of fines. The US Securities and Exchange Commission (the “SEC”) imposes fines under a loose system of legislatively-mandated tiers. The US Commodities Futures Trading Commission (the “CFTC”), however, imposes fines according to loose guidelines, as does the UK Financial Services Authority (the “FSA”). As regards the diverse comments on the maximum fines, we take the view that the maximum set out in the SF Bill serves the purpose as an intermediate disciplinary sanction and is appropriate having regard to the practices in other leading jurisdictions (see **Annex C**).

Deemed suspension of licence or exemption

27. We agree with the market comment that the provision in the White Bill that immediate suspension of a licence or an exemption for failure to pay an annual fee or submit an annual return on the due date was overly harsh. We have accordingly

revised the SF Bill to the effect that there will be a 3-month “grace” period and warning before actual suspension.

Disciplinary action against management of a licensed corporation

28. Some market participants argued that those involved in the management of a licensed corporation and who were neither licensed nor approved, should not be subject to disciplinary sanctions. We disagree. A person who can influence the management of a licensed corporation should be held responsible for his action on the basis of an appropriate standard regardless of whether he is licensed or approved. To do otherwise would result in loopholes in that people exercising major influence over the licensed corporation would stay in the “shadow”. Similar application can be found in existing law and under the SF Bill. We have tightened the circumstances where the management will be disciplined for misconduct of the licensed corporation, as there is no longer automatic liability (see paragraph 6 above).

Determination of misconduct in terms of interest of the investing public, etc

29. Clause 186(1) of the SF Bill defines “misconduct” to mean, among other things, “an act or omission relating to the carrying on of any regulated activity for which a person is licensed or exempt which, in the opinion of the SFC, is or is likely to be prejudicial to the interest of the investing public or to the public interest”. There was a market submission that the SFC had too much power in determining whether a person was guilty of misconduct on public interest grounds. This residual ability to discipline is necessary for protecting the investing public and proper regulation. We are conscious that this involves the SFC making a subjective judgement. In connection with this, the SFC is required to observe the procedural requirements as specified in clauses 189 and 191 for making an informed and transparent decision (paragraph 17 above). Any party aggrieved by the decision made in respect of him can lodge an appeal with the Securities and Futures Appeals Tribunal or, in cases relating to an exempt AI, to the Chief Executive in Council. Furthermore, common law grounds of judicial review already require a decision-maker to have sound grounds for its opinion. Otherwise, the decision may be struck down.

Information that the SFC may rely on for the purpose of disciplinary action

30. We have received a market comment that the SFC should not rely on illegally obtained information that comes to its possession in coming to a disciplinary decision. We disagree. It is noted that such information may be admitted in criminal cases. Disciplinary decisions are of administrative nature with respect to which evidence capable of logical proof may be used. As explained in paragraph 17 above, the SFC is obliged to give the concerned party an opportunity of being heard. The SFC is also obliged to disclose the information it relies upon in disciplinary proceedings and almost always informs the source of the information (there may be circumstances in which this would be inappropriate, for example, a whistleblowing employee who deserved anonymity because he reasonably feared reprisals) and

consider his side of story. The SFC would judge whether the information is trustworthy and whether it is fair to use the information. Again, any party aggrieved by the decision of the SFC made in respect of him can appeal to the Securities and Futures Appeals Tribunal. The Process Review Panel appointed by the Chief Executive will also review the SFC's internal operational procedures for taking disciplinary actions to ensure that they are fair, reasonable and consistently applied.

INTERNATIONAL COMPARISONS

31. At **Annex C** is a table comparing the disciplinary regime provided for in the SF Bill with those in the US, the UK, Australia and Canada. Members will note from the table that the range of disciplinary sanctions as well as the review mechanism under the SF Bill are comparable with those in other leading jurisdictions.

32. As for the administration of the disciplinary regime, it is similar in all leading jurisdictions generally. In each jurisdiction, the securities regulator is responsible for both licensing and disciplining of the intermediaries. Such is also the arrangement in Hong Kong (notwithstanding one respondent submitted its concern over the various roles of the SFC). The only significant departure from this is the US, where disciplinary decisions are made by administrative law judges ("ALJs") who, though being employees of the SEC, are independent of the SEC hierarchy. Proceedings before ALJs are quasi-judicial and the full Commission of the SEC may hear appeals in respect of their decisions. In each jurisdiction, disciplinary proceedings are administrative in nature with informal proceedings and with any probative material being considered.

**Securities and Futures Commission
Hong Kong Monetary Authority
Financial Services Bureau
23 March 2001**

The Disciplinary Framework for a Licensed Corporation and an Exempt Authorized Institution

Abbreviations used in the table

AI = Authorized Financial Institution
 BAB = Banking (Amendment) Bill 2000
 BO = Banking Ordinance
 HKMA = Hong Kong Monetary Authority
 SFC = Securities and Futures Commission
 SF Bill = Securities and Futures Bill

✓ = corresponding regulatory provisions in the SF Bill
 ○ = corresponding or relevant regulatory provisions in the BAB / the BO

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)	Brief Description (Exempt AIs)
<i>IX – Discipline, etc</i>		
187 – Disciplinary action in respect of licensed persons, etc	- Disciplinary actions include: (i) Revocation, partial revocation, suspension and partial suspension of the licence of a licensed representative and a licensed corporation, for being guilty of misconduct or not fit and proper;	- Disciplinary actions include: (i) Revocation and partial revocation of the exemption granted to an exempt AI, for being guilty of misconduct or not fit and proper; Removal of an employee from engaging in any regulated function by management of an exempt AI (which would lead to the removal of his name from the register maintained by the HKMA) either
190 - Disciplinary action in respect of exempt persons		

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		<p>(ii) Revocation and suspension of the approval granted to a person as a responsible officer, for being guilty of misconduct or not fit and proper;</p> <p>(iii) Private and public reprimand against a licensed representative, a licensed corporation, a responsible officer and a person involved in the management of the business of the licensed corporation, for being guilty of misconduct or not fit and proper;</p> <p>(iv) Prohibition against a licensed representative, a licensed corporation, a responsible officer and a person involved in the management of the business of the licensed corporation from applying to become licensed or approved as a responsible officer for a specified period, for being guilty of misconduct or not fit and proper; and</p> <p>(v) imposition of disciplinary fine on a licensed representative, a licensed corporation, a</p>	<p>○</p> <p>○</p> <p>○</p>	<p>voluntarily in accordance with the guidelines issued by the HKMA (which will be based on the relevant treatment of the SFC with respect to a licensed representative) or upon request by the HKMA (the register is to be maintained under clause 4 of the BAB amending section 20 of the BO);</p> <p>(ii) Revocation of the consent granted to a person as an executive officer, for being unable to satisfy the criteria adopted in granting the original consent (clause 9 of the BAB introducing section 71C of the BO);</p> <p>(iii) Private and public reprimand against an exempt AI, for being guilty of misconduct (clause 5 of the BAB introducing section 58A of the BO);</p> <p><u>General</u></p> <p>(iv) The HKMA is already empowered under the BO to take supervisory actions to deal with misconduct or non-compliance issues by an AI. These include issuing direction under section 52 of the BO to order remedial actions, restricting business of an exempt AI, and attaching conditions to the authorization of the concerned exempt AI.</p>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		responsible officer and a person involved in the management of the business of the licensed corporation, for being guilty of misconduct or not fit and proper.		
<p>188 – Other circumstances for disciplinary actions in respect of licensed persons, etc</p> <p>190 - Disciplinary action in respect of exempt person</p>	188	<p>- A licence may be revoked, partially revoked, suspended or partially suspended under the following circumstances:</p> <p>(i) facing financial difficulties;</p> <p>(ii) being affected by mental illness or in the case of a licensed corporation, one of the directors being affected by mental illness;</p> <p>(iii) having committed an offence or in the case of a licensed corporation, also one of the directors having committed an offence;</p> <p>(iv) having ceased the activities for which the licence is granted;</p> <p>(v) having requested the SFC for the revocation or suspension;</p> <p>(vi) in respect of providing automated trading services, having been requested to make an application for an authorization under clause 95 and failed to do so, or the relevant application having been rejected;</p> <p>(vii) having passed away or in the case of a licensed corporation, ceased to exist (for example, wound up);</p>	<p>190</p> <p>✓</p> <p>✓</p> <p>○</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>118(7)</p> <p>✓</p>	<p>- An exemption may be revoked, partially revoked or suspended (with respect to item (viii) below) under the following circumstances:</p> <p>(i) facing financial difficulties;</p> <p>(ii) comparable arrangements under Schedules 7 and 8 to the BO (see paragraph 16 and footnote 5 of main paper);</p> <p>(iii) having committed an offence;</p> <p>(iv) having ceased the activities for which the exemption is granted;</p> <p>(v) having requested the SFC for the revocation;</p> <p>(vi) in respect of providing automated trading services, having been requested to make an application for an authorization under clause 95 and failed to do so, or the relevant application having been rejected;</p> <p>(vii) having ceased to be an AI;</p>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		(viii)having failed to pay an annual fee (plus the accrued interest) within 3 months of the original due date; (ix) having failed to submit an annual return within 3 months of the original due date.	✓ ○	(viii)having failed to pay an annual fee (plus the accrued interest) within 3 months of the original due date; (ix) comparable requirement under the BO for submission of half-yearly returns, failure to comply with which is a criminal offence.
192 – Effect of suspension under Part IX	192(1)	- mirror clause as clause 192(3)	192(3) ✓	- mirror clause as clause 192(1)
193 – General provisions relating to exercise of powers under Part IX	193(1), (2) & (5)	- clause 193(1), (2) and (5) applicable to both licensed persons and exempt AIs - clause 193(3) and (4) are a pair and are about the power of the SFC to settle with licensed persons on disciplinary proceedings	193(1), (2) & (5) ✓	- clause 193(1), (2) and (5) applicable to both licensed persons and exempt AIs - clause 192(3) and (4) have no application to exempt AIs as the applicable disciplinary sanction administered by the SFC relates to revocation of exemption, which invariably involves serious matters not falling within the scope of matter that should be settled
194 – Requirement to transfer records upon revocation or suspension of licence or exemption		- same clause applicable to both licensed persons and exempt AIs	✓	- same clause applicable to both licensed persons and exempt AIs
195 – Permission to carry on business operations upon revocation or suspension of licence or exemption		- same clause applicable to both licensed persons and exempt AIs	✓	- same clause applicable to both licensed persons and exempt AIs

**Securities and Futures Bill
Part IX**

Comparison Table

Legend:

- CTO - Commodities Trading Ordinance (Cap. 250)
 LFETO - Leveraged Foreign Exchange Trading Ordinance (Cap. 451)
 SO - Securities Ordinance (Cap. 333)
 SFCO - Securities and Futures Commission Ordinance (Cap. 24)

Clause	Contents	Derivation	Notes
	<i>Division 1 – Interpretation</i>		
186	Interpretation of Part IX	ss 56(2)(c) & (5), 121S(5) & 121U(5) SO, ss 36(2)(c) & (5) CTO & ss 12(4)(c) & (7) LFETO	Clause 186(1) essentially re-enacts the existing definition of “misconduct”; the definition of “register of companies” is new to avoid doubt. Clause 186(2) creates a standard for the attribution of a corporation’s misconduct to the corporation’s management and is based on cl 56(2)(c) SO, 36(2)(c) CTO and 12(4)(c) LFETO but clarifies the standard of attribution as neglect, consent or connivance.
	<i>Division 2 – Discipline, etc.</i>		
187	Disciplinary action in respect of licensed persons, etc.	ss 56(1) & (2), 121S(1) & (3), 121U(1) & (3) & 121V(1) & (3) SO, s 36(1) & (2) CTO & s 12(1) & (4) LFETO	Clause 187(1) largely re-enacts existing grounds for disciplinary proceedings and existing sanctions. However, cl 187(1)(i)(A) & (B) are new insofar as they allow for partial revocation and suspension, and cl 187(1)(ii) and (iv) are new. Clauses 187(2) & (4)-(8) which provide for fines are new. Clause 187(3) makes express existing law. The clause 197(9) definitions are new.
188	Other circumstances for disciplinary actions in respect of licensed persons, etc.	ss 55(1) & (3), 121R(1), (2), (4) & (5) 121T(1), (2), (4) & (5) SO, ss 35(1)-(3) CTO & ss 11(1)-(3) LFETO	Clauses 188(1) and (3) largely re-enact existing law with some minor modifications. Clauses 188(2) and (7) are new. Clauses 188(4) and (5) elaborate on s 11(2)(b) LFETO.

Clause	Contents	Derivation	Notes
189	Procedural requirements in respect of exercise of powers under section 187 or 188	ss 55(2B), 56(3), 57(4), 121R(3), 121S(4), 121T(3), 121U(4), 121V(4), & 121W SO, ss 35(4) & (5), 36(3) & (4) & ss 11(3) & 12(5) & (6) LFETO	Clause 189(1) & (2) largely re-enact existing law, but cl (2)(d) and (e) are new.
190	Disciplinary action in respect of exempt persons	ss 60(5) & 61(2) SO	Clause 190 elaborates on the existing provisions.
191	Procedural requirements in respect of exercise of powers under section 190	New	New
	<i>Division 3 – Miscellaneous</i>		
192	Effect of suspension under Part IX	New	New
193	General provisions relating to exercise of powers under Part IX	s 23(4) SFCO, ss 57(2) & 121Y(1) SO, s 37(2) CTO & s 11(5) LFETO	Clause 193(1) is adapted from s 23(4) SFCO. Clause 193(2) re-enacts existing law. Clauses 193(3) & (4) are new. Clause 193(5) expands on s 12(8) LFETO.
194	Requirement to transfer records upon revocation or suspension of licence or exemption	New	New
195	Permission to carry on business operations upon revocation or suspension of licence or exemption	s 121X SO	Clause 195 models and expands on the effect of s 121X SO.

International comparison on disciplinary action

	Hong Kong	US ⁱ	UK	Australia	Canada ⁱⁱ
Reprimand	Yes	Yes s 15(b)(4) Securities Exchange Act (“SEA”)	Yes ss 66(3)(b) & 205 Financial Services and Markets Act (“FSMA”)	No, but disciplinary action is publicised.	No, but disciplinary action is publicised.
Suspension	Yes	Yes as above	Yes s 63(1) FSMA	Yes ss 827 & 1192 Corporations Law (“CL”)	Yes s 26 Securities Act (“SA”) ss 23 and 24 Commodity Futures Act (“CFA”)
Revocation	Yes	Yes as above	Yes s 63(1) FSMA	Yes ss 824, 826, 1189A & 1192 CL	Yes as above
Fine	Yes	Yes s 21B SEA	Yes ss 66(3)(a) & 206 FSMA	No	No
Maximum fine	The higher of \$10m or 3x profit or loss	Tiered up to maximum of US\$100k for individuals and US\$500k for corporations per violation (e.g. 20 persons sustain loss, fine = 20X fine levied) s 21B SEA Orders forcing an account of profits or disgorgement of profits are also available. s 21C(e) SEA	Unlimited ss 66(3)(a) & 206 FSMA	N/A	N/A
Merits review	Yes Securities and Futures	Initial decision by Administrative Law Judge, with review by full	Yes Financial Services and Market	Yes Administrative	Yes Appeals Full Commission and appeal

Hong Kong	US ⁱ	UK	Australia	Canada ⁱⁱ
Appeals Tribunal	SEC Commission and appeal to Federal Circuit Court after that SEC's Rules of Practice and 5 United States Code §§ 551-559 & 701-706	Tribunal ss 60(5) & 179(4) FSMA	Tribunal s 1317B CL	on merits to Provincial Divisional Court ss 8-9 SA/ss 4-5 CFA

ⁱ Uses the Securities and Exchange Commission (SEC) as a basis for comparison. There are other disciplinary powers in other SEC administered statutes, but they are all similar. Commodities Futures Trading Commission (CFTC) has similar, but not identical powers.

ⁱⁱ Securities and futures regulation in Canada is a responsibility for provincial governments, but regulation in each province is broadly similar. This table has been prepared on the basis of Ontario.