

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

**Efforts of the Securities and Futures Commission  
in engaging investors**

**Introduction**

At the Bills Committee meeting on 8 June 2001, some Members suggested that there should be a statutory requirement for the Securities and Futures Commission (SFC) to set up a “consumer panel” similar to that required under the UK Financial Services and Markets Act 2000 (the “FSMA”). Some Members however cautioned that the creation of multiple layers of committees might not help enhance the investor protection efforts made by the SFC. This paper seeks to update Members on the on-going efforts made by the SFC to engage investors and recent initiatives and proposals in this area, and explains our position on Members’ suggestion.

**Regulatory objectives and functions**

2. Clause 4 of the Securities and Futures Bill (“SF Bill”) will, when enacted, stipulate for the first time in legislation the regulatory objectives which the SFC is to pursue. Two of the five objectives are respectively to promote understanding by the public of the operation and functioning of the securities and futures industry and to provide investor protection. Clause 5 of the SF Bill imposes statutory functions on the Commission which elaborate on how the regulatory objectives set by the Bill are to be achieved. These include –

- promoting understanding by the public of the securities and futures industry and of the benefits and risks of investment
- encouraging the public to invest through regulated persons
- promoting public understanding of the importance of making informed decisions regarding financial products
- securing investor protection

The SF Bill also places upon the SFC a statutory duty to act in a way that it considers most appropriate for meeting the regulatory objectives. To this end, the SFC shall no doubt be, and in fact has been, seeking input from investors and other concerned sectors in formulating and implementing the regulatory framework.

## **Efforts of the SFC in engaging investors**

### ***Advisory Committee formed under clause 7***

3. As is the case under existing law, the SFC shall, under clause 7 of the SF Bill, set up a statutory advisory committee consisting of members drawn from various industry sectors, issuers and the general public to advise it on matters of policy regarding any of its regulatory objectives and functions. The SFC Advisory Committee (the “SFCAC”) established under the Securities and Futures Commission Ordinance (the “SFCO”) has a broad-based membership capable of representing the interest of investors, intermediaries, listed companies and other market participants. Under both the present regime and the SF Bill, the SFCAC shall meet at least once every three months and additional meetings may be convened by the Chairman of the SFC or any three other members. It serves as a bridge for the SFC to reach providers and users of financial services in the securities and futures market.

### ***Committees formed under clause 8 and working groups***

4. The Commission has also formed more than ten specialized standing committees under section 6 of the SFCO (which is the equivalent of clause 8 of the SF Bill) to assist its work. Some of the better known committees to the market and the investing public are the Committee on Unit Trusts, the Takeovers and Mergers Panel and the Investor Education Advisory Committee (the “IEAC”) (see para. 7). These committees are established with a statutory basis and their members are subject to relevant safeguards and immunity provisions in the law.

5. In addition, working groups of relevant expertise are set up to help the SFC formulate draft rules, codes and guidelines on specific subjects, like the regulation of Automated Trading Services. The practice is to release preliminary drafts to the relevant working groups for consideration and technical input. Amendments are then made in the light of their contributions before release for

public consultation. Most of these rules deal with highly technical issues. It is important for the SFC to take into account expert views on the drafts in their formative stage. The SFC also actively seeks input from the Consumer Council, institutional investors, academics, etc. on relevant subjects.

### ***Investor Education***

6. Investor education is very important to the SFC. The SFC recognizes the crucial role that investor education plays in ensuring a healthy, well-balanced and responsive market, and in assisting the SFC to meet its regulatory objectives mentioned above.

7. The IEAC was established by the Commission in 1998 to provide ideas and support to the SFC in setting its investor education targets and in its work aimed at achieving those targets. In performing this role, the IEAC identifies areas where investor education is desirable and where the SFC should focus in order to further the interests of consumers of financial services within its regulatory purview. The committee consists of 10 members and 4 alternate members from different constituents, including the Hong Kong Exchanges and Clearing Limited, the Consumer Council, the Hong Kong Investment Funds Association, the accounting profession, the press, the academia and a LegCo member.

8. The Electronic Investor Resources Centre (the “eIRC”) launched by the Commission in June 2000 plays an important role in investor education by providing a website which enables investors to research facts on all aspects of investing with one of the most comprehensive lists of links to investor education websites.

9. The SFC’s website provides investors with regulatory news, an investor education corner and a registry of registered persons and authorized investment products. The SFC also distributes free brochures and pamphlets explaining to investors the basics of investing and how they should protect their rights.

10. The SFC conducts media programmes aimed at educating and informing investors both by publishing articles in newspapers and magazines and jointly running radio and television programmes on a wide variety of investment topics. In the first nine months of 2001, the SFC published 78 articles on investment topics in local newspapers and ran 84 radio programmes. Seminars

and workshops are also organised to enhance investors' understanding of the markets and promote proper attitudes towards investing. In the last twelve months, the SFC has conducted 34 seminars with over 4,500 participants.

### ***Shareholders Group***

11. While the SFC has always been conscious of the importance of investor input, it has recently taken an additional step and established a Shareholders Group to provide an organised means of engaging investors and harnessing their views and to provide advice and feedback to the SFC on issues relating to shareholders' rights and interests. The group consists of 14 members drawn from different constituencies including retail and institutional investors, professionals, academics and prominent advocates of investors' rights as well as the Consumer Council. The Shareholders Group aims to meet bi-monthly but has been flexible in agreeing to meet twice during November 2001 in the light of the workload to be dealt with. The items which have been worked on include the agreement of the group's terms of reference and a study on the possibility of companies incorporated in overseas jurisdictions listing in Hong Kong. The meetings have been reported in the SFC's news releases.

### ***Statutory public consultation requirement***

12. It has been our practice to consult the public on any legislative proposals. Having regard to Members' views, we have proposed a Committee Stage Amendment (CSA) to the Securities and Futures Bill to include a statutory public consultation requirement with respect to any rules before they are made by the SFC. With increased investor awareness resulting from the efforts put into investor education by the SFC including the newly established eIRC (see paras. 8 and 9), we would expect to see more active participation of and contribution from investors in such consultation exercises.

### ***Other efforts of the SFC in engaging the public***

13. There are a number of channels through which investors can engage the SFC and through which the SFC can gauge investors' views and concerns. The SFC actively encourages investors to contact it with any inquiries or complaints by providing an Investor Hotline and a complaint form on its website. Alternatively, investors may email the SFC or simply set out their complaints or comments in writing.

14. The Complaints Control Committee (the “CCC”) is an internal body established by the Commission to ensure that all complaints from the public are assessed in a consistent, transparent and accountable manner. It is chaired by an Executive Director of the Commission. The CCC meets weekly and oversees the procedures for handling complaints from the public by the SFC and ensuring compliance with those procedures so as to ensure that the SFC’s objective of evaluating and responding to complaints promptly can be met. The Commission’s performance pledge is to provide a preliminary response to public inquiries and complaints made verbally within 48 hours and to written inquiries and complaints within two weeks.

15. The SFC has recently published the findings of a survey which was conducted in June and July 2001 to ascertain the profile, investment behavior, education needs and views on regulatory functions of retail investors. This is the second such survey (the first having been conducted in 1999) and a decision has been made to conduct similar surveys every 12-18 months in order to assist the SFC in assessing the views and needs of investors.

### **A statutory investors group?**

16. The concept of the SFC having a formalized body that articulates the issues concerning investors and the protection of their interests is a good one. The SFC has taken on board Members’ views about the advantages of such a body and recognizes the fact that it would help it to achieve its regulatory objective of protecting the interests of investors. Having considered the views of the Bills Committee, the SFC has decided to upgrade the Shareholders Group, referred to in para. 11, to a statutory standing committee under section 6 of the SFCO (see para. 4). It will start the process soon. We believe that this would help formalize the functions of this important Group, and enable the SFC to better share information and seek views from the investing public with respect to a wide variety of issues on shareholder and investor protection. The Group with its collective diverse experience and new statutory status will serve as an effective sounding board through which the SFC can hear direct from investors and other interested constituencies about the issues which concern them. It will also help facilitate investors as a group to participate more effectively in public consultation exercises. The Group’s work will be reported through press releases, newsletters and the SFC’s Annual Reports. The latter are required by law to be laid before LegCo.

## Comparison with the UK regime

17. The FSMA does not provide for the establishment of an advisory committee similar to the SFCAC. The Consumer Panel established under the FSMA is a unique feature among the legislative frameworks in all leading jurisdictions. There is no statutory body similar to the Consumer Panel under the US or Australian securities laws. Since the UK Financial Services Authority (the “FSA”) regulates many sectors<sup>1</sup>, ranging from the securities and futures industry to insurance and building societies, the consultative mechanism that it is subject to may have to be more comprehensive to include users of all relevant services. Actual Panel membership includes professionals like lawyers, accountants and institutional investors, as well as representatives of consumer advisory groups. Such statutory arrangement has to be seen against the fact that the FSA has been given much wider powers than the SFC.

18. For instance, the FSA has “extra-parliamentary” powers to make rules which carry legislative effect without any form of scrutiny or vetting by the Parliament. We understand that the Parliament has agreed to confer the FSA with such powers on the condition that detailed consultative arrangements be put in place in primary legislation.

---

<sup>1</sup> FSA subsumes the regulatory functions of a number of authorities:

- Securities and Investment Board,
- Personal Investment Authority,
- Investment Management Regulatory Organisation,
- Securities and Futures Authority,
- Supervision and Surveillance Branch of the Bank of England,
- Building Societies Commission,
- Insurance Directorate of the Treasury,
- Friendly Societies Commission,
- Register of Friendly Societies,
- UK Listing Authority,
- Lloyd’s of London.

Its remit encompasses the regulation of banking activities, securities transactions, healthcare products, funeral expenses arrangements, etc. which affect the interests of a wide spectrum of consumers, depositors and investors.

## **Conclusion**

19. We believe that the above-mentioned investor engagement efforts being made, or to be made upon enactment of the SF Bill, by the SFC, notably the SFCAC, the Shareholders Group (soon to be made a statutory standing committee), and the mandatory public consultation requirement to be introduced through a CSA to the SF Bill (see para. 12), will achieve the same goal in a manner more suitable in the local context. We shall keep these engagement efforts under review to assess the need for improvements, with a view to promoting dialogues and partnerships between the regulators and the investors, in particular the small investors. We shall also continue to review with SFC the need to engage further investors through other channels.

Secretary for Financial Services  
Financial Services Bureau  
26 November 2001