

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

**Part XVII of and Schedule 9 to the Securities and Futures Bill
Clause-by-clause examination**

Part XVII

We propose no amendment to Part XVII of the Securities and Futures Bill (SF Bill). Members are invited to refer to the Blue Bill for discussion.

Schedule 9

Part 1 - Savings, transitional and supplemental arrangements

In relation to Part XIII of the SF Bill

2. We are in the process of refining the provisions on the MMT proceedings in Schedule 8 in the light of comments made by Members at the meetings on 19 and 21 September 2001. The transitional arrangements for insider dealing cases in clauses 75 and 76 which take place before commencement of Part XIII of the Bill may be revised in the light of the review currently in progress, where appropriate. We shall finalise the detailed amendments to the above clauses as necessary for Members' consideration in due course.

In relation to other Parts of the SF Bill

3. We propose no amendment to Part 1 of Schedule 9 in relation to the remaining Parts of the SF Bill. Members are invited to refer to the Blue Bill for discussion.

Part 2 - Consequential amendments

4. We propose certain Committee Stage Amendments to Part 2 of Schedule 9 to deal with the consequential amendments to the following Ordinances or subsidiary legislation -

- (a) Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.);
- (b) Estate Duty Ordinance (Cap. 111);
- (c) Inland Revenue Ordinance (Cap. 112);
- (d) Stamp Duty Ordinance (Cap. 117); and
- (e) Stamp Duty (Jobbing Business)(Options Market Makers) Regulation(Cap. 117 sub. leg.).

5. The relevant amendments and explanatory footnotes are set out at **Annex**.

6. We propose no amendment to the remaining provisions in Part 2 of Schedule 9. Members are invited to refer to the Blue Bill for discussion.

Securities and Futures Commission
Financial Services Bureau
19 October 2001

SCHEDULE 9

PART 2

CONSEQUENTIAL AMENDMENTS AND SUPPLEMENTAL AMENDMENTS

Item	Enactment	Amendment
New 4A.	Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.) ¹	<p>(a) Repeal section 2 and substitute - "2. Interpretation In this Notice- "GEM" (創業板) means the recognized stock market called the Growth Enterprise Market; "listing rules" (上市規則) means the rules made under section 23 of the Securities and Futures Ordinance (of 2000) by a recognized exchange company that governs the listing of securities on a stock market it operates;".</p> <p>(b) In section 4- (i) in subsections (1)(b) and (2)(b), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it operates"; (ii) in subsection (3)(a), repeal "SEHK Listing Rules or the GEM Listing Rules" and substitute "listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b)".</p> <p>(c) In section 5(1)(b) and (2)(b), repeal "Unified Exchange" and substitute</p>

¹ Enacted after publication of the Blue Bill and commenced on 11 May 2001 (L.N. 76 of 2001).

"recognized exchange company that operates GEM".

(d) In section 6-

(i) in subsections (1)(b) and (2)(b), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it operates";

(ii) in subsection (3)-

(A) in paragraph (a), repeal "SEHK Listing Rules or the GEM Listing Rules" and substitute "listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b)"

(B) in paragraph (c)(i), repeal "Unified Exchange" and substitute "recognized exchange company referred to in subsection (1)(b) or (2)(b)".

Repeal item 10 of Part II of Schedule 9 to the Blue Bill and substitute new item 10 as follows-

10. Estate Duty Ordinance (Cap. 111)²
- (a) In section 3(1), repeal the definition of "Unified Exchange" and substitute -
- "recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000);".

² The original consequential amendments in the Blue Bill (item 10) have inadvertently expanded the scope of the Estate Duty Ordinance by substituting references to "Unified Exchange" with "recognized stock market or recognized futures market". In line with the consequential amendments to other Ordinances, amendment is made to substitute references to "Unified Exchange" with "recognized stock market".

(b) In section 34(5)(b), repeal "the Unified Exchange and the shares were quoted in any list of that exchange" and substitute "a recognized stock market and the shares were quoted in any list of that market".

(c) In section 44(4), repeal "the Unified Exchange in the ordinary course of business on that exchange" and substitute "a recognized stock market in the ordinary course of business on that market".

To be added before the existing item (a)

11. Inland Revenue Ordinance (Cap. 112)³
- (aa) In section 15E -
- (i) in subsection (8) -
- (A) in the definition of "borrower", "borrowed stock", "lender", "specified purpose", "stock borrowing", "stock borrowing and lending agreement", "stock return" and "Unified Exchange" -
- (I) after "lender" (借出人)", add ", "recognized stock market" (認可證券市場);
- (II) repeal ", "stock return" (證券交還) and "Unified Exchange" (聯合交易所)" and substitute "and

³ The consequential amendments to section 15E of the Inland Revenue Ordinance were not included in the Blue Bill pending confirmation of the amendments to the Stamp Duty Ordinance (Cap. 117), to which it cross-refers. See Footnote 4 below.

"stock return"
(證券交還)";

(B) in the definition of
"specified securities",
repeal "the Unified
Exchange" and substitute "a
recognized stock market";

(ii) in subsection (9), repeal "the
Unified Exchange" and substitute
"a recognized stock market".

New Stamp Duty (a) In section 2(1) -
11A. Ordinance (i) repeal the definition of
(Cap. 117)⁴ "Exchange Company" and
substitute -

⁴ To ensure that the collection of stamp duty would not be affected by the new regulatory regime provided for under the SF Bill, particularly as a result of the introduction of new arrangements for authorizing Automated Trading Services (ATS) providers, the consequential amendments to the Stamp Duty Ordinance (SDO) (Cap. 117) and Stamp Duty (Jobbing Business)(Options Market Makers) Regulation (Cap. 117 sub. leg.) were not included in the Blue Bill, pending outcome of a public consultation conducted by the SFC on the detailed regulatory arrangements for ATS providers under the Bill. The current amendments are proposed after consultation with the Finance Bureau and the Inland Revenue Department.

The amendments basically follow the convention adopted for other Ordinances, with one exception as explained below. Under current section 5(2A) of the SDO, the Collector of Stamp Revenue (Collector) may authorize any person to stamp contract notes for the purpose of section 5 of the SDO to the effect that stamp duty will be paid through the Exchange Company (i.e. the Stock Exchange of Hong Kong (SEHK)). In practice, the Collector authorises the exchange participants to stamp contract notes made by them in relation to the Stamp Duty Collection Agreement between the SEHK and the Collector under section 5A of the SDO. As a result of the introduction of new arrangements for authorizing ATS providers, we have, through amendments to sections 5(2A) and 5A of the Stamp Duty Ordinance, empowered the Collector to enter into an agreement with an authorized ATS provider apart from the Exchange Company (to be amended to "recognized exchange company") for stamp duty collection to maintain flexibility and efficiency in stamp duty collection.

"recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (of 2000) as an exchange company for operating a stock market;"

- (ii) in the definition of "exchange participant", repeal "section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000)";
- (iii) in the definition of "loan capital", in paragraph (c), repeal "the Unified Exchange" and substitute "a recognized stock market";
- (iv) repeal the definition of "Unified Exchange" and substitute -
 - "recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000);"
- (v) add -
 - "authorized ATS provider" () means a person authorized under Part III of the Securities

and Futures Ordinance
(of 2000) to
provide automated
trading services within
the meaning of Part 2
of Schedule 6 to that
Ordinance;".

- (b) In section 5(2A)(b), repeal "the Exchange Company" and substitute "a recognized exchange company or an authorized ATS provider".
- (c) In section 5A -
 - (i) in subsection (1), repeal "the Exchange Company" and substitute "a recognized exchange company or an authorized ATS provider";
 - (ii) in subsections (2)(b) and (c) and (3), repeal "Exchange Company" and substitute "recognized exchange company or authorized ATS provider".
- (d) In section 19 -
 - (i) in subsection (12AA)(c), repeal "Unified Exchange" and substitute "relevant recognized stock market";
 - (ii) in subsection (16) -
 - (A) in the definition of "market contract", repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures

- Ordinance (of 2000)";
- (B) in the definition of "previous closing price", repeal "Unified Exchange" and substitute "recognized exchange company that operates the relevant stock market";
- (C) in the definition of "recognized clearing house", repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (of 2000)";
- (D) repeal the definition of "rules" and substitute -
"rules" (), in
relation to a
recognized
clearing house and
a recognized
exchange company,
has the same
meaning as it has
in relation to
those bodies in
section 1 of Part
1 of Schedule 1 to
the Securities and
Futures Ordinance
(of 2000);";
- (E) in the definition of "stock borrowing", repeal "Unified Exchange" and substitute

"recognized exchange company that operates the relevant stock market".

(e) In the Fourth Schedule -

- (i) in section 1, repeal "the Unified Exchange" and substitute "a recognized stock market";
- (ii) repeal section 2 and substitute -

"2. For the purpose of this Schedule, a recognized exchange company that operates a stock market may, by notice in the Gazette, specify any regional stock exchange as an approved regional exchange.";
- (iii) in section 3 -
 - (A) in the definition of "approved basket stock", in paragraph (a) -
 - (I) in subparagraph (i), repeal "stock";
 - (II) in subparagraph (ii), repeal "the Unified Exchange" and substitute "a recognized stock market";
 - (B) in the definition of "approved regional stock", repeal "stock" before "exchange";
 - (C) repeal the definition of "approved regional stock exchange" and substitute -

"approved regional exchange" ()

means a regional stock exchange specified as an approved regional exchange under section 2;"

- (D) in the definition of "previous closing price" -
 - (I) in paragraph (a), repeal "stock" before "exchange";
 - (II) in paragraph (b) -
 - (aa) repeal "the Unified Exchange" where it first appears and substitute "a recognized stock market";
 - (bb) repeal "the Unified Exchange" where it secondly appears and substitute "the recognized exchange company that operates the stock market";
- (E) repeal the definition of "rules" and substitute -
 - "rules" (), in relation to -
 - (a) an approved regional exchange,

means the rules governing the operation and management of the approved regional exchange or the conduct of its members, by whatever name called and wherever contained;

(b) a recognized exchange company, has the same meaning as in section 19(16) of this Ordinance;"

(F) in the definition of "specified derivative", in paragraph (a), repeal "Unified Exchange" and substitute "recognized exchange company that operates the relevant stock market";

(G) in the definition of "value" -

(I) repeal "stock exchange or on the Unified Exchange" and substitute "exchange or a recognized stock market";

(II) repeal "stock exchange or the Unified Exchange" and substitute "exchange or the recognized stock market";

- New Stamp Duty (a) In section 2 -
- 11B. (Jobbing (i) in the definitions of "options Business) contract" and "options market (Options Market maker", repeal "the Unified Makers) Exchange" and substitute "a Regulation recognized exchange company"; (Cap. 117 sub. (ii) repeal the definition of "rules" leg.)⁵ and substitute -
- "rules" (), in relation to a recognized exchange company, has the same meaning as in section 19(16) of the Ordinance;".
- (b) In section 3(a) and (b), repeal "the Unified Exchange" and substitute "a recognized stock market".

⁵ See Footnote 4.