

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

**Disciplinary Sanctions and Appeal Mechanism for
Exempt Authorized Institutions and their staff**

Introduction

At the Bills Committee meetings on 30 March and 27 April 2001, some Members expressed concern about the difference in the disciplinary sanctions and appeal channels that apply to exempt authorized institutions (“exempt AIs”) and SFC licensees.

2. To address Members’ concern, the Administration has reconsidered the proposed arrangements and held further discussions with the industry. The Administration now proposes a revision of the disciplinary sanctions applicable to exempt AIs and their securities staff. Under these revised proposals, exempt AIs and their securities staff would be subject to the same range of sanctions as SFC registrants, namely revocation, suspension, prohibition orders, public and private reprimands and fines. In the light of the revised sanctions, the Administration also proposes to standardise the appeal channels by routing all appeals against decisions in respect of the regulated activities of exempt AIs and their relevant staff to the Securities and Futures Appeals Tribunal (SFAT). This paper explains the proposals in detail.

Disciplinary Sanctions in the Bills

3. Under Part IX of the Securities and Futures Bill (“SF Bill”), the following disciplinary sanctions are applicable, where appropriate, to SFC regulated persons (i.e. SFC licensees, responsible officers or persons involved in the management of the business of licensed corporations) if they are guilty of misconduct or not fit and proper to remain licensed –

- (a) revocation of licence/approval;
- (b) suspension of licence/approval;

- (c) public or private reprimand;
- (d) prohibition from applying to be licensed or to be approved as a responsible officer; and
- (e) pecuniary penalty (in the form of a fine).

4. The sanction under the SF Bill that is applicable to exempt AIs is the revocation of exempt status. Separately, under the Banking (Amendment) Bill 2000 (“BAB 2000”), the HKMA is empowered to revoke the consent granted to an individual to become an executive officer of an exempt AI (equivalent to the responsible officer of a licensed corporation), and also to publicly or privately reprimand an exempt AI.

Revised proposal for Exempt AIs and their staff

5. Under the revised proposal, the range of sanctions applicable to exempt AIs and their securities staff will be the same as those for SFC licensees. The details are explained in the following paragraphs.

Revocation

6. As far as revocation is concerned, the treatment for exempt AIs (as an entity) as stipulated in the SF Bill at present is already the same as for licensed corporations.

7. When applying this sanction to individuals, the BAB 2000 already empowers the HKMA to withdraw consent to the appointment of executive officers of an exempt AI. This is the same as the SFC’s power to revoke the approval granted to a responsible officer of a licensed corporation. As regards individual front-line staff of exempt AIs who have committed an act of misconduct or are considered not fit and proper, the revised proposal puts forward that the HKMA, as the authority responsible for maintaining the register, be empowered to take the names of such individuals off the register after consultation with the SFC. This is equivalent to revoking the status of the individuals concerned. With this new proposal, exempt AIs will be on equal footing with licensed corporations in respect of revocation.

Suspension

8. Currently under Part IX of the SF Bill, the exemption of an exempt AI is deemed to be suspended if the annual exemption fee to be paid by the exempt AI is overdue for three months. The revised proposal extends this by empowering the SFC, after consultation with the HKMA, to suspend the exemption of an exempt AI on the grounds of misconduct or fit and proper considerations. This would result in the same arrangement as that for the licensed corporations.

9. Part IX of the SF Bill also empowers the SFC to suspend the approval granted to a responsible officer. The revised proposal seeks to include in the BAB 2000 an equivalent power for the HKMA, as the authority for granting consent to executive officers, to suspend, after consultation with the SFC, the consent granted to the appointment of executive officers of exempt AIs. As regards front-line staff of exempt AIs, the new proposal to empower the HKMA to take names off the HKMA register (as explained in paragraph 7 above) will cover removal for a specified period of time. This provides the effect of suspension. As a result of the changes proposed above, the sanction of suspension applicable to SFC licensees will effectively be extended to executive officers and front-line staff of exempt AIs.

Reprimand

10. The BAB 2000 currently empowers the HKMA to reprimand, privately or in public, exempt AIs. This is different from the situation for SFC regulated persons against which the power to reprimand applies to both the entity and its individual staff. To address Members' concern, the revised proposal seeks to extend the sanction of reprimand to individual staff of exempt AIs, including the executive officers, senior staff involved in the management of the regulated activities, and front-line staff engaged in such activities. It is further proposed that this power to reprimand exempt AIs and its staff be exercised by the SFC after consultation with the HKMA.

Prohibition

11. As currently drafted, neither the SF Bill nor the BAB 2000 includes the sanction of prohibition in respect of exempt AIs or their staff. Under the revised proposal, we propose to introduce prohibition order as another disciplinary sanction for exempt AIs and their securities staff. In other words, AIs may be prohibited from applying for exempt status while individuals

may be prohibited from engaging in the regulated activities, meaning that such individuals cannot apply to become an executive officer or employed as front-line securities staff of exempt AIs. We also propose that the SFC should exercise this power of issuing prohibition orders after consultation with the HKMA. This is logical as the prohibition would be made on an industry-wide basis.

Pecuniary penalty

12. The concept of imposing a pecuniary fine currently does not exist in the Banking Ordinance. In order to address Members' concern, it is proposed that exempt AIs and their staff involved in regulated activities should also be subject to a pecuniary fine as a possible sanction under the SF Bill. It is also proposed that the power to order a payment of fine be exercised by the SFC after consultation with the HKMA.

Appeals by exempt AIs

13. In respect of appeals, Members have expressed concern that the SF Bill and BAB 2000 currently provide for decisions in respect of exempt AIs to be appealed to the Chief Executive in Council while a different appeal channel will be available to SFC licensees through the SFAT. To address this concern, it is proposed that appeals against **all** decisions in relation to the regulated activities of exempt AIs and their securities staff should also be made to the SFAT. In this regard, the SFAT will have at its disposal the full range of disciplinary sanctions administered by both the SFC and the HKMA in considering an appeal by an exempt AI or its securities staff. The SFAT, being the single appellate body, will ensure consistency in the nature and degree of disciplinary sanctions applied by the regulators in similar circumstances.

HKMA to remain front-line regulator of exempt AIs

14. As shown in the preceding paragraphs, the range of disciplinary sanctions and appeal mechanism for exempt AIs and their securities staff under the revised proposal are the same as those applicable to SFC licensees. The HKMA will remain the front-line regulator responsible primarily for the day-to-day supervision of the regulated activities conducted by exempt AIs, while the SFC will be the ultimate authority for granting or revoking declaration of exemption.

15. As set out in Papers No. 5/01 and 6/01, as far as the regulatory requirements are concerned, the basic principle is that exempt AIs and their staff will be subject to regulatory standards in respect of their conduct of the regulated activity, which are the same or equivalent to those applicable to SFC licensees. Except for clearly defined areas where the SFC considers the regulatory results can be achieved by the requirements under the Banking Ordinance (such as the financial resources requirements), the regulatory requirements prescribed in the SF Bill or the rules/codes, etc. made/issued by the SFC are equally applicable to exempt AIs. With these arrangements and the revised proposal of disciplinary sanctions and appeal channel set out above, we believe that the regulatory framework for exempt AIs and their staff is comparable to that for SFC licensees. We are mindful at the same time of the need to minimise regulatory overlap and to provide reasonable protection and choices for investors.

Financial Services Bureau
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