File Ref. : SU B38/31 (2000)

LEGISLATIVE COUNCIL BRIEF

REGULATORY REFORM
FOR THE SECURITIES AND FUTURES MARKET

The Securities and Futures Bill

INTRODUCTION

At the meeting of the Executive Council on 7 November 2000, the Council advised and the Chief Executive ordered that the Securities and Futures Bill should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENTS

Background

2. On 28 March 2000, the Executive Council approved that the Securities and Futures Bill should be published as a White Bill on 2 April 2000 for public consultation.

3. Since publication of the White Bill, both the Financial Services Bureau (FSB) and the Securities and Futures Commission (SFC) have met with the Legislative Council Subcommittee established for the White Bill and engaged different stakeholder groups intensively to explain our policy objectives and consider issues of practical implementation with a view to refining the White Bill.

4. The public supports the objectives and direction of the proposed regulatory régime enshrined in the White Bill, which has incorporated views collected in the July 1999 consultation on the policy proposals. Further detailed consultation on the White Bill has been useful in ensuring that compliance by market practitioners with the proposed legislation will not entail an excessive burden.

Regulatory reform: objectives and guiding principles

5. The Securities and Futures Bill ("the Bill") consolidates 10 existing Ordinances[1]. These Ordinances present a complex labyrinth of regulatory arrangements that should be streamlined to facilitate users. Some requirements need to be updated in response to developments brought about by globalisation, computer usage and new products and services.

6. The Bill aims to enshrine a user-friendly regulatory régime for the development of a fair, orderly and transparent market that is competitive internationally as well as attractive to investors, issuers and intermediaries. Specifically it seeks to create a modern legal framework that -

(a) promotes market confidence;

(b) secures appropriate investor protection;

(c) reduces market malpractice and financial crimes; and

(d) facilitates innovation and competition.

Annex A

7. In the White Bill consultation exercise, we identified certain key areas of concern to the market, in particular the stockbroking community and investment banking industry, as set out at **Annex A**. We sought to address these concerns by explaining the implementation of relevant proposals to the stakeholders, and where appropriate, refining the draft provisions to facilitate compliance by market participants. In making the refinements, we have taken into account the following factors -

(a) the new régime should be on a par with international standards and compatible with international practices, with necessary adjustments to address local characteristics and needs;

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[1] There are now altogether 10 Ordinances –

(1) Securities and Futures Commission Ordinance (Cap. 24) (enacted 1989)
(2) Commodities Trading Ordinance (Cap. 250) (enacted 1976)
(3) Securities Ordinance (Cap. 333) (enacted 1974)
(4) Protection of Investors Ordinance (Cap. 335) (enacted 1974)
(5) Stock Exchanges Unification Ordinance (Cap. 361) (enacted 1980)
(6) Securities (Insider Dealing) Ordinance (Cap. 395) (enacted 1990)
(7) Securities (Disclosure of Interests) Ordinance (Cap. 396) (enacted 1988)
(8) Securities and Futures (Clearing Houses) Ordinance (Cap. 420) (enacted 1992)
(9) Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (enacted 1994)
(10) Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (enacted 2000)

(b) a reasonable balance should be struck between protecting the investors and facilitating market development;

(c) procedures and processes should be simplified and made user-friendly wherever possible to minimize the regulatory burden;

(d) the exercise of regulatory powers should be subject to adequate checks and balances; and

(e) there should be a smooth transition from the existing to the new regulatory framework.

8. The following sections will highlight the salient features of the proposed regulatory framework as enshrined in the Bill, together with major refinements made during the White Bill consultation exercise to address market concerns.

Major regulatory initiatives and refinements

9. The Bill enshrines a number of new regulatory initiatives including the introduction of a single licensing régime to streamline the existing registration requirements for market intermediaries and improve the quality of their services; strengthening the SFC's powers to inquire into listed corporation misconduct; the establishment of a Market Misconduct Tribunal to promote a fair market; modernising the disclosure régime for securities interests and encouraging more accurate disclosure to enhance market transparency; and providing for more efficient channels of appeal against SFC decisions for aggrieved parties. Where appropriate, these initiatives have been refined to address market comments on the White Bill.

Improving the Regulation of Market Intermediaries

(a) A single licence for an intermediary

10. At present an intermediary needs to apply to the SFC for separate registrations for undertaking different activities in different products. In recent years, financial innovation and growing investor sophistication have rendered the requirement for multiple registrations unnecessary, as market intermediaries increasingly have simultaneously to deal in and advise on different investment products. Under the Bill, an intermediary will only need one single licence to

engage in activities concerning securities, futures contracts and other investment products regulated by SFC (the "regulated activities" as set out in the Bill). Existing registered persons will have two years to migrate to the new licensing régime after enactment of the new legislation. This proposal will reduce administrative costs and burdens, and has been well received by the market.

(b) Senior management and their responsibility

11. Given that the activities of an intermediary are ultimately in the hands of its controllers, we have introduced into the White Bill a "management responsibility" concept to enhance investor protection. Under this proposal, each licensed intermediary, other than a temporary licensee, has to nominate at least two "responsible officers" (ROs) for approval by SFC. In granting the approval, the SFC will require the RO to participate in or be responsible for directly supervising the business of the "regulated activity", or any part thereof, for which an intermediary is licensed.

12. The market has expressed concern as to whether the net of ROs would be cast too wide. In response, the Bill specifies that a director who actively participates in or is responsible for directly supervising the business of the "regulated activities", will have to be licensed by the SFC as a RO. We do not expect any directors or other senior management who have no responsibility for the "regulated activities" to apply to the SFC for approval as a RO. Also, the Bill has removed the requirement that at least one RO must be physically present in Hong Kong at all times. This seeks to address the practical difficulties of some intermediaries. Instead, as a more flexible alternative, the SFC will, under licensing conditions, require an intermediary to ensure that at least one RO will be available at all times to supervise the business of the "regulated activities".

13. A major question raised on the White Bill is the extent to which a RO would be held liable for a criminal offence committed by his corporation. The White Bill held both the ROs of an intermediary as well as the corporation itself liable for certain offences committed by the corporation.

14. Having reviewed relevant jurisprudence on similar strict liability offences, we conclude that only those persons who have actively participated in, consented to or connived in the criminal misconduct of the corporation which they manage, or those whose recklessness has allowed the corporation's criminal conduct to occur, will be criminally liable under the management liability concept. The Bill now imposes the onus of proof in this regard on the prosecution.

This is similar to relevant provisions in the UK[2], where the requirement is "consent, connivance or neglect".

(c) Review of criminal penalty maxima

15. The market has also expressed general concern about the criminal offences in the licensing provisions and their associated custodial penalties. We have explained to the market that over 90% of these offences are from existing laws and the penalty maxima are designed for the worst scenarios. The low market awareness of these criminal offences may be a result of the fact that the SFC usually resorts to disciplinary actions like reprimands and suspension of registrations in most circumstances and would only prosecute on grounds of public interest. We do not believe that there is a strong case for decriminalisation in light of investors' calls for stronger deterrence against intermediary misconduct. We have however rationalised the proposed penalty maxima for a number of offences in consultation with the Director of Public Prosecutions and, in the process, removed custodial penalties for breaches of less serious administrative requirements. We have also extended certain statutory time limits for compliance with procedural licensing requirements say, from two days to seven days in some cases, to take into account the practical constraints intermediaries face.

16. We are conscious of the possible impact of these amendments on the SFC's ability to protect investors. Having discussed the matter with the SFC, we are satisfied that the proposed disciplinary sanctions will sufficiently deter misconduct and allow the SFC to rely on the senior personnel of the intermediaries to ensure compliance.

17. The Bill also provides for proportionate disciplinary sanctions to punish improper conduct by intermediaries. In addition to existing sanctions like reprimands, and suspension and revocation of registrations, the Bill empowers the SFC to impose civil fines, the maximum of which will be the higher of $10 million or three times the amount gained or loss avoided. We have not received any strong market views against this proposal other than calls for greater clarity as to its implementation. In response, the SFC plans to issue draft guidelines on civil fines for consultation later this year.

[2] S.400(1) of the Financial Services and Markets Act, 2000.

(d) Level playing field between brokers and banks

18. At present, the SFC grants exempt status to authorized institutions (AIs) conducting securities business, in recognition of the fact that they are already subject to regulation by the Hong Kong Monetary Authority (HKMA) under the Banking Ordinance (BO). This will continue under the Bill with a new requirement that the SFC must act on the advice of the HKMA in deciding whether or not to grant the exempt status. New efforts will also be made by the HKMA to strengthen the existing regulation of the securities arm of exempt AIs. Our guiding principles in developing this new regulatory framework are to provide better protection to investors, minimize regulatory overlap thereby reducing unnecessary regulatory costs, and level the playing field between exempt AIs and SFC licensees.

19. The HKMA will remain the front line regulator in so far as exempt AIs are concerned and will perform its regulatory functions, in relation to the securities business of exempt AIs, in a manner and according to standards that are consistent with those applied by the SFC to its licensees. In order to fulfil this commitment, the Bill vests in the HKMA inspection powers for the day-to-day supervision of the securities arm of exempt AIs. Necessary amendments will also be made to the BO to enable the HKMA to perform these regulatory functions[3].

20. In consulting the banking community on the White Bill, we have identified a number of regulatory requirements which already exist in the BO and are enforced by the HKMA, and hence should not be applied to the exempt AIs under the Bill. These include requirements primarily about audit and information reporting. Further, the banking sector has submitted that there are practical difficulties for them to comply with certain regulatory requirements under the Bill, due to the multi-business areas they are engaging in. To provide for flexibility, the Bill allows the SFC to grant a class modification or waiver for exempt AIs from specific regulatory requirements. In practice, before granting such modification or waiver, the SFC will make sure that investor protection is not compromised, for example, through compensating measures administered by the HKMA. Similarly, while the exemption granted to AIs is subject to revocation by the SFC after consulting the HKMA, exempt AIs will be excluded from the disciplinary and appellate régimes of the Bill as separate arrangements are provided for them under the BO.

21. The new regulatory framework for exempt AIs will be underpinned by a revised Memorandum of Understanding to be drawn up between SFC and HKMA.

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[3] The Banking (Amendment) Bill 2000 will be the subject of a separate Legislative Council Brief issued concurrently.

Combating Market Misconduct

(a) Establishing a Market Misconduct Tribunal to deal with cases of insider dealing and other specified market misconduct

22. The Bill creates an alternative civil route to the existing criminal route for dealing with certain forms of market misconduct[4]. It will build on the strength of the Insider Dealing Tribunal which already provides a means of dealing with insider dealing, and expand it into a Market Misconduct Tribunal (MMT) to handle, in addition to insider dealing, five other specified types of market misconduct[5] on the civil standard of proof and using civil procedures. The MMT will be chaired by a judge[6], and assisted by two members. The Chairman of the MMT will be appointed by the Chief Executive with the recommendation of the Chief Justice, whilst the two other members will be appointed by the Chief Executive. The Financial Secretary will be able to initiate proceedings before the MMT, the purpose of which is to determine whether market misconduct has taken place and to identify the persons committing the market misconduct. A Presenting Officer, appointed by the Secretary for Justice, will conduct proceedings before the MMT. He will present the case to the Tribunal and initiate such further inquiries as necessary. The MMT may, by way of civil sanctions, order payment to Government of the profit gained or loss avoided ("disgorgement"), issue a "cold shoulder" order[7] to restrict a person's access to the markets, issue a "disqualification" order to disqualify a person from being a director or other officer of any corporation, and order a person to cease and desist from committing any further acts of market misconduct[8]. Separately, the MMT may order a person to pay the costs of investigating his market misconduct. A "cold shoulder" order or a "disqualification" order may be for a period of up to five years. Non-compliance with an order issued by the MMT may be punished

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[4] Existing offences of market misconduct refer to market manipulation and disclosure of false or misleading information as stipulated in the Securities Ordinance, Commodities Trading Ordinance and Leveraged Foreign Exchange Trading Ordinance.

[5] The five types of market misconduct are: false trading in securities or futures contracts, price rigging in securities or futures contracts, stock market manipulation (securities only), disclosing information about prohibited transactions in securities or futures contracts, and disclosing false or misleading information about securities or futures contracts inducing transactions in those products.

[6] A judge or deputy judge of the Court of First Instance, a former Justice of Appeal, or a former judge or former deputy judge of the Court of First Instance.

[7] Under the existing Codes on Takeovers and Mergers and Share Repurchases, the Takeovers Panel has the power to issue a "cold-shoulder" order which requires licensed persons not to act or continue to act for a person, who is the subject of an order, for a prescribed period. The Bill will give the MMT the power to make orders of similar effect although, for legal reasons, the precise form of the order will be different.

[8] The US Securities and Exchange Commission has the power to issue these "cease and desist" orders. It may impose such an order as an administrative act in proceedings before an administrative law judge. Proceedings for breach of an order are brought before a court and such breach is punishable by a civil penalty and a mandatory injunction directing compliance with the order.

either as contempt or as a criminal offence. As in the White Bill, we did not pursue fines of three times the profit gained or loss avoided owing to human rights concerns.

23. Reliance on the above civil sanctions is considered inadequate to deter and punish market misconduct. Hence, in parallel to the MMT régime, the Bill will retain, modernize and expand the existing criminal régime to deal with market misconduct where there is sufficient evidence that a criminal offence has been committed by an identifiable person, that there is a reasonable prospect of a conviction, and it is in the public interest to bring a prosecution. Insider dealing and five other specified types of market misconduct will be made criminal offences.

24. The market misconduct provisions specified in the Bill for the civil and criminal regimes will mirror each other and are modelled upon the well established Australian Corporations Law. During the White Bill consultation, the market asked that the onus of proof in establishing mens rea[9] be imposed on the Prosecution and that the burden on the defendant in proving (or disproving) a state of mind be removed. We have paid particular attention to the need to allay market fear that legitimate market activities might be caught by the proposed régime. Having conducted a detailed examination of the provisions, we have identified scope for expressly stating the mens rea as a requirement to be proved by the Prosecution by, for instance, generally making it explicit that a person will not be held liable for committing certain market misconduct unless he intended the harmful market effect to occur or was reckless as to whether it would occur. The onus of proof will be on the Presenting Officer of the MMT or the Prosecution (as the case may be), except for wash sales and matched orders[10] which are blatantly abusive. For market misconduct on disclosure of false or misleading information inducing transactions, the Bill requires the Presenting Officer or the Prosecution (as the case may be) to prove that the defendant knew that the information was false or misleading, or was reckless or negligent as to whether it was so. Further the Bill confines the misconduct to false or misleading information that is likely to have an effect on the price of securities or futures contracts[11], or is likely to induce others to enter into transactions. Special efforts

[9] The state of mind that the Presenting Officer of the MMT (under the civil regime) or the prosecution (under the criminal regime) must prove a defendant to have had at the time of commission of certain market misconduct in order to secure a finding of that market misconduct by the MMT or a conviction by the criminal court.

[10] A "wash sale" is a transaction where a person effectively buys a security from, or sells a security to, himself, perhaps via nominees. "Matched orders" occur where a person, perhaps together with others, makes matching buy and sell orders for the same security for about the same price and quantity. Both types of conduct are usually engaged in to create an illusion of a genuine market for a security, but there may sometimes be innocent reasons for such conduct. The defence will be for the defendant to prove to a civil standard (i.e. on balance of probabilities) that none of the purposes for their conduct were prohibited purposes.

[11] That is, information that is likely to maintain, increase, reduce or stabilize the price.

have also been made to ensure that there are effective defences for those merely passively disseminating information produced by others. These are discussed in paragraphs 38 and 39 below.

25. We have assessed the impact of these amendments on the effectiveness of the civil and criminal market misconduct régimes, in particular that of the MMT. As the Bill has preserved the strength of the civil régime which lies in the nature of tribunal proceedings, i.e. allowing evidence to be developed in the process of the hearing, and a lower standard of proof, we are satisfied that the viability of the proposed MMT will not be compromised.

26. The Bill sets the maximum penalty for criminal offences of market misconduct at a fine of $10 million and 10 years' imprisonment. In response to comments from the Legislative Council Subcommittee on the White Bill, we have extended the civil sanctions set out in paragraph 22 above, other than "disgorgement" and "cease and desist"[12] orders, to the criminal régime in order to better protect investors and market participants.

(b) Assisting litigants in a private right of action against market misconduct

27. Under the common law, a person who has suffered loss as a result of market misconduct <u>may</u> be able to seek redress through a civil action against the person responsible for that misconduct. The Bill seeks to establish a clear relationship between compensation for affected investors and breach of the market misconduct provisions of the Bill by creating an express statutory cause of action for victims to sue another person for recovery of losses which result from the latter's market misconduct, if the court thinks that it is fair, just and reasonable for him to recover. This will put Hong Kong more in line with international practice[13].

[12] The order is superfluous because if the person engages in market misconduct again, his previous conviction would have already been taken into account in the sentencing process.

[13] In the United States, sections 11 and 12 of the Securities Act expressly provide for private causes of action for violations of the securities registration requirements. Section 18 gives a right of action to any person who purchases or sells a security in reliance on misleading statements in a report filed under that Act. There is also a right of action for violation of Rule 10b-5 (an anti-fraud rule made under section 10(b) of the Securities Exchange Act). Volumes of case law have interpreted this anti-fraud rule to cover an extremely wide variety of situations, thus effectively providing a catchall cause of action for private litigants. In the United Kingdom, under section 71 the Financial Services and Markets Act, a contravention by an authorised person "is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty". Section 1324(1) of the Australian Corporations Law extends the right of action to "[any] person whose interests have been, are or would be affected by the conduct [that contravenes a legal provision]".

28. The Bill will allow the court hearing a private action to admit findings of the MMT and criminal convictions as evidence that market misconduct has been committed. The victim will still need to prove that the MMT findings or criminal convictions are probative and relevant to his civil proceedings. However, the admissibility of MMT findings and criminal convictions is likely to be of considerable assistance to those who having suffered loss as a result of market misconduct, intend to recover such loss through a private civil action.

29. Some stockbrokers have expressed concerns about the possibility of being sanctioned by the MMT or punished by the court, and required to compensate the victims of their market misconduct. There are, however, public comments that the proposed civil sanctions under the MMT régime are inadequate and that the criminal régime will be of limited utility as sophisticated market practices have made it difficult to prove market misconduct to the criminal standard of beyond reasonable doubt. We consider that the private cause of action should be preserved in the Bill in order to better protect investors and to send a clear message to the market that such misconduct will not be tolerated.

(c) Facilitating a preliminary inquiry into a listed corporation

30. Current law authorizes the SFC to review the documents of a listed corporation when it appears to the SFC that there is fraud or other misconduct in the listing or management of the corporation. In practice, however, the SFC has only a limited ability to look into the entries in those documents in any meaningful context or to check their veracity. The Bill will rectify this problem, allowing the SFC to seek from the listed corporation explanations of such an entry; to request contractual counterparties of the listed corporation to produce documents relating to dealings with the corporation; and to request access to the working papers of the corporation's auditors. These enhancements will enable SFC to perform better its regulatory role in relation to listed corporations.

31. The proposed power for the SFC to require the production of audit working papers has been a matter of concern for the accountancy profession. Having considered the various safeguards[14] that the White Bill has introduced to ensure proper exercise of this power, the accountants have not pursued their previous request for the SFC to first obtain a court order for access to an auditor's working papers. Instead they proposed that the SFC should furnish an auditor with a "statement of relevance" when requesting the production of working

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[14] The safeguards include first, SFC must have reasonable cause to believe that the auditor possesses audit working papers relating to the affairs of the listed corporation under inquiry and relevant to the grounds of the inquiry; and second, SFC must <u>certify these in writing</u>. Also the Bill provides for a definition of "audit working papers" in response to representations from the accountancy profession to delineate the scope of inquiry.

papers. We have explained to the accountants that officers authorised to conduct an inquiry are required by law to include in their request for documents a written certification. In practice, the SFC will give the grounds for the appointment of the authorised officer and the commencement of the inquiry. The proposed inquiry power is not intended for "fishing expeditions". The SFC is prepared to particularise the nature of any documents requested and modify the scope of the request if the auditor has genuine and reasonable concerns about the scope of documents requested.

32. We are satisfied that the proposed power to require the production of audit working papers is in line with similar powers in overseas jurisdictions including the US, the UK and Australia. In our dialogues with the accountancy profession, we learned that the profession intended to prepare guidelines for its members on compliance with requests from SFC for audit working papers under the Bill in future. The SFC has already pledged to help the profession develop those guidelines.

(d) Protecting auditors who choose to report suspected fraud

33. The Bill provides auditors of listed corporations who report to the SFC any suspected fraud or misconduct in the management of a listed corporation statutory immunity from civil liability under the common law. The choice to report is entirely voluntary. The White Bill has already taken into account earlier comments of the accountancy profession. Accordingly the profession has raised no further objection to the proposal.

Enhancing Market Transparency

34. Information is at the centre of an efficient market. It enables investors to make informed decisions and helps maintain a level playing field among market participants. The proposals at (a) and (b) below seek to enhance market transparency by promoting timely and accurate disclosure of price sensitive information to investors to assist them in assessing risks and returns.

(a) Improving disclosure of interests in securities

35. To bring Hong Kong in line with international standards, the Bill will lower the initial shareholding disclosure threshold for persons other than directors and chief executives from 10% to 5%; and shorten the disclosure

notification period for most cases from five days to three business days. The market has welcomed these proposals.

36. The White Bill proposed to extend certain disclosure requirements to short positions, unissued shares and cash-settled derivative products to close an existing information gap for the investors. This is to address a unique Hong Kong problem in that our market capitalisation and the public float of most listed corporations are relatively small by international standards, and thus incomplete information on shareholding positions may distort market prices easily. These proposals have been put forward in response to calls from listed corporations in the light of their past market experience. Nonetheless, they have been an issue of concern to some international investment bankers and equities brokers, in particular the proposal regarding disclosure of interests in derivatives.

37. Through detailed working sessions with the target stakeholders, we have identified some genuine market concerns about the details of positions in derivatives to be disclosed which might reveal their hedging strategies to their competitors and hence expose themselves to the risk of being front-run. This might adversely affect the development of the derivatives market. We have also identified certain compliance problems, especially for large-scale multinational operations. To address these concerns, the Bill compresses the level of details to be disclosed and introduces a few exemptions, but preserves the essential aggregate data for investors to have a clearer picture of the major shareholding positions in a listed corporation. The amendments aim to strike a pragmatic balance between enhancing market transparency and facilitating market development.

(b) Creating civil liability for false disclosure to the market

38. There is a market consensus that the quality of disclosure under the various regulatory requirements, especially those relating to listings, takeovers and mergers, needs to be strengthened. The Bill provides that a person will be civilly liable for knowingly, recklessly or negligently disclosing to the public false or materially misleading information that might affect the price of securities or futures contracts. A victim who has suffered loss as a result of relying on such disclosure may claim damages from the person who is responsible for the disclosure provided that the person has either assumed responsibility with respect to the victim in relation to the disclosure, or it is fair, just and reasonable that the person should be liable. The provisions will provide a defence for persons who only participate in the making of part of a statement which is not false or misleading or who knows that the information is false but opposes its disclosure. This defence will be available to a director of a listed corporation who is aware of

the false statement but opposes to its issue. Also, the Bill will specifically provide that persons acting as "conduits" for disseminating information, like printers, publishers and "live" broadcasters, shall not be legally liable, as they cannot be expected to check the information that they disseminate.

39. During the White Bill consultation, we have liaised with automated trading service providers and identified ways to refine the Bill to provide that these persons shall not be legally liable for disclosure of false information to the public if they act in the capacity of a "conduit" in disseminating information from third parties (in certain cases via hyperlinks) from their web sites, without editing the contents or in such a way as to adopt them.

40. We have also discussed with the Bar Association about the scope of the provision and have clarified that the provision is not intended to go further than the common law. To this end, we have refined the relevant provision which states the applicable common law test for liability to arise. We have also restricted the categories of persons that might be caught to those who participated in or approved the disclosure of the false information.

Meeting new market needs

(a) Adopting a flexible and pragmatic approach to the regulation of automated trading services

41. The rapid development of automated trading facilities, through which automated trading services (ATS) are provided, is conducive to the rapid growth in electronic trading in overseas markets. The activities and services of these technology driven operators should be appropriately regulated for investor protection and systemic risk management. Yet the diversity and the rapid development that marks these ATS require us to approach the question of regulation with caution and flexibility. Imposing a set of requirements that apply universally would probably leave undesirable loopholes and impede competition, innovation and growth. Accordingly, the Bill takes a flexible and pragmatic approach by enabling the SFC to examine each application for ATS authorization and, on the basis of each individual case, to determine which rules[15] are to be

[15] Examples of areas covered by such rules are –
(a) the standards of conduct in relation to the provision of an automated service;
(b) steps to be taken to avoid and deal with conflicts of interest;
(c) steps to ensure that there is integrity, transparency and fairness in transactions conducted through the service; and
(d) procedures to discourage and identify any money laundering activities.
They are similar to rules governing an exchange for ensuring adequate market surveillance, managing systemic risk, enhancing market liquidity, monitoring system capabilities, regulating user admission standards, etc.

applied. The US, the UK and other jurisdictions have adopted a similar approach. To provide for clarity and certainty to ATS operators, the SFC will work closely with the market in preparing guidelines on how it is going to regulate ATS. Acknowledging the difficulties in codifying the details in the Bill, the market accepts that this is the direction in which to proceed.

(b) Allowing the SFC to join in third-party litigation

42. As financial markets and their infrastructure become increasingly complex, what appear to be disputes between private parties are more and more likely to affect the rest of the market system. Private litigation may involve points of law that bear on the wider public interest. The Bill will give the SFC standing to intervene in third-party proceedings (other than criminal proceedings) after consultation with the Financial Secretary, to provide its regulatory perspective and expert opinion in appropriate cases. In response to earlier market views, the White Bill provides that the SFC may intervene only when the SFC is satisfied that this in the public interest, parties to the litigation will have the right to challenge the intervention and the intervention will be subject to such terms as the court considers just. These safeguards were well received in the consultation exercise.

(c) Monopoly to operate a stock market

43. Under the existing law, the Stock Exchange of Hong Kong Limited (SEHK) has an exclusive right to operate a stock market in Hong Kong. In promoting the merger of the exchanges and clearing houses, the Government committed itself in March 1999 to preserving the legal monopoly of SEHK. We believe that this will allow Hong Kong Exchanges and Clearing Limited (HKEx), as the merged entity, to benefit from economies of scale, concentration of resources, as well as consistency and coherence in business and risk management strategies in meeting the competitive challenge of globalisation. The White Bill thus seeks to re-enact the legal monopoly by conferring the right to operate a stock market on SEHK's new holding company, HKEx, and also any subsidiary of HKEx that has been recognised as an exchange company.

44. In the consultation exercise, we have received comments by the legislature and some market participants that the Bill should not carry anti-competitive provisions that may impede market development. We have also received HKEx's request that its legal monopoly should be extended to the operation of a futures market in Hong Kong. We consider that, on balance, the

status quo should be maintained, but shall keep the subject under review in light of new market developments.

(d) Investor Compensation

45. The existing compensation funds for both SEHK and the Hong Kong Futures Exchange (HKFE) are derived partly from deposits paid by the exchange participants and partly from statutory transaction levies. SEHK may be required to replenish amounts paid out in respect of claims made against the SEHK fund. The compensation ceilings are respectively $8 million per stockbroker and $2 million per futures broker, but the SFC may allow a higher level of compensation. The per broker ceilings give an uncertain level of investor protection, as they do not communicate to investors the amount of coverage available to them individually.

46. We have included in the Bill a flexible framework for the establishment of a new investor compensation scheme[16]. Since publication of the White Bill, the SFC has commissioned a consultancy study with a view to putting forward detailed proposals for a new compensation framework for consultation with HKEx soon. Detailed rules for the operation of the new compensation scheme, once agreed among concerned parties, will be set out in subsidiary legislation. Specifically, we propose a per investor compensation ceiling to be prescribed by the Chief Executive in Council.

Transparency and Accountability of the SFC

Annex B

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47. The SFC needs adequate powers and discretion to perform its functions effectively. In exercising its powers and performing its functions, the SFC should be both transparent and accountable, subject to adequate consideration being given to the SFC's statutory secrecy obligations. To this end, the Bill has preserved all existing accountability arrangements, as summarised at **Annex B**, and created a number of additional checks and balances to guard against possible abuse. One notable measure of accountability is the inclusion of the SFC's regulatory objectives in the Bill, which will serve as benchmarks by which the public and the industry will be able to measure the SFC's performance. Other measures include the establishment of a Securities and Futures Appeals Tribunal and a Process Review Panel. All these are welcomed by the market.

[16] These proposals were put forward for market consultation in September 1998 and generally well received.

(a) Securities and Futures Appeals Tribunal

48. As an improvement to the mechanism of checks and balances, the Bill will replace the current Securities and Futures Appeals Panel (SFAP) with a Securities and Futures Appeals Tribunal (SFAT). The SFAP is a part-time merits review panel. Its jurisdiction is limited to certain decisions made by the SFC on licensing and discipline of intermediaries and intervention in their business. The SFAT as a statutory tribunal will operate on a full-time basis with an expanded remit. It will be chaired by a judge[17] and is expected to include a number of market practitioners and others with appropriate knowledge and experience of the industry, all appointed by the Chief Executive. It will have a wider jurisdiction than the SFAP and may review many important SFC decisions, including all licensing and disciplinary decisions as well as certain matters relating to intermediary supervision and investment products, as set out in detail in the Bill. We anticipate that with the SFAT operating on a full-time basis, the time required for hearing a review should be shorter than that with the SFAP.

(b) Process Review Panel

49. It is important for public confidence and trust in the SFC to be maintained. Part of its work is necessarily subject to statutory secrecy obligations so specific information often cannot be publicly disclosed. This, however, could give the public the misconceived impression that the SFC is not taking appropriate action. To bridge this gap, we have established an independent non-statutory Process Review Panel, ahead of the enactment of the Bill, to demonstrate the SFC's openness to independent scrutiny. The Process Review Panel is tasked to audit the internal operations (including investigative procedures) of the SFC for adherence to the SFC's internal procedures and standards of due process. Panel membership is broadly-based. Members have the necessary market expertise and professional skills. The Panel will submit its reports to the Financial Secretary with a view to publication subject to the SFC's statutory secrecy obligations.

Relationship with other regulators and market operators

50. With the rising sophistication of investors and continual innovation in financial products, traditional sector-specific financial institutions have increasingly moved to provide cross-sector services. This trend calls for better coordination and cooperation among financial regulators. Existing law enables

[17] A judge or deputy judge of the Court of First Instance, a former Justice of Appeal, or a former judge or former deputy judge of the Court of First Instance.

the SFC to share information with and grant investigative assistance to other regulators. Apart from these provisions (which will be preserved in the Bill), there are at present a number of bilateral and multilateral channels for the SFC to maintain formal and informal dialogues with other regulators. The SFC has entered into Memoranda of Understanding (MOU) with HKMA and the Mandatory Provident Fund Schemes Authority (MPFA) to facilitate the regulation of cross-sector activities. The Financial Secretary has recently established a Council of Financial Regulators to facilitate cooperation and coordination among the financial regulators including HKMA, the SFC, MPFA and the Insurance Authority. To complement these efforts, the Bill specifies, as one of the SFC's objectives, that the SFC will assist the Financial Secretary in maintaining the financial stability of Hong Kong. This will provide a statutory basis for the SFC to contribute towards cross-market surveillance in the performance of its functions.

51. The Bill has also established a framework governing the regulatory relationship between the SFC and HKEx. Both the SFC and HKEx consider it more flexible to set out details of their division of duties and regulatory interface in MOUs. For this purpose, the SFC has already entered into a MOU with HKEx on the regulation of listing activities in June 2000. They will shortly enter into another MOU on the oversight and supervision of exchange participants and market supervision by the SFC.

Incorporation of other ordinances

52. In preparing the White Bill, we have implemented, in parallel, certain urgent legislative amendments to regulate margin financing in securities transactions, short selling and the provision of false and misleading information[18]. They have been incorporated into the Bill as appropriate.

Preparation of subsidiary legislation

53. The Bill provides for a framework of regulatory arrangements that are flexible enough to cater for changing market needs. It vests in the SFC powers to make subsidiary legislation and non-statutory codes and guidelines for the purpose of effective compliance and enforcement. Altogether there will be nearly 70 sets of rules, codes and guidelines to be made under the Bill, of which about 20 are of particular market interest, as set out at **Annex C**. The SFC has

Annex C

[18] These legislative initiatives are contained in the Securities (Margin Financing) (Amendment) Ordinance (enacted on 15 March 2000), Securities (Amendment) Ordinance (enacted on 25 May 2000), and Securities and Futures Legislation (Provision of False Information) Ordinance (enacted on 6 July 2000).

committed to expose drafts of these new instruments in the next few months for market comments. Through these continuous consultation efforts, we hope to give a clearer picture to the market as to the detailed regulatory requirements under the Bill, and assure the market that practitioners' views will be taken into account in finalising these instruments. These drafting and consultation efforts will be conducted in parallel to the passage of the Bill through the legislature. We aim to have these new instruments ready by the time of enactment of the Bill, as they will be necessary for the new régime to commence.

THE BILL

54. The purpose of the Bill is to consolidate and amend the law relating to financial and specified investment products including securities, futures contracts, collective investment schemes, and leveraged foreign exchange contracts; the securities and futures market and industry; as well as the protection of investors. The Bill is divided into 17 Parts.

55. **Part I** provides for commencement and specifies that interpretation provisions of general application are set out in Schedule 1.

56. **Part II** provides for the operation of the SFC and its constitutional framework.

57. **Part III** provides for the regulation of exchange companies, clearing houses, exchange controllers, investor compensation companies and certain automated trading services.

58. **Part IV** deals with the regulatory framework for the offering of investment products.

59. **Part V** provides for a new licensing régime for market intermediaries. **Part VI** imposes capital requirements and other requirements relating to client assets, records and audit applicable to intermediaries. **Part VII** regulates business conduct of intermediaries.

60. **Part VIII** provides for powers of supervision and investigation of the SFC; and deals with preliminary inquiries into listed corporations, supervision of intermediaries, and investigations into misconduct and offences under the Bill, and enables the SFC to assist overseas regulators in appropriate cases.

61. **Part IX** provides for the SFC's disciplinary powers exercisable in respect of licensed and exempt persons.

62. **Part X** provides for powers of intervention exercisable by the SFC and for relevant proceedings.

63. **Part XI** contains provisions relating to the SFAT, which is established to deal with appeals against decisions made by the SFC under specified provisions.

64. **Part XII** contains provisions for establishing a framework for making specific compensation arrangements for investors.

65. **Part XIII** contains provisions relating to MMT, which is established to deal with insider dealing and other specified market misconduct. **Part XIV** provides for market misconduct offences and establishes a criminal régime for punishing and deterring market misconduct.

66. **Part XV** sets out the régime for the disclosure of interests in shares and other investment instruments relating to listed corporations.

67. **Part XVI** contains miscellaneous provisions and **Part XVII** deals with repeals and transitional provisions.

68. In refining the White Bill, dedicated efforts have been made to streamline the drafting of relevant provisions in response to market comments. Notable examples include combining provisions on the same market misconduct concerning transactions in securities and those relating to futures contracts both in Parts XIII and XIV; incorporating the original Schedule 9 into Part XV to consolidate the provisions on disclosure requirements; and moving relevant definitions from individual Parts to Schedule 1 for easy reference.

LEGISLATIVE TIMETABLE

69. The legislative timetable is as follows –

Publication in the Gazette	24 November 2000
First Reading and commencement of Second Reading debate	29 November 2000
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

BASIC LAW IMPLICATIONS

70. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

71. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

72. The Bill proposes no changes to the binding effect of those existing Ordinances which the Bill seeks to consolidate and modernize.

FINANCIAL AND STAFFING IMPLICATIONS

73. Subject to the enactment of the Bill in its present form, we will create 14 new posts with annual staff cost of $20 million for the MMT. This will be offset by the deletion of the same number of posts with an annual staff cost of $16 million under Insider Dealing Tribunal. Therefore, the net additional staff cost to Government is $4 million. The MMT will also require an additional $4 million each year to meet its operating expenses which largely comprise witness and professional fees.

74. For the SFAT, we will create three new posts with an annual staff cost of $3 million. We will also provide $4 million for the SFAT to cover its operating expenses, the nature of which is similar to that of MMT.

75. The workload of the MMT and the SFAT is contingent upon the number and degree of complexity of the cases to be heard, which cannot be predicted with accuracy. This will be likely to have an impact on the workload of the FSB and Department of Justice as they have to consider referrals of possible MMT cases from the SFC and make recommendations to the Financial Secretary thereon. In addition, the Secretary for Justice will have to appoint Presenting Officers for the purpose of MMT proceedings. Also, relating to but outside the Bill, the Bureau will have to spare resources to provide secretariat support for the Process Review Panel. The Secretary for Financial Services will review the overall resource requirement for the implementation of the Bill and associated activities from time to time and seek any additional requirement in the normal

way to ensure that the MMT, SFAT and the Process Review Panel are adequately served for them to perform their functions properly.

76. There may be additional workload for the SFC as a result of the strengthening of its supervisory, regulatory and investigative powers. The SFC will absorb within its resources the additional resource requirements to cope with the extra workload. There will also be additional workload to the HKMA as a result of the strengthening of the regulatory functions in relation to exempt AIs. This will be absorbed by the HKMA through redeployment of existing resources from the Exchange Fund.

ECONOMIC IMPLICATIONS

77. Measures to enhance the health, transparency and vibrancy of the securities and futures market through regulatory reforms, in the way described in this Bill, will help boost the vitality and strength of Hong Kong's financial sector as it evolves along with global financial market developments. This is crucial for the securities and futures market to meet its economic role in the mobilization of capital and also for Hong Kong to maintain its position as an international financial centre and the premier capital formation centre for the Mainland of China.

PUBLIC CONSULTATION

78. We published the White Bill and the associated Consultation Document in early April 2000 for public consultation until 30 June 2000. During this period, we had six meetings with the Legislative Council Subcommittee on the Securities and Futures Bill to present to members our proposals in the White Bill in detail and canvass their views, which are summarized, together with our response, at Annex A.

Annex D
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79. We have also received altogether 53 submissions from 44 market organisations, chambers of commerce, professional bodies and individuals, as listed out at **Annex D**. Both the FSB and the SFC have engaged intensively the major stakeholders through workshops, seminars, discussion groups and informal meetings since April 2000 to listen to their views on the Bill and solicit their assistance in refining the more technical parts of the Bill. Numerous media briefings and interviews have been arranged to enhance public awareness of the reform proposals. This process has been most useful in identifying viable solutions to the regulators, the regulatees and the investing public. The major public comments and our response thereto are summarized also at Annex A.

80. The respondents generally recognise the need for reform and support its broad direction. Industry as well as public respondents supported the inclusion of the SFC's statutory objectives, the transition to a single licence régime, the introduction of more proportionate disciplinary sanctions, the establishment of a MMT, and the regulation of ATS. They were positive about the proposed safeguards, namely upgrading and expanding the SFAP to the SFAT, and establishing a Process Review Panel to ensure that the SFC follows its internal due process procedures. Consultees are quick to point out that the White Bill has taken into account their earlier comments expressed during the 1999 consultation, in particular the Hong Kong Society of Accountants and the Bar Association.

81. The stock broking community and investment banking industry have been particularly critical about the proposals in the White Bill on strict liability for senior management, custodial penalties for certain breaches of licensing requirements, the apparent lack of mens rea elements in the market misconduct régime, and regulatory burden arising from the disclosure régime. We believe that the amendments to the White Bill outlined above would go a long way to address these concerns without compromising the overall effectiveness of the new regulatory régime.

PUBLICITY

82. We will brief the Legislative Council Panel on Financial Affairs on 10 November, , highlighting major proposals of the Bill and changes made to the White Bill. A press conference and media briefings will be arranged afterwards to publicize the Bill. A press release will also be issued. The Bill will be published in the Gazette on 24 November. An electronic copy of it will be put on the websites of the Financial Services Bureau at www.info.gov.hk/fsb and the SFC at www.hksfc.org.hk on 17 November.

ENQUIRIES

83. Enquiries on this Brief may be directed to Miss Vivian Lau, Principal Assistant Secretary for Financial Services at 2528 9493.

Financial Services Bureau
10 November 2000

Annex A

Response to major comments
on the Securities and Futures Bill (the White Bill)

General Comments

- The respondents generally recognise the need for reform and support its broad direction, including –

  # the introduction of a single licence regime to streamline the regulatory framework for intermediaries and upgrade the quality of intermediary services for better protection of investors;

  # the establishment of the Market Misconduct Tribunal to reduce market malpractice and financial crime;

  # modernising the regime for the disclosure of interests in securities to enhance quality of information disclosed and market transparency;

  # building in greater flexibility for new market development like on-line trading; and

  # levelling the playing field for SFC-licensed brokers and the securities arm of exempt AIs.

- The respondents also welcome the proposed safeguards, including the establishment of the Securities and Futures Appeals Tribunal and the Process Review Panel.

- The Bill represents the fruit of an intensive consultation exercise on the White Bill since its publication in April 2000. It has been refined in light of comments from the market and the Legislative Council to strike the right balance between investor protection and market development. We believe the refinements would go a long way in addressing market concerns without compromising the overall effectiveness of the new regulatory regime.

Serial No.	Specific Comments	Administration's Response
Part I – Preliminary		
1.1	Rules to be made by the Commission are not yet available. The subsidiary legislation will be most crucial for the operation of the securities industry.	Drafting work for the relevant subsidiary legislation, guidelines and codes is in progress. Priority would be given to items of most concern to the market. Aim to release the first draft of the priority items for market consultation in the next few months.
Part II – Securities and Futures Commission		
2.1	Welcome codifying the regulatory objectives of SFC. The objective in maintaining the "competitiveness" and "efficiency" of the market should not make SFC feel obliged to participate in the commercial decision making process of the market operators.	It is one of SFC's regulatory objectives to maintain the competitiveness and efficiency of the securities and futures market. SFC does not interfere in commercial decisions of market operators; nor will the regulatory objective concerned empower SFC to do so.
Part III – Exchange companies, clearing houses, exchange controllers, investor compensation companies and automated trading services		
3.1	The definition of "clearing house" might inadvertently catch the inter-bank clearing company.	The definition is revised to ensure that the inter-bank clearing company is excluded.
3.2	The immunity of recognised exchanges, clearing houses and exchange controllers only applies to them if they had acted "with reasonable care" and "in good faith". This was too strict.	Agreed to align relevant immunity clauses in the Bill by removing the "with reasonable care" requirement.
3.3	SFC's power to make statutory rules for the recognised exchanges should be subject to a more vigorous consultation and appeal mechanism.	In addition to consultation with the recognised exchange, SFC will have to consult the Financial Secretary as well before making such rules.

Serial No.	Specific Comments	Administration's Response
3.4	The listing of HKEx gave rise to potential conflicts of interest between its commercial objectives and regulatory responsibilities.	Adapted from the Exchanges and Clearing Houses (Merger) Ordinance, the Bill requires a recognised exchange controller to ensure that public interests prevail where they conflict with the interests of the recognised exchange controller. SFC may give directions to the exchange controller if there is conflict of interest.
3.5	The definition of "automated trading services" (ATS) might be too wide and potentially encompass activities performed by a securities firm in the normal course.	Modelled on similar definitions in overseas jurisdictions. Too narrow a definition may create regulatory gaps and fail to embrace new technologies and trading methods. SFC will issue guidelines to assist the market in interpreting the definition.
3.6	It is not clear as to how SFC would regulate ATS – whether by granting the provider a licence as an intermediary, or authorising it to operate as an exchange.	The relevant criteria and policies will be explained in the SFC guidelines to be published for market consultation in the next few months.
3.7	To the extent that Hong Kong residents buy and sell non-Hong Kong securities, their Hong Kong broker is likely to use, or introduce their accounts to, a foreign financial services provider. Such a foreign provider should not be included in the definition of providing "automated trading services".	The Bill does not require foreign financial services providers concerned to obtain an ATS licence or authorisation unless they themselves conduct the specified regulated activities in Hong Kong.
3.8	Some respondents queried whether the stock market monopoly is anti-competitive, whereas HKEx proposed that the existing monopoly be extended to futures market.	To keep the matter under review in light of market development. Recognise the need for HKEx to consolidate its market position to meet the competitive challenge presented by globalization.

Serial No.	Specific Comments	Administration's Response
3.9	It is not clear if the power of an Investor Compensation Company (ICC) to invest money in such manner as SFC may approve is confined to the types of investment SFC may make in respect of the investor compensation fund.	The power of an ICC will be so confined upon a transfer of functions from SFC to it.
Part IV – Offers of investments		
4.1	Offers of "collective investment schemes" (CIS) are subject to regulation. CIS is too broadly defined and the regulatory net has been cast too wide to include, for instance, contracts of insurance.	The definition of CIS is already narrower than that in the existing Protection of Investors Ordinance. The proposed scope is necessary to secure reasonable protection for investors, like those of insurance-linked investment products. The Bill allows the Financial Secretary to specify exclusions from CIS where justified.
4.2	The definition of CIS is confusing in that its new component term of "other investment arrangements" overlaps with those of "unit trusts" and "mutual funds".	CIS is redefined based on the original definition for "other investment arrangement". References to "unit trusts", "mutual funds" and "other investment arrangements" will be deleted.
4.3	In line with other major financial centres, a distinction should be made to the targets of offers of investment. A lighter regulatory approach should be adopted for regulating offers of investment to "professional investors" or "sophisticated investors", without compromising investor protection.	Appreciate the merits of modernising the regulatory regime for the offers of investment. To pursue as a separate exercise independent of the Bill. As a first step, the Bill will define "professional investor" and provide the necessary flexibility to delineate "sophisticated private investors" through rules to be made by SFC on a need basis.
4.4	There are concerns that every director of a company is liable to compensate investors for misrepresentations made by the company, unless the director can prove that he did not authorise the making of the misrepresentation.	The intended effect is to improve corporate governance and protect investors. A director only needs to establish that he did not authorise the making of the misrepresentation to rebut the presumption.

Serial No.	Specific Comments	Administration's Response
4.5	It is not clear whether exempt authorised financial institutions (exempt AIs) currently trading in leveraged foreign exchange are also exempt from the requirements governing the offers of investment.	This has been clarified by expressly providing in the Bill an exemption for AIs in relation to leveraged foreign exchange trading.
Part V – Licensing and exemption		
5.1	It is not appropriate to hold each and every executive officer of a corporation liable for certain criminal offences without any proof of fault or criminal intent on his part.	In considering whether the management is liable, we agree that the "guilty intent" of the officers should be taken into consideration. Generally, an officer would not be held liable unless he actively participated in, consented to or connived in the criminal conduct of the corporation which he manages or his recklessness has allowed the corporation's criminal conduct to occur. (See also 5.3.) The intention is to encourage the management to put in place robust internal control systems, which may also be pursued through the disciplinary regime.
5.2	The mental element ("mens rea") in committing an offence should not be presumed and the onus of proof should be on the prosecution.	We agree that the onus of proof should be put on the prosecution for all offences under the licensing regime.
5.3	Officers should not be criminally liable for an offence committed by the corporation on the ground of neglect.	We appreciate the market concern. By "neglect" we indeed meant "gross negligence", or a high level of neglect. To avoid misunderstanding, we will apply, instead, the test of "recklessness".
5.4	The time limit for compliance with certain regulatory requirements should be extended and criminal punishments for non-compliance be dispensed with.	Without affecting the effectiveness of the regulatory regime, we have extended the time limit to 7 business days in most cases having regard to practical constraints faced by intermediaries. Criminal punishments are necessary as deterrence against the worst cases.

Serial No.	Specific Comments	Administration's Response
5.5	The Bill required every executive director to be approved as a "responsible officer" (RO) and all ROs are required to be registered with SFC. This requirement caused difficulty to some licensed corporations which have non-Hong Kong based directors not actively involved in the licensed corporation's business activities in Hong Kong.	There will be a definition of "executive director" limiting to directors who actively participate in or are responsible for directly supervising the business of the regulated activities. We do not expect any directors or other senior management who have no responsibility for the regulated activities to apply to SFC for approval as a "responsible officer".
5.6	A licensed corporation must always have at least one "responsible officer" (RO) physically present in Hong Kong. There may be instances when all are absent from Hong Kong. It should be sufficient if the ROs can be contacted in case of emergency.	To address the practical difficulties of some intermediaries, we will remove the requirement for at least one of the ROs to be physically present in Hong Kong. Instead, as a more flexible alternative, SFC will, under licensing conditions, require an intermediary to ensure that there is at least one RO who is available at all times to supervise the business of the regulated activities.
5.7	Penalties for offences under the licensing regime appeared to be too harsh.	In rationalising the penalty structure for offences under the licensing regime, the penalty maxima for about 10 criminal offences will be lowered. On the other hand, for some serious offences involving fraud, an indictable route will be added as an alternative for bringing prosecution against the worst cases.
5.8	Under the new licensing regime, an individual would be regarded as carrying on a regulated activity if he performs or "takes part in" any act, other than clerical duties, which constitutes that regulated activity. The "take part in" catch is too vague.	It is not easy to set out precisely the level of involvement in the regulated activities that warrants a licence. For the sake of certainty, the Bill will expressly provide that a regulated function in relation to a regulated activity carried on as a business by any person means any function performed for or by arrangement with the person relating to the business other than work ordinarily performed by an accountant, clerk or cashier.

Serial No.	Specific Comments	Administration's Response
5.9	Any person who advises "professionals" (i.e. persons whose business involves the acquisition, etc. of securities/futures contracts) should be exempt from a licensing requirement. The concept of "professionals" should also include sophisticated, high net worth or large corporate investors who require lower levels of investor protection than retail investors.	SFC has already consulted the market on the code of conduct for regulated persons serving professional or sophisticated market. As in the context of offers of investment, the new definition of "professional investor" would also apply to the licensing regime in respect of dealing in securities and futures contracts. In the light of market views, SFC may make rules as necessary to delineate individual investors for inclusion as "professional investor".
5.10	An executive officer is obliged to report to SFC of any attempts to prevent him from properly discharging his supervisory responsibilities. Failure to comply with this reporting requirement would amount to a criminal offence. This may put the executive officer in a dilemma between criminal sanction for failing to report and possible dismissal for reporting.	Original intention was to ensure that executive officers would not be forced to perform their supervisory functions improperly. But we appreciate that criminal sanction for failure in reporting to SFC would put executive officers in a difficult position. On reflection, we agree that the relevant provision should be removed.
5.11	Unlike trust companies registered under the Trustee Ordinance, trust companies incorporated overseas are not eligible for exclusion from the licensing regime. It is doubtful why exclusion should be based on the company's place of incorporation.	Casting the exclusion net too wide would create regulatory problems as it is uncertain as to the criteria for obtaining overseas registration as trustee.
5.12	For the sake of transparency, waivers and modifications to licensing conditions granted by SFC should be published to enhance transparency.	SFC will keep market participants informed of the waivers and modifications granted. It will publish, to the extent permitted by law, details of such waivers and modifications.

Serial No.	Specific Comments	Administration's Response
5.13	Licensed corporations and exempt AIs are regulated by SFC and HKMA respectively. There may be inconsistency in the exercise of administrative discretion, creating as a result confusion and affecting the level playing field between the two groups of market participants.	The Bill seeks to minimize regulatory overlap as far as possible by making HKMA the front-line regulator of exempt AIs, while maintaining a level playing field and protecting investors. Implementation of the new regulatory framework will be further guided by a revised MOU between SFC and HKMA. SFC licensees and exempt AIs will be subject to the same codes and rules as far as possible.
5.14	Applications by AIs for exemption from licensing under the Bill have to satisfy both SFC and HKMA. This is unnecessary.	Under the revised framework, when an AI applies to SFC for exempt status, SFC will refer the application to HKMA for consideration. The AI would have to satisfy HKMA that they are fit and proper to be granted the exemption. SFC shall grant or reject the application according to HKMA's advice.
Part VI – Capital requirements, client assets, records and audit		
6.1	An auditor should not be appointed to examine and audit the records of a corporation merely as a result of an application of a client. This should only be a matter of complaint to be investigated by the Commission or a cause for civil action. Also, the complainant should not be immuned under law from civil liabilities.	We need to strike a balance between protecting investors and discouraging frivolous applications. As extra safeguards, the Bill will require an applicant to make statutory declarations to set out the particulars of his application, and confine the immunity to liability arising from defamation.
6.2	The Bill does not confine the definitions of "other collateral" and "securities collateral" to regulated activities in the securities and futures market, thereby causing compliance difficulties on the part of exempt AIs.	The definitions of "other collateral" and "securities collateral" will be revised such that the definitions are confined to regulated activities in the securities and futures market.

Serial No.	Specific Comments	Administration's Response
6.3	Custodial penalty should not be imposed on breaches or offences not related to fraud or failure in a trust in clients' assets.	We have reviewed the penalty maxima for offences under the licensing regime and removed the custodial penalty for relatively minor breaches of administrative requirements. The offences concerned include failure to return an expired licence, to notify SFC of end of a financial year or of the name of address of the auditor, within the specified time limit.
Part VII – Business conduct, etc.		
7.1	There is a concern over the power of SFC to prohibit intermediaries from writing options in any securities other than those listed in the SEHK.	The power of SFC to prohibit writing of options in securities will be confined to options written on securities listed on a recognised stock market.
Part VIII – Supervision and investigations		
8.1	The investigative powers vested in SFC are too wide.	SFC needs to conduct investigations to ascertain compliance. Its powers are not excessive when compared with its overseas counterparts. There are also adequate checks and balances, such as judicial review, complaint to the Ombudsman, merit review by the Securities and Futures Appeals Tribunal and procedural review by the Process Review Panel.
8.2	The SFC should give a statement of relevance to an auditor when seeking audit working papers to let the auditor judge whether the request is legally justified.	SFC officers authorised to conduct an inquiry are required to include with their requests a written certification, which in practice gives the grounds for the appointment of the authorised officer and includes the grounds for the commencement of the inquiry.

Serial No.	Specific Comments	Administration's Response
8.3	An auditor should be protected, when giving audit working papers to SFC, from having others using those papers against him in court.	An auditor who assisted SFC cannot be compelled by the Court to disclose information that had been given to SFC because it is bound by the secrecy provisions in the Bill. Furthermore, SFC must keep secret audit working papers it obtains, except in certain legally permitted circumstances.
8.4	An investigator should have a sufficient reason to believe something before exercising investigative powers. A mere suspicion should not be enough.	We agree. The threshold for the exercise of SFC's investigative powers is now generally "reasonable cause to believe" (threshold in existing legislation is "reason to believe").
8.5	A person who has destroyed or disposed of documents required in an investigation should not have to prove that they did not have an intention to conceal information.	We agree. The relevant offence has been amended to be one that requires the prosecution to prove an intention to conceal information from SFC.
Part IX – Discipline, etc.		
9.1	The different roles played by SFC under the disciplinary regime, including the roles of identifying suspected cases, investigation, and taking disciplinary action, are conflicting. There seems to be inadequate checks and balances.	The multi-functional roles played by SFC are similar to those of its counterparts overseas. There are adequate checks and balances, as provided by the expanded ambit and full time nature of the Securities and Futures Appeals Tribunal to review a wide range of SFC decisions, as well as the establishment of a Process Review Panel to review the internal operational procedures of SFC.
9.2	SFC's disciplinary jurisdiction extends to anyone involved in the management of the business of a licensed corporation, even if the management persons are not licensed. The regulatory catch is too wide. It is particularly unnecessary given the requirement to register all responsible officers.	This is adapted from existing law. It is necessary to cover all those involved in an intermediary's management regardless of the form of their role. Substance is more important than title.

Serial No.	Specific Comments	Administration's Response
9.3	SFC should not be empowered to impose a financial penalty which is essentially a fine, given that SFC is not a court and there is no criminal prosecution. Fines should only be imposed by the Court through the criminal justice system.	These are civil fines, not criminal fines. There is no legal or constitutional prohibition against conferring upon SFC a civil fining power on those whom it regulates and who voluntarily subject themselves to such regulation with knowledge that SFC has such powers. Civil fines are considered a more proportionate disciplinary action between reprimands and suspension or revocation of licence.
9.4	The Bill places a cap on the amount of civil fines that SFC may impose on licensed persons, i.e. the higher of $10 million or three times the profit made or loss avoided as a result of misconduct. Some respondents considered the level too high but others considered that where a profit has not been made or loss avoided it is uncertain whether the maximum fine of $10 million is adequate.	Pecuniary penalties must be set at a level which properly reflects the seriousness of offensive conduct and/or the potential gains which may accrue (or loss avoided) from improper conduct on the part of regulated persons. We believe that a right balance has been struck.
9.5	It is not sure how SFC would set the actual civil fine level. Relevant yardsticks should be set out in subsidiary legislation.	Pecuniary penalties can only be properly determined within the particular circumstances of each case. SFC will issue guidelines on how it is to exercise its fining power and the major factors to be taken into account in determining the fine level. The guidelines will be published in draft for consultation in the next few months. Parties aggrieved by a fining decision of SFC may appeal to the Securities and Futures Appeals Tribunal for a review.

Serial No.	Specific Comments	Administration's Response
9.6	The mental incapacity of one director should not result in the revocation of the licence of the relevant corporation. Similarly, the offence of one director should not affect the licence of the relevant corporation.	The basic licensing criterion is fitness and properness, as in most major financial centres. The revocation power in relation to a mentally ill director is discretionary, not automatic, and provides an incentive for the corporation to take appropriate action to remove the mentally ill director from office.
9.7	A person must be given a chance to test the authenticity of the information relied upon by SFC in disciplinary cases. The information must be divulged to the relevant person and be subject to challenge.	Information which is relevant to SFC's disciplinary decision is typically disclosed according to the well-established principles of procedural fairness embodied in the Bill. The subject of a disciplinary case will be given an opportunity of being heard before SFC makes a final decision. That information may be challenged as part of the disciplinary process. If the person is aggrieved by the SFC's use of that information in its final decision, it may appeal to the Securities and Futures Appeals Tribunal.
Part X – Power of Intervention and Proceedings		
10.1	The SFC may transfer property before it applies for a court order. It would be a better safeguard to require the SFC to apply to the court for approval before effecting a transfer. This is to avoid prejudicing the reputation of any person against whom the SFC exercises such power if he is found to be innocent.	The intention is to permit SFC to act to preserve property in emergency situations. A requirement for a prior application to the court would impair the effectiveness of the provision in such circumstances. SFC is required under law to seek an order from the Court of First Instance as soon as reasonably practicable, to preserve the property and to ascertain who has an interest in the property.

Serial No.	Specific Comments	Administration's Response
10.2	On civil liability for public mis-statements, etc. concerning securities and futures contracts, the actual scope of the provision appears to be too wide. There is no requirement to establish intention, recklessness or negligence on the part of the person making the statement.	The clause will be amended to require positive proof of knowledge, recklessness or negligence, and the onus of proof will be put on the plaintiff.
10.3	The Bill provides that no person is to be held liable to pay compensation for public mis-statements unless it is "fair, just and reasonable" in the circumstances of the case. This control mechanism is not satisfactory and may depart from the "duty of care" principle under common law.	There is no intention to go beyond common law in creating civil liability for false disclosure to the market. The Bill now clarifies that no person is liable unless it is fair, just and reasonable that he should be liable, or he has assumed responsibility with respect to the victim in relation to the disclosure.
Part XI – Securities and Futures Appeals Tribunal		
11.1	The jurisdiction of the proposed Securities and Futures Tribunal (SFAT) should cover the entire Ordinance. There must be an avenue to appeal in respect of all decisions made by the Commission.	A wide range of SFC decisions, about 60 in total, are subject to appeal to SFAT. This includes private and public reprimands. Some SFC decisions are made on the advice of experts independent of SFC or do not have a final effect on a person. There is no particular need to subject such decisions to a merits review mechanism.
11.2	The SFAT should have stock brokers as majority of its members.	The Chairman of the SFAT is a judge appointed by the Chief Executive (CE) on the recommendation of the Chief Justice. It is intended that the members will primarily be business people, professionals or academics appointed by CE on account of their impartiality, standing in the community and, most important of all, ability to bring relevant experience or expertise to bear in considering an appeal against specified decisions of SFC. Sectoral representation is not pursued to

Serial No.	Specific Comments	Administration's Response
		avoid conflicts of interests.
11.3	The time limit for lodging an appeal against SFC decisions should be extendable beyond the 21-day period required under the White Bill.	The proposed period provides regulatory certainty and is considered adequate. An affected party would be served a letter of mindedness and would have the opportunity to make representations before SFC makes the decision. He would have known the issues well before the 21-day period starts to run.
11.4	By virtue of more formal proceedings under the SFAT, a review of SFC decision may be more costly and time consuming for the parties concerned. This may discourage some parties from pursuing their rights.	The establishment of a full-time SFAT under the chairmanship of a judge has gone a long way to address concerns over the inadequacy of the existing review mechanism. The intention is to make the SFAT proceedings as informal and as effective as possible while providing procedural certainty for efficient review of appeal cases.
Part XII – Investor Compensation		
12.1	Details of the operation of the investor compensation fund are not provided in the primary Bill.	This is a complicated matter. SFC has commissioned consultants to advise it on various aspects of the compensation fund. It has also set up a steering committee to supervise the consultation process and advise on the best way to take forward the proposals, including how they should be reflected in rules to be made under the Bill by the CE in Council or SFC as appropriate.
12.2	There should be public consultation on the rules governing the operation of the investor compensation fund.	Target is to expose the draft rules for consultation in the next few months.
12.3	The Bill should make it clear that there is not to be any cross-subsidy between different groups of contributors to the compensation fund.	The principle is agreed, and the actual operational arrangements will be worked out and specified in rules to be made under the Bill.

Serial No.	Specific Comments	Administration's Response
12.4	ATS providers outside Hong Kong should be prohibited from providing services to Hong Kong investors unless they have contributed to the investor compensation fund. Also, the fund should not be exposed to claims from the collapse of an overseas ATS.	The proposed regulatory framework for investor compensation funds is flexible enough to cover various types of market participants and investors. Operational details of the compensation fund will be stipulated by way of subsidiary legislation.
Part XIII – Market Misconduct Tribunal (MMT) ***Part XIV – Offences relating to dealings in securities and futures contracts, etc.***		
13/14.1	The ability of the MMT to impose three times profit or loss fines should be kept as this has proven very effective. The proposed civil sanctions are ineffective and it is difficult to secure a criminal conviction.	It is not possible to keep "three times fines" as a civil sanction on human rights grounds. The criminal provisions are necessary deterrents. They will be used where sufficient evidence exists, that there is a reasonable prospect of a conviction and the public interest favours criminal prosecution. SFC has successfully prosecuted some market manipulation cases.
13/14.2	The market misconduct provisions are too uncertain and will outlaw legitimate conduct such as post public offering price stabilisation, index arbitrage, program trading and so on.	We have clarified the mental element of the provisions to make it clearer that they will in appropriate cases only apply to intentional or reckless conduct that distorts the market. SFC will consult the market on "safe harbour" rules to permit price stabilisation in an Initial Public Offering, and possibly also activities conducted on different sides of Chinese walls and road show prospectuses.
13/14.3	The provisions should be amended to allow pledgees/ mortgagees of shares to sell those shares in accordance with the security arrangement, if the pledgor/mortgator or a related company defaults, even though the default may not be public knowledge.	This is blatant insider dealing and should not be allowed. We do not support an exception and we are not aware of any exception in comparable foreign markets.

Serial No.	Specific Comments	Administration's Response
13/14.4	Making disclosing false or misleading information that may induce transaction in securities or futures contracts, or have an effect on the price of either, a strict liability provision with a reverse onus due diligence defence is too harsh.	The provisions have been changed to require proof of knowledge that the information is false or misleading, or recklessness or negligence as to whether it is so. The onus of proof of all the elements of the provisions has been placed on the prosecution. We believe that imposing a duty to take reasonable care is not unreasonable with respect to disclosure of false or misleading information and serves to close an existing regulatory gap which does not exist in other regimes like those in the US and UK. False and misleading information is very damaging to financial markets and those disclosing information should take reasonable steps to ensure that information they disclose is true and not misleading.
13/14.5	There are too many overlapping market misconduct provisions. This is unfair.	There are only six specified types of market misconduct. The provisions are drafted to identify and apply to specific conduct which is unlawful. This will help market participants understand what conduct is lawful and what is unlawful. The US and Australia also have overlapping market misconduct provisions. In cases where one set of conduct offends against several different laws, it is the prosecution's policy to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence. The alternative is to have a few vague provisions covering lots of different sorts of conduct, but this will make the law uncertain and it will be difficult to know what is and is not lawful.
13/14.6	The "stock market manipulation" provisions should only apply to two or more transactions carried out with a manipulative intention.	Agreed. The provisions have been changed to apply to only two or more transactions.

Serial No.	Specific Comments	Administration's Response
13/14.7	The disclosing provisions on "false or misleading information to induce transactions" will chill the supply through the internet of information that benefits investors as a website operator, who provides access to information from a third party site, will not be able to check continuously to see if the information so available is false or misleading.	We have added a specific defence to these provisions to protect a person who has an internet website that gives access to information on third party websites. This should give sufficient protection. It is similar to the "conduit" defence.
13/14.8	The proposed private cause of action exposes market participants to too wide a scope of potential liability. The persons to whom liability should be owed should be confined much more narrowly.	The Bill has made it clear that no person may be liable to pay compensation unless the court is satisfied that it is "fair, just and reasonable" in the circumstances; and the person has perpetrated, participated in, or given consent to the market misconduct. This is important for discouraging market misconduct.
13/14.9	A defendant should not have to prove that a wash sale or matched orders were engaged in for innocent purposes.	Wash sales and matched orders are common manipulative devices with relatively few innocent explanations. As trading in financial products does not on its face disclose the intention with which it is engaged in, proving a manipulative intention to a high standard of proof is very difficult. If a defendant has a legitimate reason for a wash sale or matched orders, they will be in the best position to give evidence about it. The provisions only require that a person establish that their purposes were innocent on the lower standard of "balance of probabilities".
13/14.10	As the punishments for market misconduct are so serious, the defences proposed for "safe harbour" should be included in the primary legislation.	Having "safe harbours" in rules rather than the Bill will not give a person any less protection. Market practices change quickly and "safe harbours" must be kept updated. Having safe harbours in flexible rules are thus more appropriate. SFC must consult the public and FS before making "safe harbour" rules.

Serial No.	Specific Comments	Administration's Response
13/14.11	Sanctions under the market misconduct civil regime should also be available under the criminal regime to add deterrence.	Civil sanctions will be extended to the criminal regime where appropriate to better protect investors and market participants. They include orders to prohibit the convicted from being a director of a listed corporation, or dealing in any securities or futures contracts.
13/14.12	The civil and criminal market misconduct provisions do not consolidate and streamline the law. They create an unwieldy set of provisions.	Streamlined the provisions governing false trading, price rigging, disclosing information about prohibited transactions and disclosing false or misleading information in securities and futures contracts inducing transactions. Need to ensure clarity and certainty as to what a criminal offence is.
Part XV – Disclosure of Interest in Securities		
15.1	Some market participants commented that the requirement to disclose interests including purely cash-settled derivatives and short positions exceeded the regulatory requirement in other international financial centres. This would affect the development of the derivatives market. However some listed companies suggested that the disclosure of interests in derivatives should be enhanced.	Most companies in Hong Kong are controlled by a substantial shareholder or shareholding group, and have a small public float. Therefore, dealings exceeding 5% of the share capital could have a profound effect on the market. Particularly, for a company with a large market capitalization, economic interests more than 5% of the share capital (which could be held through derivatives) may involve a large amount of capital flow in the market. Requiring disclosure of underlying shares of short positions and purely cash-settled derivatives will enable investors to be better informed of market situations. Due care has been taken to compress the level of details to be disclosed to facilitate legitimate hedging activities. The additional disclosure requirements have taken into account local market characteristics, and will bring our level of market transparency in line with international norms.

Serial No.	Specific Comments	Administration's Response
15.2	Some respondents question the relevance of having to disclose prices and considerations paid for shares acquired in the 4 months immediately before first disclosure of securities interests.	The requirement for substantial shareholders will be removed in the light of market comments that such information may be difficult to compile and of limited value to the investors. This will help reduce compliance costs.
15.3	There is concern about having to disclose "conduit stock borrowing and lending" activities (the business of borrowing shares from clients or third parties and on-lending the shares to others who wish to go short) as the "conduit" has no real interest in the shares.	The Bill will exempt the genuine "conduit" borrowing and lending activities from the disclosure requirement. The exemption will be for shares which are borrowed from, and lent to, third parties on the same day by a stock borrower and lender. This seeks to minimise duplication in disclosures.
15.4	Exception for "exempt security interests" is too narrowly defined, as it is only confined to lenders who are authorized or registered in Hong Kong. Many of the international firms' lending activities, however, are done overseas.	To maintain a level playing field, we will extend the exception to cover comparable corporations authorized under the law of another jurisdiction as recognized for this purpose by SFC, if they hold the shares by way of security only for the purposes of a transaction entered into in the ordinary course of its business.
15.5	The proposed regime for disclosure of securities interests is set out in the main body of the Bill and one of the schedules. This arrangement is confusing as cross references have to be made from time to time.	Our intention is to make the Bill as user-friendly as possible. The substance in the relevant schedule will be incorporated into the body of the Bill and the relevant provisions re-arranged to address market concerns.
Part XVI – Miscellaneous		
16.1	A corporation should not be held liable for criminal offences committed by its officers or employees.	The policy intention is to reflect common law position by holding a corporation liable for offences committed by its employees when the latter committed the offences in their capacity as the controlling or directing minds of the corporation concerned. We have removed the provision from the Bill to allow common law to apply as it develops.

Serial No.	Specific Comments	Administration's Response
Schedule 1 – Interpretation and general provisions		
17.1	It is difficult to locate the definitions. They should be centralised to avoid cross references.	We have reduced cross references between definitions. In line with law drafting convention, definitions which are specific to certain provisions or Parts have been placed in the relevant provisions or Parts. Definitions which apply throughout the Bill have been centralised in Schedule 1.

Financial Services Bureau
November 2000

Annex B

Transparency and Accountability of the Securities and Futures Commission

When SFC was first established in 1989, due care was exercised in prescribing adequate safeguards when vesting powers in the new regulatory watchdog. The main accountability arrangements include -

(a) the Chief Executive appoints all SFC directors, half of whom must be non-executive, and approves SFC's annual budget;

(b) the Chief Executive may give SFC directions regarding the performance of its duties and functions;

(c) the Chief Executive approves estimates of SFC's income and expenditure and the approved estimates are to be laid before the Legislative Council;

(d) SFC must furnish such information to the Financial Secretary as he may specify;

(e) the Director of Audit may examine records of SFC;

(f) an independent Securities and Futures Appeals Panel (SFAP) is established to hear appeals from parties aggrieved by certain decisions made by SFC;

(g) any SFC's decisions concerning the recognition and closure of the exchanges may be appealed to the Chief Executive in Council;

(h) judicial review by the Court of First Instance of relevant SFC decisions is available; and

(i) complaints against the actions of SFC or any of its staff may be lodged with the Office of the Ombudsman.

These accountability measures will be preserved in the Bill, subject to changes such as the SFAP being replaced by the Securities and Futures Appeals Tribunal.

Annex C

Securities and Futures Bill
Subsidiary legislation, codes and guidelines
of particular market interest

The SFC has plans to expose drafts of the following subsidiary legislation, codes and guidelines, which are of particular interest to the market, for comment in the coming few months –

- Rules/Guidelines on automated trading services
- Rules on investor compensation
- Rules necessary to define professional investors
- Guidelines on imposition of disciplinary fines
- Rules on associated entities of intermediaries
- Rules on safe harbours for stabilisation activities
- Guidelines on a civil or criminal route for market misconduct
- Disclosure of interests - exclusions regulations
- Accounts and audit rules
- Client money rules
- Client securities rules
- Contract notes, statements of account and receipts rules
- Financial resources rules
- Keeping of accounts and records rules
- Security deposits rules
- Code of business conduct[1]
- Rules on contract limits and reportable positions
- Guidelines on transitional arrangements

November 2000

[1] Already issued for market consultation in September 2000

Annex D

List of Respondents to the Consultation on the Securities and Futures Bill (the White Bill)

1. Allen & Overy
2. Celestial Asia Securities Holdings Limited
3. Centurion Corporate Finance Limited
4. Charles Schwab
5. The Chase Manhattan Bank
6. Cheung, Tong & Rosa Solicitors & Notaries
7. The Chinese General Chamber of Commerce
8. Consumer Council
9. Deacons Graham & James
10. Deloitte Touche Tohmatsu
11. The Deposit Taking Companies Association
12. Ernst & Young
13. Fidelity Investments Management (H.K.) Limited
14. Goldman Sachs (Asia) LLC
15. The Hong Kong Association of Banks
16. Hong Kong Bar Association
17. Hong Kong Exchanges and Clearing Limited
18. The Hong Kong Federation of Insurers
19. Hong Kong Federation of Women Lawyers
20. The Hong Kong General Chamber of Commerce
21. The Hong Kong Institute of Directors
22. Hong Kong Investment Funds Association
23. Hong Kong Securities Professionals Association
24. Hong Kong Society of Accountants
25. Hong Kong Stockbrokers Association Limited
26. Hong Kong Trustee Association
27. HSBC Holdings plc
28. HSBC Investment Bank Asia Limited
29. Instinet (a Reuters Company)
30. The Institute of Securities Dealers Limited
31. The Law Society of Hong Kong
32. Linklaters & Alliance, representing a group of 10 market participants
33. Mandatory Provident Fund Schemes Authority
34. Morgan Stanley Dean Witter Asia Limited
35. State Street Global Advisors
36. Tai Fook Securities Group Limited
37. Wocom Holdings Limited

and seven other individuals submitted their views in their personal capacity.