

Ref : CB1/BC/4/00

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

**Update on areas of concern raised by members during discussions on the  
Securities and Futures Bill and Banking (Amendment) Bill 2000 and  
follow-up actions required from the Administration**

This paper summarizes the major concerns, views and suggestions raised by the Bills Committee on Part I to Part VII of and relevant Schedules to the Securities and Futures Bill since December 2000. It has updated the list on areas of concern raised by members during discussions on the two Bills (LC Paper No. CB(1) 1379/00-01(01) issued on 29 May 2001 and summarized new issues and concerns raised by members during meetings held from June to October 2001 when the Bills Committee examined the two Bills clause-by-clause.

2. This paper should be read in conjunction with the relevant marked-up versions of the Blue Bill showing the Committee Stage Amendments to be proposed by the Administration which were issued to members in November 2001.

Legislative Council Secretariat

30 November 2001

**Parts I & II of and Schedules 1 & 2 to the Securities and Futures Bill**

**Date of meetings: 8 & 12 December 2000, 5 January and 1, 5, 8 & 12 June 2001**

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
<b>Part I - Preliminary</b> <b>Part II- Securities and Futures Commission</b>		
<p align="center">4</p> <p align="center">4(c)</p>	<p><u>Regulatory objectives of Commission</u></p> <p>The drafting fails to reflect SFC's commitment to investor protection. More positive expression e.g. "as far as practicable" is preferred to "to secure an appropriate degree of".</p>	<p>To consider amendments.</p>
<p align="center">4(f), 5(1)(o) &amp; (q), 5(4)</p>	<p>The clauses provide very wide powers to SFC in assisting FS in maintaining the financial stability of Hong Kong. They allow SFC to take any steps and to provide FS with any information in fulfilling the regulatory objective under 4(f).</p>	<p>To review clauses 5(4) to clarify that SFC's powers are not unlimited.</p>
<p align="center">7, 8</p>	<p><u>Advisory Committee, Commission may establish committees</u></p> <p>Standing, designated statutory bodies for protecting and promoting the interests of financial customers and market practitioners similar to the Consumers and Practitioners Panels established under the FSMA of UK should be set up.</p> <p>SFC is required to consult these panels and obliged to give reasons where it disagrees with their views. These panels are appropriate institutions to fulfil the regulatory objective under 4(b) &amp; (c).</p> <p>The UK system may not be applicable in Hong Kong due to differences in their constitutional structures and developments in financial markets.</p>	<p>SFC will consider upgrading and formalizing the status of the Shareholders' Group under clause 8 (LC Paper No. CB(1) 423/01-02(01) of 27 November 2001).</p> <p>The Administration has provided an information paper on SFC's existing efforts and proposals in engaging investors and seeking their inputs in</p>

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	SFC conducts consultation through a system of standing and special committees. The proposal of establishing statutory panels on consumers and practitioners may reduce flexibility of the current system.	formulating and implementing the regulatory framework (LC Paper No. CB(1) 423/01-02(01) of 27 November 2001).
8(5)(b), 32 of Part 1 (Schedule 2)	The expression "revoke an appointment" is used in clause 8(5)(b), where "remove from office" is used in clause 32 of Part 1 of Schedule 2.	To check consistency with other legislation and propose changes if necessary.
11	<p><u>Directions to Commission</u></p> <p>The CE's power to give written directions to SFC will undermine the autonomy of SFC and subject its work to political interference.</p> <p>The power will override checks and balances and safeguards designed for the entire regulatory regime.</p> <p>Such overriding power of the Administration does not exist in other jurisdictions.</p> <p>LegCo should put check on such a "reserved power" of the Administration to prevent possible abuse.</p> <p>There is concern about whether written directions will be made public.</p> <p>Clear procedures and circumstances for invoking the power should be specified in the Bill.</p> <p>There are safeguards to CE's power. He has to consult the Chairman of SFC and be satisfied that it is the public interest before giving the direction.</p>	<p>The Administration has explained the need for the power under LC Paper No. CB(1) 1174/00-01(01) of 8 May 2001.</p> <p>The Administration will endeavour to enhance the transparency of such directions.</p>

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
	CE's power will be an effective safeguards against possible malfunctioning of SFC.	
12	<p><u>Commission to furnish information</u></p> <p>There is concern that the provision will enable the Government to access information on individual cases.</p>	The information sought under this clause is confirmed to principles, practices and policies.
<b>Schedule 1 - Interpretation and general provisions</b>		
1 of Part 1	<p>The definition of "associate" has been cast too wide to include " each employee of any of its related corporations" (under item (k)(i)).</p> <p>In the definition of "professional investor", the expression "(other than a municipal government authority)" under item (h) should be deleted.</p>	<p>To consider the drafting comments.</p> <p>To discuss "associate" in context as and when the definition appears in relevant parts, in particular Parts XIII &amp; XIV of SFB.</p>
6 of Part 3	"Deutsche Borse AG" should be read "Deutsche Börse AG".	To up-date the name of the exchanges in the Schedule.
<b>Schedule 2</b>		
<b>Part 1 - Constitution and proceedings of Commission, etc.</b>		
1	There is a view that a maximum number of SFC members should be specified.	Need to retain flexibility.
2	There is a view that the number of non-executive directors should be more than that of executive directors to ensure better checks and balances on SFC.	To consider the suggestion.

<b>Clause No.</b>	<b>Concerns/Views/Suggestions</b>	<b>Administration's response or Follow-up required by the Administration/Securities and Futures Commission</b>
16	The quorum for SFC meetings should be specified as 1/3 of the total membership of the Commission.	To consider the suggestion.
19, 20	It is doubtful whether the Chairman of SFC should be given a casting vote as this might undermine the role of the non-executive directors. The need for him to consult FS in exercising the vote is also questionable.	Consultation with FS was taken as an additional safeguard during passage of the SFC Ordinance in 1989. To review the two clauses.
21	The arrangement for written resolution is not clear.  There is no provision for those directors who are opposed to the written resolution to request for a meeting to discuss the matter in question.	To review the drafting to provide for clearer arrangement.

**Part III of and Schedule 3 to the Securities and Futures Bill**

**Date of meetings: 12 & 19 January, 15, 19 & 22 June 2001**

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
<b>Part III - Exchange Companies, Clearing Houses, Exchange Controllers, Investor Compensation Companies and Automated Trading Services</b>		
19, 37, 59, 79	<p><u>Recognition of regulated entities</u></p> <p>The clauses provide that SFC may recognize the regulated entities "in the interest of the investing public or in the public interest". There is a view that it is unnecessary to refer to "interest of the investing public" as this should have been included under "public interest". If "public interest" is to prevail, the expression "in the interest of the investing public and not against public interest" should be used.</p> <p>There is a suggestion that the expression "the public or any section of the public" should be considered.</p>	To consider amendments to clarify policy intention that "interest of the investing public" should not be contrary to "public interest".
21, 38, 63	<p><u>Duties of regulated entities</u></p> <p>The clauses provide that the regulated entities, in discharging their duties, shall "act in the interest of the public, having particular regard to the interest of the investing public".</p> <p>The expression "having particular regard to the interest of the investing public" seems to imply that the interest of the investing public will prevail over the public interest. "including" is more appropriate than the expression "having particular regard to".</p>	To consider the drafting comments.

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
21, 22(3)	It is not clear whether the exchange company has a duty to members of the public; and if it fails in its duty, whether members of the public have a right to sue.	To review the clauses.
22, 39, 64, 81	<p><u>Immunity for regulated entities</u></p> <p>The provisions provide statutory immunity for civil liability to recognized exchanges, clearing houses, exchange controllers and investor compensation companies if they act "in good faith". The threshold of acting "in good faith" is too low for statutory immunity. There is also concern that a person acts in "gross negligence" or "recklessly" will be exempted from liability. A "due diligence" threshold should be added.</p>	<p>The Administration has considered the suggestion to include "with due diligence" as the threshold, but maintains that the threshold of "in good faith" is appropriate (LC Paper No. CB(1) 1420/00-01(01) of 4 June 2001).</p> <p>The Administration has confirmed that the same threshold is used in clauses 368 and 369 in relation to immunity in respect of staff of SFC and auditors of listed companies in communicating with SFC.</p>
28 & 33, 43 & 44, 72 & 73, 85 & 86	<p><u>Withdrawal of recognition of regulated entities and appeal</u></p> <p>There is concern about conflict of interest on the part of FS as he is involved in the decision on withdrawal and also deals with the concerned appeal.</p>	<p>The Administration to check the existing CE in Council appeal procedure to ensure that there will not be any conflict of interest on the part of FS.</p> <p>The Administration has provided a paper on "Appeals under Part III of</p>

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
		the Securities and Futures Bill" (LC Paper No. CB(1) 423/01-02(02) of 27 November 2001).
29 (related to 11 in Part II)	<p><u>SFC's direction to exchange companies to cease to provide facilities in emergencies</u></p> <p>Such power is subject to safeguards provided in clause 29(1) and (2). It appears that there is no need to give extensive power to CE to give written directions to SFC under clause 11.</p> <p>CE's power is not a reserved power, but more of a supplemental power as it can override SFC's opinion and remove safeguards built-in under the Bill.</p>	The Administration has explained the need for the power of CE under LC Paper CB(1) 1174/00-01(01) of 8 May 2001.
33	A direction given under clause 29 will take immediate effect despite the exchange company can appeal to the CE in Council under clause 33. There is a suggestion that FS should be consulted if the exchange company's view is different from that of SFC .	The Administration has explained that direction given to deal with emergency situations shall take immediate effect. CE in Council is able to hear the appeal expeditiously. SEHK has not expressed concern on the clause.
45, 46	<p><u>Proceedings of clearing houses take precedence over insolvency law</u></p> <p>The clauses will enable the clearing houses to have priority over others in the event of liquidation/insolvency. This is contrary to the insolvency law and inconsistent with the objective of enhancing investor protection.</p>	The clearing houses are accorded priority in the event of an insolvency in order to minimize systemic risk and to prevent the occurrence of chain reaction of defaults (Administration's response to public



Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
		comment in LC Paper No. CB(1) 1485/00-01(01) of 9 June 2001).
80	<p><u>Transfer and resumption of functions of Commission</u></p> <p>There is a view that it may be necessary to restrict the transfer of important functions to ICC under Part XII.</p>	To discuss in context of Part XII. (Proposed CSAs agreed in principle by Bills Committee on 17 September 2001.)
87 (in connection with 235 in Part XII)	<p><u>Subrogation rights of ICC</u></p> <p>At present SFC has priority over claimants who have received compensation from the compensation fund in the distribution of the "assets" recovered from defaulted intermediaries.</p>	The Administration will propose CSAs in clauses 87 and 235 to remove SFC's priority in order to reflect the High Court decision in the Forluxe case in 2000.
88	<p><u>Financial statements of ICC</u></p> <p>It is not clear whether "financial statements" refer to ICC's own accounts or the compensation fund's accounts.</p>	To review the drafting to clarify that the clause refers to ICC's own accounts.
93	<p><u>Suspension orders by SFC</u></p> <p>Suspension orders cannot be appealed but only subject to judicial review. There is a suggestion that an order to suspend the function of a person should be appealable to CE in Council, similar to other appeal cases under Part III.</p>	To consider providing an appeal channel for the affected person.

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
93, 95 (Chinese version)	To review the drafting.	To consider the drafting comment.
95-100	<p><u>Automated trading services</u></p> <p>There is concern about the regulation of overseas exchanges providing ATS services in Hong Kong. Specific concerns are whether there will be conflict between the overseas exchanges and SEHK's monopoly in trading Hong Kong stocks, and whether the Bill has extra-territorial effect in regulating the services provided by overseas exchanges.</p>	<p>The Administration has consulted the market on the guidelines on authorization of ATS. The guidelines have conformed to the general principles of maintaining a level playing field in regulation and preserving the existing statutory monopoly of SEHK (Administration's responses to public comments in LC Paper No. CB(1) 1485/00-01(01) of 9 June 2001).</p> <p>The Administration is considering CSAs to cover those ATS activities conducted overseas but targeting at investors in Hong Kong.</p>
95, 97, 98	<p><u>Authorization and withdrawal for ATS</u></p> <p>SFC should have a statutory obligation to provide the public with information on the authorization, conditions imposed, and withdrawal of ATS providers. Reference should be made to similar provisions in ETO (Cap 553).</p>	To consider the suggestion.
98	To review the expressions "...by notice in writing served on a person granted an authorization..." in sub-clause (1), and "...in relation to a person granted an authorization ..." in sub-clause (2).	To consider the drafting comment.

<b>Clause No.</b>	<b>Concerns/Views/Suggestions</b>	<b>Administration's response or Follow-up required by the Administration/Securities and Futures Commission</b>
99	<u>Rules by Commission</u>  The clause may imply that a contravention of any "conditions" set out in the rules and imposed on ATS providers would attract criminal liability.	Rules are subsidiary legislation subject to negative vetting by LegCo.
General	There are differences in the substantive provisions applicable to the various regulatees including "exchange companies", "clearing houses", "exchange controllers", "minority controllers", "investor compensation companies", and "providers of automated trading services".	The Legal Services Division of LegCo has provided a clause-by-clause comparison of the different sets of provisions in LC Paper No. CB(1) 1309/00-01(01) of 22 May 2001. The Administration has responded under LC Paper No. CB(1) 1309/00-01(02) of 22 May 2001.

**Part IV of and Schedule 4 to the Securities and Futures Bill**

**Date of meetings: 19 January, 9 February and 22, 27 & 29 June 2001**

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
<b>Part IV - Offers of investments</b>		
Part 1 (Schedule 1)	The definition of "collective investment scheme" is too board. The types of products that fall within the definition are not clearly set out.	The market has been consulted on various occasions and is generally content.
102	<p><u>Offence to issue advertisements, invitations or documents relating to investments in certain cases</u></p> <p>There is concern over the approach of imposing a general prohibition on the issue of marketing materials and subject it to exemptions. The concerns are about the wide scope of prohibition, and whether adequate exemptions are provided to cover the necessary persons or activities. For example, in clause 102(7), it is not clear whether a person will commit an offence if he issues the marketing material <u>not</u> "in the ordinary course of a business".</p> <p>There is concern about the regulation of unauthorized offers of investments from overseas.</p>	<p>To re-examine the scope of exemption and to review the relevant clauses.</p> <p>To consider CSAs to reflect the policy intention that activities conducted overseas but targeting at investors in Hong Kong should be covered.</p>
106	<p><u>Offence to fraudulently or recklessly induce others to invest money</u></p> <p>There is uncertainty as to when liability arises under this clause.</p>	

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up required by the Administration/Securities and Futures Commission
	There is concern about the regulation of analysts and intermediaries who give inaccurate or misleading advice or information through the media.	Paper provided by the Administration under LC Paper No. CB(1) 1420/00-01(02) of 4 June 2001.
106(1)	The meaning of "induce" is unclear. It is not clear whether "induce" means "successfully induced" another person to invest money.	To review the drafting.
106(3)	As a "fraudulent misrepresentation" is different from a "reckless misrepresentation", the definitions of the two terms should be separately provided.	To review the drafting.
106(3)(c), 107(3)(c)	There is reservation that "any forecast" should be included as "fraudulent or reckless misrepresentation" made by the person concerned. This will have the effect of making a lot people liable, in particular, financial analysts or columnists who often make forecast on the financial markets.	To consider amendments.
107	<p><u>Civil liability for inducing others to invest money in certain cases</u></p> <p>This clause seeks to create a private cause of action for investors to claim damages for misrepresentation, but the policy objective has not been clearly spelt out.</p> <p>The provision seems to go beyond common law liability for misrepresentation. It is unclear what further compensation in addition to the requirement under common law could be sought by an investor. It may be appropriate to add the test of "fair, just and reasonable" for determining compensation.</p> <p>The meaning of "reliance" on the misrepresentation is unclear.</p>	To consider the comments and to review the clause.

<b>Clause No.</b>	<b>Concerns/Views/Suggestions</b>	<b>Administration's response or Follow-up required by the Administration/Securities and Futures Commission</b>
	<p>No time limit for initiating the civil proceedings has been provided.</p> <p>The burden of proof seems to fall on the defendant under sub-clause (2).</p> <p>The need for sub-clause (3) on court injunction is not clear.</p>	
Part 4 (Schedule 4)	<p><u>Exempted Bodies</u></p> <p>Some of the bodies do not have statutory power to issue investment instruments. Exemptions to these bodies are unnecessary.</p> <p>There is query on why the Airport Authority is included in the list whereas LegCo is excluded.</p>	<p>To consult the bodies on whether they wish to be included in the list.</p> <p>The Administration will provide a written explanation.</p>

**Part V of and Schedule 6 to the Securities and Futures Bill**

**Date of meetings: 16 & 23 February, 9 March, 29 June and 4 & 10 July 2001**

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
<b>Part V - Licensing and exemption</b>		
114(6)	<p><u>Restriction on carrying on business in regulated activities, etc</u></p> <p>The drafting "... if he reasonably believes that the financial accommodation is not to be used to facilitate ..." will put an obligation on the lender to inquire for the purpose of lending. The formulation "... unless he has reasonable grounds to believe that the financial accommodation will be used to facilitate ..." should be considered.</p>	To consider amendments.
116	<p><u>Grant of temporary licences to corporations</u></p> <p>The provision shall specify that an applicant will not be issued with a temporary licence that will enable him to carry on a regulatory activity for more than six months in any 24-month period.</p>	To consider amendments.
118(4)	<p><u>Exempt persons</u></p> <p>The term "exempt person" should be re-considered as it conveys a meaning that AIs are exempted from regulation under the new regulatory regime.</p> <p>There is a view that the word "shall" will imply that SFC must follow the advice of HKMA in granting or refusing to grant an exemption. The word "may" will be more appropriate.</p>	To consider amendments.

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
<p>General</p> <p>119 of SFB, 4 of BAB, 128(1) of SFB</p> <p>124(1), (2) of SFB,</p>	<p><u>Dual-regulator approach</u></p> <p>(SFC is to be responsible for regulating the brokerage industry while HKMA remains as the front-line regulator for securities business run by AIs.)</p> <p>There are concerns about:</p> <p>(a) whether the approach will be conducive to a level playing field in the securities and futures market;</p> <p>(b) whether there will be inconsistencies in application of regulatory standards and requirements;</p> <p>(c) whether HKMA is the appropriate regulator for securities business as this involves conduct regulation of market participants but HKMA is traditionally a prudential regulator of banks;</p> <p>(d) HKMA only exercises indirect supervision on the front-line staff of AIs involving in securities business. The senior management of AIs is responsible for ensuring staff are fit and proper. AIs will submit the information to be entered into the register maintained by HKMA. HKMA will only consider the fitness and properness of "director", "manager" and "executive officer" of an AI. SFC's supervision is more direct as it is responsible for licensing the representatives for regulated activities and approve their accreditation. It will consider the fitness and properness of "any officer" of the corporation; and</p> <p>(e) every ED of a licensed corporation has to be approved by SFC and the corporation has to appoint at least two responsible officers (one has to be ED)</p>	<p>The Administration explained the rationale for the dual-regulator approach in LC Paper No. CB(1) 569/00-01(01) of 12 February 2001.</p> <p>The regulatory framework proposed in SFB for the securities business of AIs is in line with the practice adopted for the insurance and MPF industries (LC Paper No. CB(1) 648/00-01(03) of 22 February 2001).</p> <p>The requirement for AIs to conduct their securities business through subsidiaries will not address the supervisory overlap between HKMA and SFC (LC Paper No. CB(1) 648/00-01(02) of 22 February 2001).</p> <p>Paper comparing the "fit and proper" criteria to be applied to SFC licensees and exempt AIs was provided under LC Paper No. CB(1) 725/00-01 of 1 March 2001.</p>



Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
9 of BAB	<p>for approval by SFC. An AI only needs to obtain HKMA's consent in appointment of executive officers. These officers may not be at director rank.</p> <p>Some members suggested that a "same regulator for the same regulated activities" approach which is adopted in the US and UK should be used in Hong Kong.</p> <p>There is support for the dual regulator approach as it will avoid duplication in regulation and reduce compliance cost on the banking industry without compromising investor protection.</p>	
124	<p><u>Requirement for executive officers</u></p> <p>The banking industry points out that as AIs will be liable for non-compliance for the captioned breach under sections 71C and 71D of BO, there may be "double jeopardy" if the offence under sub-clause (3) also applies to them.</p>	To consider amendments.
117(1)(b), (2)	<p><u>Arbitration system for leveraged foreign exchange traders</u></p> <p>It is suggested that the system should be deleted as there have been few disputes needed to be arbitrated.</p>	To consult the leveraged foreign exchange traders on the suggestion.
121	<p><u>Approval and transfer of accreditation</u></p> <p>There is concern about the portability of licence granted to representatives of licensed corporations.</p>	The Administration's paper provided under LC Paper No. CB(1) 741/00-01(02) of 5 March 2001.

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
122(1)	<p><u>Commission to be notified, etc if licensed representatives ceases to act for principal</u></p> <p>The industry is of the view that the failure for an individual to return the licence within seven business days after the cessation should not be a strict liability offence.</p>	To consider amendments.
133, 134	<p><u>Commission to maintain register of licensed persons and exempt persons.</u> <u>Publication of names of licensed persons and exempt persons</u></p> <p>To enhance transparency, more information on registrants should be provided e.g. disciplinary records.</p>	<p>The SFC is empowered to prescribe under clause 384 such other particulars for inclusion in the register.</p> <p>While disciplinary sanctions against registrants are published in SFC's web site, there is reservation about including them in the register. The period of which these records are to be kept in the register is a controversial issue in other jurisdictions.</p>
136	<p><u>Prohibition of use of certain titles</u></p> <p>Consideration should be given to remove clause 136 to a schedule to the Bill to facilitate amendment in the future.</p>	To consider amendments.

<b>Clause No.</b>	<b>Concerns/Views/Suggestions</b>	<b>Administration's response or Follow-up by the Administration/Securities and Futures Commission</b>
<b>Schedule 6 - Regulated activities</b>		
Part 2	“advising on corporate finance” “dealing in securities” “dealing in futures contracts” “leveraged foreign exchange trading” “automated trading services”	To consider amendments.

**Parts VI and VII of and Schedule 6A (Schedule 5 of the Blue Bill) to the Securities and Futures Bill**

**Date of meetings: 2 & 9 March, 10, 16 & 17 July 2001**

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
<b>Part VI - Capital requirements, Client assets, Records and Audit relating to intermediaries</b>		
142, 143	<p><u>Failure to comply with FRRs; monitoring compliance with FRRs</u></p> <p>There are concerns as to:</p> <p>(a) whether advice of conditions in cases of breaches against FRRs should be given orally; and</p> <p>(b) how transparency of conditions imposed on intermediaries will be enhanced.</p>	<p>The Administration has proposed CSAs to provide the concerned licensed corporation an option to request to have the imposition of conditions in writing.</p> <p>SFC has obligation to include information on conditions imposed on licensed corporations in the register of registrants as appropriate.</p>
144, 145, 147, 148	<p><u>Licensed persons require to notify SFC when there is non-compliance of rules</u></p> <p>The brokerage industry has expressed concern about self-incrimination where SFC could initiate prosecution with the information supplied by licensees.</p>	To consider amendments.
153, 154	<u>Auditors of licensed corporations to lodge report with SFC and immunity in respect of the communication</u>	

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
	<p>There is a view that auditors should have a duty to report mal-practices of licensed corporations in the course of their auditing work.</p>	<p>An auditor has a duty to report "reportable matters" to SFC and HKMA and is provided with immunity in performing such a function under the Bill.</p> <p>An auditor who chooses to report malpractices of listed corporations to SFC will have immunity against civil liability in respect of the communication under clause 369.</p>
<p>155, 156</p>	<p><u>SFC to appoint auditors for licensed corporations on its own initiation or on application</u></p> <p>There are concerns about:</p> <p>(a) SFC's power to appoint auditors of its own choice for licensed corporations (the approach under which an AI can appoint its own auditor for approval of HKMA is preferred);</p> <p>(b) clause 156 will be abused by clients of licensed corporations;</p>	<p>Response by the Administration in LC Paper No. CB(1) 1246/00-01(03) of 16 May 2001.</p> <p>In practice, the SFC consults the concerned licensed corporation over the choice of auditors before making the appointment.</p> <p>There are safeguards to frivolous applications (LC Paper No. CB(1) 1705/00-01(03) of 5 July 2001).</p>

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
	<p>(c) power of SFC under clause 156(8) to order the applicant to bear the cost for appointing the auditor; and</p> <p>(d) it is unclear what principles or factors will be considered by SFC in attributing the cost to the applicant.</p>	<p>Clause 156(8) order is appealable to SFAT.</p> <p>To review the clause.</p>
<p>Rule-making powers of SFC</p>	<p><u>SFC has power to make rules under clauses 141 to 148</u></p> <p>There are concerns about:</p> <p>(a) SFC has power to make rules to create criminal offences;</p> <p>(b) whether market consultation will be conducted on draft rules; and</p> <p>(c) whether there will be guidance on when SFC will exercise its rule-making power or instead choose to issue a code of conduct.</p>	<p>The Administration has explained the rationale for the rule-making power in LC Paper No. CB(1) 626/00-01(01) of 21 February 2001.</p> <p>The Administration's response to concerns in LC Paper No. CB(1) 1705/00-01(03) of 5 July 2001.</p> <p>Information on subsidiary legislation, codes and guidelines to be made for commencement of SFB in LC Paper No. CB(1) 1246/00-01(04) of 16 May 2001.</p> <p>CSA will be moved in clause 384 to impose an express requirement for SFC to consult the public before making any rules.</p>

Clause No.	Concerns/Views/Suggestions	Administration's response or Follow-up by the Administration/Securities and Futures Commission
<b>Part VII - Business conduct, etc. of intermediaries</b>		
167(3)	<u>Requirement to disclose short sales</u>  The proposed CSA on "lawful excuse" is unclear.	To adopt the drafting of existing section 80(C) of SO (Cap. 333).
new 169A (original 108 in Part IV)	<u>Offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity</u>  There is a view that the provision should stipulate that SFC can make rule to add, waive or modify the requirement under sub-clauses (1), (2), (3) on <u>individual case basis</u> .	To review the clause.

Abbreviations :

AI	- Authorized institution
ATS	- Automated Trading Services
BAB	- Banking (Amendment) Bill 2000
BO	- Banking Ordinance
CE	- The Chief Executive
ED	- Executive Director
ETO	- Electronic Transactions Ordinance
FRR	- Financial Resources Rules
FS	- The Financial Secretary
FSMA	- Financial Services and Markets Act 2000
HKMA	- The Hong Kong Monetary Authority
ICC	- Investor Compensation Companies
LegCo	- The Legislative Council
MOU	- Memorandum of Understanding
MPF	- Mandatory Provident Fund
SEHK	- The Stock Exchange of Hong Kong
SFAT	- The Securities and Futures Appeals Tribunal
SFB	- Securities and Futures Bill
SFC	- The Securities and Futures Commission
SO	- Securities Ordinance

Legislative Council Secretariat

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