### Bills Committee on Securities and Futures (Amendment) Bill 2005

#### Follow-up to the first meeting on 22 April 2005

This paper sets out the information sought by the Bills Committee at its first meeting held on 22 April 2005.

- (a) Request on the Securities and Futures Commission (SFC) for the following information:
  - (i) the internal Code of Conduct of the SFC;
  - (ii) existing arrangements governing the division of roles and responsibilities between Executive Directors (EDs) and Non-Executive Directors (NEDs);
  - (iii) how the existing arrangements will apply to the future Chairman and Chief Executive Officer (CEO); and
  - (iv) how to publicise the division of responsibilities.
- 2. The reply provided by the SFC executive management is at  $\underline{\mathbf{Annex A}}$ .

#### The Administration's Views

3. As head of the Commission, the independence of the future Chairman is of utmost importance. The SFC's internal Code of Conduct which sets out the requirements (including relevant legal requirements) on confidentiality, conflict of interest, personal investments and prevention of bribery, will be binding on the future Chairman as at present<sup>1</sup>. Apart from the Code of Conduct, the independence of the future Chairman will also be preserved through application of the legal requirements under various ordinances including the Securities and Futures Ordinance (SFO), the Prevention of Bribery Ordinance, etc. The future Chairman will also be required to comply with the following requirements before his/her appointment takes effect:

<sup>&</sup>lt;sup>1</sup> The Code of Conduct is binding on the staff of the SFC, EDs including Chairman, and NEDs.

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- (i) He/she should not be a director in any listed company in Hong Kong;
- (ii) He/she should not have any material interest in any principal business activity or involved in any material business dealing with a listed company or any person or institution engaged in activities regulated by the SFC.
- 4. Concerning the division of roles and responsibilities between the future Chairman and CEO, the Administration has set out the broad principles in our papers to the Financial Affairs Panel (*Ref*: *LC Paper No. CB(1)177/04-05(01)* and *LC paper No. CB(1)880/04-05(08)*) and the Legislative Council Brief issued on 9 March 2005. Subject to the passage of the Securities and Futures (Amendment) Bill 2005 (the Bill), the SFC governing body<sup>2</sup> will draw up and agree on the details of the division of responsibilities. We expect the arrangements to be along the following lines:
  - (a) The role of the future Chairman will, in-principle, be non-executive so that he could be relieved from the day-to-day operational and regulatory work. The Chairman will focus on setting the overall directions, policies, agendas, strategies and priorities of the Commission; enhancing the effectiveness of the governing body; monitoring the performance of the executive arm in implementing the objectives set by the governing body; and representing the SFC publicly, in liaison with local and international financial institutions and other stakeholders. All of these functions are currently carried out by the incumbent Chairman and will continue with the future Chairman. The future Chairman will also continue to exercise the statutory functions expressly provided by the SFO (see paragraphs 7-17 below).
  - (b) As for the role of the CEO, while each ED will continue to assume management responsibility for his or her Division (as set out in paragraph 5 to Question 1(b) in the SFC's reply at Annex A), the CEO will assume overall executive management responsibility including –

<sup>&</sup>lt;sup>2</sup> Under the SFO, the Commission shall consist of a Chairman, EDs and NEDs (section 1 of Part 1 of Schedule 2). To distinguish between the Commission and its employees or staff, the term "governing body" is used in this paper.

- (i) implementing the objectives, policies and strategies agreed by the SFC governing body;
- (ii) reporting to the governing body regularly with appropriate, timely and quality information;
- (iii) informing and consulting the chairman and the governing body on all matters of significance to the Commission;
- (iv) developing and delivering the strategic objectives agreed with the governing body;
- (iv) supervising the work of other EDs, overseeing the day-to-day operation and regulatory work of the Commission and ensuring that the Commission is equipped with the necessary staffing and financial and risk management systems for its missions.

The above functions are currently carried out by the incumbent chairman. With these functions transferred to the CEO, the Chairman can focus on the overall directions, policy and strategic development of the Commission.

- (c) As for NEDs, they will continue to play their independent role of supervising the SFC's executive functions as set out in paragraph 10 to Question 1(b) of SFC's reply at Annex A.
- (d) Although the policy intent is for the future Chairman to be non-executive in-principle, the Chairman (and NEDs alike), as part of the Commission, would continue to perform and discharge the statutory functions of the Commission, including the non-delegable functions listed in Part 2, Schedule 2 of SFO (Annex B), as well as the statutory functions specially assigned to him under SFO. As at present, all important policies will continue to be discussed and approved by the SFC governing body, which meets monthly and holds additional meetings as necessary. The governing body will continue to discharge the non-delegable functions under the SFO. It will continue to be briefed on the financial position of the Commission and be provided with monthly financial statements. Divisional staff will continue to attend Board meetings on a need basis to explain

policy proposals, report on important operational matters and regulatory issues.

- We note the SFC's concerns (as set out in pages 8-9 of its reply at 5. Annex A) that the future Chairman may not be able to discharge his/her responsibilities without hands-on understanding of the regulatory details of The Administration wishes to reiterate that the policy individual cases. intention is for the future Chairman to be non-executive in-principle, so that he/she could be relieved from day-to-day operational and regulatory details. As part of the Commission, the future Chairman and NEDs alike, are required to discharge their statutory functions under the SFO, including the non-delegable Where there are matters / decisions of which the responsibilities are functions. vested with the full Commission / governing body, it will be the responsibility of the executive arm (to be led by the CEO) to brief the governing body and assist members in handling such tasks or arriving at an informed decision, as at present. As set out in the broad principles of the responsibilities of the CEO, the CEO is also expected to inform and consult the Chairman on all matters of significance to the SFC. As evident in the cases of HKEx and MPFA, a non-executive chairman can successfully lead and develop the regulatory body without being involved in the day-to-day regulatory work. The division of responsibilities between a non-executive chairman and a CEO is also workable in many other local statutory bodies like the Airport Authority, Kowloon Canton Railway Corporation and Mass Transit Railway Corporation Limited. We consider the issues raised by the SFC management in its reply can be resolved with careful The Administration will continue to liaise closely with and detailed planning. the SFC on the implementation details to ensure a smooth execution of the proposal. Regarding SFC's concern that a non-executive chairman may reduce Hong Kong's standing in the IOSCO Technical Committee (see page 9 of its reply in Annex A), the Secretary General of IOSCO has indicated clearly in his reply to the Administration that the appointment of the IOSCO Technical Committee Chairman is "a personal employment based on the recognized experience and authority of the appointee". A copy of the letter (Annex C) has been provided to the Financial Affairs Panel in January 2005.
- 6. On the arrangements through which information relating to the division of responsibilities between the future Chairman and CEO can be made known to the public, such information has already been made public in the papers to the Financial Affairs Panel; the Legislative Council Brief and the advertisement on the recruitment of Chairman (see paragraph 22 below). Upon the passage of the Bill, the SFC will draw up, deliberate and agree on the details of the division

of roles and responsibilities, after which the details will be issued in the form of a press release and uploaded onto the website of the SFC.

- (b) Impact of the splitting proposal on existing provisions under the SFO, including those which stipulate the functions vested with the SFC Chairman and how section 11(1) of SFO will be executed
- 7. We do not think that the splitting proposal would have much impact on the existing provisions of the SFO, including those which stipulate the powers, functions and duties are to be exercised by the Chairman of the SFC as follows:

	Description	Section(s)
(i)	Chief Executive (CE) to give written directions to the Commission after consultation with Chairman.	s.11(1)
(ii)	Chairman and one NED to sign the financial statements of the Commission	s.15(2)b
(iii)	Chairman and at least one NED to sign the financial statements of the Investor Compensation Fund.	s.240(4)
(iv)	Chairman to designate an executive director to act as chairman.	s.6, Part 1, Schedule 2
(v)	Chairman may convene meetings of the Commission and, if present, shall preside at the meeting.	s.14 and 15, Part 1, Schedule 2
(vi)	The chairman of the meeting has a casting vote in case of equal votes.	s.19, Part 1, Schedule 2
(vii)	Chairman or deputy chairman or other member as authorized shall authenticate the affixing of the seal.	s.25, Part 1, Schedule 2
(viii)	Chairman shall be a member of the Advisory Committee, may convene meetings and if present, shall preside at the meeting.	s.27-29, Part 1, Schedule 2

We recommend that all of the above powers or functions continue to vest with the future Chairman. Our views are set out in paragraphs 8-17 below.

### (i) CE to give written directions to the Commission <u>after consultation with</u> <u>Chairman</u> – section 11(1)

- 8. The power of the CE to give written directions to the SFC under section 11(1) of SFO may only be exercised subject to the following restrictions:
  - (i) the direction must be in the public interest;
  - (ii) it must further the SFC's regulatory objectives or the performance of any of its functions (sections 4-5, SFO, extracted at <u>Annex D</u>); and
  - (iii) the CE must first consult the Chairman of the SFC.

The provision is a tool of last resort for the Government to implement necessary remedial measures in the most pressing and extreme circumstances taking into account all the circumstances prevailing at the time, which may include whether there is any major malfunction of the SFC, whether financial stability of Hong Kong is at risk or its reputation as an international financial centre is at stake, the urgency of remedial actions required of the SFC and whether other checks and balances are performed effectively in the circumstances.

- 9. It is our policy intention to <u>maintain the status quo</u>, which means should the CE wishes to issue a section 11 direction to the Commission, the CE would need to consult the Chairman first. As head of the Commission, we consider it appropriate for the future Chairman, who is responsible for leading the Commission in setting the overall directions, policies and strategies and monitoring the performance of the executive arm in implementing the objectives set by the governing body, to be consulted before the CE issues a written direction. Depending on the circumstances and urgency of the situation, the Chairman may consult other members of the SFC governing body.
- 10. A written direction issued to the Commission by the CE under section 11 must be related to the furtherance of any of the Commission's regulatory objectives or the performance of any of its functions. As mentioned in paragraphs 4-5 above, the Chairman is part of the Commission and is required to perform the functions of the Commission (together with other members), discharge the statutory functions assigned to him as well as the non-delegable functions of the Commission. Any direction to the Commission, shall be binding on all members (including Chairman whether he is executive or

non-executive), and persons employed by the Commission to carry out its objectives and to perform its functions.

11. On how section 11 will be executed, it should be noted that section 11 has never been invoked since the establishment of the SFC in 1989. Notwithstanding, as written direction under section 11 is to be given to the Commission, the written direction must be made known to members of the Commission (i.e. the governing body), who will execute the direction (especially if the direction is related to non-delegable functions) or instruct persons employed by the Commission to execute the direction as a great number of functions of the SFC can be delegated to and performed by an individual director or his subordinates.

# (ii) & (iii) Chairman and one NED to sign the financial statement of the Commission – section 15(2)b; and Chairman and at least one NED to sign the financial statement of the Investor Compensation Fund – section 240(4)

12. The splitting proposal would not have impact on these two provisions since the signing of financial statements in these two cases vouches for the authenticity and accuracy of the statements. It is the responsibility of the Commission under section 15(2)(a) to prepare and endorse the financial statement of the Commission which shall give a true and fair view of the state of affairs of the Commission; and under section 240 to keep proper accounts and prepare the financial statement of the Investor Compensation Fund, before presenting the statements to the chairman and NED(s) for signature. As head of the Commission, we consider it appropriate for the chairman to sign the financial statements. The status quo of having NED(s) to co-sign will also be maintained.

### (iv) Chairman to designate an executive director to act as chairman – section 6, Part 1, Schedule 2

13. The splitting proposal would not have impact on this provision since the nature of this power to designate an ED to act as chairman when Chairman and Deputy Chairman are unable to act due to illness, absence from Hong Kong or any other cause, is for administrative convenience purpose. As the future Chairman is intended to be non-executive under the splitting proposal, clause 3(g) of the Bill will amend section 6 to allow the chairman to designate an ED or NED to act as chairman.

### (v) Chairman may convene meetings of the Commission and, if present, shall preside at the meeting – sections 14-15, Part 1, Schedule 2

14. As head of the Commission, we consider it appropriate for the future Chairman to convene and preside at a meeting. It should also be noted that the power to convene and preside at a meeting is not specifically reserved for the Chairman alone (see paragraph 15 below).

### (vi) The chairman of the meeting has a casting vote in case of equal votes – section 19, Part 1, Schedule 2

15. The splitting proposal would have no impact on this provision since the power of casting vote is not specifically reserved for the Chairman, but assigned to the chairman of a meeting in case of equal votes. If the Chairman is present, he shall be chairman of the meeting. If Chairman is absent, the Deputy Chairman shall be the chairman of the meeting. If neither Chairman nor Deputy Chairman is present, the members of the Commission present shall choose among themselves a member to be the chairman of the meeting. According to section 20 of the SFO, to exercise the casting vote, the chairman of a meeting has to consult the Financial Secretary first.

### (vii) Chairman or deputy chairman or other member as authorized shall authenticate the affixing of the seal – section 25, Part 1, Schedule 2

16. This function of authenticating the affixing of the seal is merely a matter of formality as the Board should have deliberated and agreed on a certain matter before authenticating the affixing of the seal. Besides, this function is not specifically reserved for the Chairman. The Deputy Chairman, or other members of the Commission as authorized by the governing body (in the form of a resolution), may also exercise this function under the SFO.

## (viii) Chairman shall be a member of the Advisory Committee, may convene meetings and if present, shall preside at the meeting - sections 27-29, Part 1, Schedule 2

17. The Advisory Committee is set up under section 7 of the SFO to advise the Commission on matters of policy regarding any of its regulatory objectives and functions. Currently, it comprises 3 SFC official members (i.e. Chairman

and 2 EDs) and 10 other members outside the Commission. It is our policy intention to maintain the status quo, i.e. that the SFC Chairman will continue to be a member of the Advisory Committee with the power to convene and preside at meetings of the Advisory Committee. As head of the Commission, the participation of the chairman in the Advisory Committee will be conducive to his work in leading the Commission in setting the overall direction, policies and strategies and monitoring the performance of the executive arm in implementing the functions of the Commission. It should also be noted that a meeting of the Advisory Committee may also be convened by any 3 other members of the Committee and chaired by other members of the Advisory Committee if the chairman is not present.

### (d) Remuneration level and the number of working days of the non-executive chairmen of other regulatory bodies.

- 18. A table showing the remuneration of the Chairmen of Hong Kong Exchanges and Clearing Limited, the Mandatory Provident Fund Schemes Authority, the Airport Authority, the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation Limited is at Annex E. The remuneration ranges from nil in the case of MPFA to not more than \$1 million in the case of MTRCL.
- 19. Concerning the number of working days of Chairmen of the above organisations, we have consulted the organisations and were advised that it would be difficult, if not impossible to quantify the number of working days of their Chairmen. The heavy responsibility and all-encompassing nature of the post mean that the workload of chairman cannot simply be measured in terms of the time spent in the office. There was also a general view that the contribution of a non-executive chairman should not be assessed in terms of the number of working days. We share these views and would like to add that the future SFC Chairman is not an employee of the Commission. His/her agreement to take up the Chairman post will be out of a spirit and commitment to serve Hong Kong and the community. We expect that a chairman with commitment will spend as much time and efforts as necessary to fulfill his / her roles and responsibilities. He/she is also expected to work anytime, anywhere if necessary.

- (e) The principles and factors in determining the level of remuneration of the non-executive chairman post of the SFC and the proposed level/range of remuneration.
- 20. The overriding principle in determining the level of remuneration of the future Chairman of SFC is -
  - (a) that the appointment is a service to the community, not an employment with the SFC.

Other factors which will be taken into account include -

- (b) the remuneration of non-executive chairmen of other statutory bodies in Hong Kong; and
- (c) the remuneration of NEDs of the SFC.
- 21. Currently, the remuneration of non-executive chairmen of other statutory bodies in Hong Kong we compare in Annex E ranges from nil to not more than \$1 million. As for NEDs of the SFC, they receive \$234,000 per annum. Having carefully considered the important role and heavy responsibilities of Chairman of the SFC, we propose to set the remuneration at \$702,000 per annum, which is three times of that for NEDs of the SFC.
- (i) Recruitment advertisement for Chairman, SFC.
- 22. A copy of the recruitment advertisement is at <u>Annex F</u>. The advertisement has been placed on the South China Morning Post, Hong Kong Economic Times, Hong Kong Economic Journal, The Standard, Asian Wall Street Journal and Financial Times.

Financial Services Branch Financial Services and the Treasury Bureau 12 May 2005

### <u>Information provided by the SFC to the Bills Committee on Securities and Futures (Amendment) Bill 2005</u>

#### Question 1(a):

SFC's internal Code of Conduct which sets out the standards of integrity and conduct required of its directors (including the Chairman of the SFC and the non-executive directors of the SFC) and its staff

- 1. The SFC requires the highest standards of integrity and conduct from its staff, who have a vital role in promoting and maintaining public confidence in the SFC.
- 2. The SFC has an internal Code of Conduct which sets out the Commission's requirements and also the relevant legal requirements in respect of its staff. The Code was first issued in August 1994. It has been revised to incorporate changes that are required as a result of the commencement of the Securities and Futures Ordinance (SFO), to address the recommendations made by the Independent Commission Against Corruption (ICAC) during its occasional reviews of the work of the SFC and to implement a number of changes to the SFC's staff investment policy. The revised Code came into operation on 1 February 2005 (but 1 April 2005 for the additional staff investment restrictions).
- 3. The term "staff" in the Code refers to any employee of the SFC or any other person retained or appointed by the SFC for a fixed or indefinite term to perform any function of the SFC. The term covers Executive Directors (including the Chairman) (EDs) and Non-Executive Directors (NEDs) of the SFC unless otherwise stated.
- 4. The Code covers four main aspects which are summarised below:

#### (I) Confidentiality

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- 5. Staff are reminded of their statutory secrecy obligations and general confidentiality requirements.
- 6. Under section 378 SFO, except in the performance of the SFC's functions or for the purpose of doing something required or authorised under the relevant provisions, staff must keep secret any matter which came to their knowledge whilst they were in the course of performing (or assisting in performing) the SFC's functions. In addition, they must not reveal or allow any person to have access to any record or document which has come into their possession while they were performing (or assisting in the performance of) the SFC's functions or as a result of their employment or appointment. This secrecy obligation will continue to apply after the termination of the staff employment or appointment unless the information has already been made available to the public or some other exceptions stated in section 378 apply.

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7. Failure to comply with the statutory secrecy provisions is an offence which is punishable on conviction by up to 2 years' imprisonment and a fine of up to \$1 million.

#### (II) Conflicts of interest

- 8. Staff are required to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their duties. Questions on impartiality may arise when their duties for the SFC impact upon their own personal or financial interests or those of a related person or entity.
- 9. To preserve public confidence in the integrity of the SFC and its staff, staff must not exploit or appear to exploit for their personal advantage, any personal or professional relationship with an individual or organisation regulated by the SFC or who contracts with the SFC to supply goods or services.
- 10. It is important to avoid situations where an independent party may reasonably take the view that there is a risk that staff's actions or decisions might be affected (whether or not their actions or decisions are actually affected) by a personal interest. If there is a reasonable appearance of conflict, staff should disclose the potential conflict to their superiors.

#### Prohibited transactions

- 11. Staff are subject to provisions in the SFO regarding conflicts of interest. Section 379(1) of the SFO prohibits staff from entering into any transaction (directly or indirectly or on their own account or for the benefit of someone else) regarding securities, futures contracts, leveraged foreign exchange contracts or an interest in any securities, futures contracts, leveraged foreign exchange contracts or collective investment schemes which they know is, or is connected with a transaction or a person that is, the subject of an investigation or proceedings by the SFC or which transaction they know is otherwise being considered by the SFC. Any breach of this section is an offence which is punishable on conviction by up to two years' imprisonment and a fine of up to \$1 million.
- 12. As a matter of policy, staff are also required to avoid entering into any transactions mentioned in the paragraph above which as a result of their position with the SFC they know is, or is connected with a transaction or person that is, the subject of an investigation or proceedings by an overseas financial regulator or which transaction they know is being considered by an overseas financial regulator.

#### **Unofficial Contacts**

13. Staff should exercise caution if they have social contact with any person who is connected with a case in which they are directly involved. Staff should record the details of any work-related discussion as soon as possible and inform their superiors in writing.

Loans

14. Staff and their related persons or entities should not knowingly grant or guarantee a loan to, or accept a loan from or through the assistance of any individual or organisation having business dealings with the SFC. Staff are discouraged from lending or guaranteeing a loan to or borrowing money from colleagues. This principle aims to prevent situations where an independent party may reasonably take the view that there is a risk that an employee's actions or decisions may be affected (whether or not the employee's actions or decisions are actually affected) as a result of the loan or guarantee to or from the colleague.

Dealing with former SFC colleagues

- 15. Staff are required to exercise caution when dealing with former colleagues in order to avoid any appearance that former staff are able to obtain advantageous treatment and to keep proper records to show fair and impartial treatment.
- (III) Personal dealings in securities & futures contracts and prohibition against leveraged foreign exchange trading
- 16. The Code sets out a clear policy for staff on personal dealings in securities and futures contracts.
- 17. Staff are required to make the initial and on-going disclosure (by way of declarations) relating to their direct or indirect holdings in securities and futures contracts. Their declarations must also include any securities and futures contracts that they know are held by a related person or entity.
- 18. Staff hold securities and futures contracts "indirectly" if they have been purchased and held by someone else on their behalf.
- 19. No ED (including the Chairman) shall deal in any securities except the Pilot Programme Securities and securities held through the medium of collective investment schemes or investment companies. No ED (including the Chairman) shall in any manner transact any trading in any futures contract as defined under the SFO. To the extent not already covered, the EDs are also subject to additional staff investment restrictions. Such additional staff investment restrictions do not however apply to NEDs.
- 20. Staff are also reminded of their statutory duty to notify in certain situations under section 379(3), SFO.
- 21. As a matter of policy, the SFC prohibits staff from directly engaging in any transactions regarding leveraged foreign exchange trading with a licensed corporation or its representative.
- 22. Staff are reminded of the relevant statutory provisions (sections 270 and 291) prohibiting insider dealings and the possible consequences of any breach.

#### (IV) Advantages, gifts and hospitality

- 23. Staff are reminded to exercise caution in accepting gifts and hospitality which could give rise to any criticism of undue influence or bribery. As a matter of prudence, staff are required to decline any gift that is offered by a regulatee (including listed companies) or an applicant to be listed or registered unless the gift falls within the general policy expressly provided in the Code.
- 24. Staff are also reminded of the relevant provisions of the Prevention of Bribery Ordinance and the possible consequences of any breach.

#### Non-compliance with the Code

- 25. All SFC staff are required by their contracts of employment to comply with the terms of the Code. The SFC may take disciplinary action if staff infringe any provision of the Code. In serious cases, this may result in summary dismissal or termination of the staff employment.
- 26. So far as NEDs are concerned, as they are appointed by the Administration, they are not bound by SFC's contracts of employment as such. However, each of the NEDs has been provided with a copy of the Code and been reminded to observe its terms since they are applicable to all Directors (including NEDs) and staff unless otherwise specified.

#### Question 1(b):

The existing arrangements governing the division of roles and responsibilities between the executive and non-executive directors of the SFC

- 1. The Board of the SFC at present comprises eleven members: four full time Executive Directors (EDs) (including the Chairman and will be increased to five later this month) and seven Non-Executive Directors (NEDs). As required by the SFO, the majority of the Board members (Members) must be NEDs. All Members are appointed by the HKSAR Chief Executive.
- 2. All important policies are discussed and approved by the Board, which meets regularly every month and holds additional meetings as necessary. Divisional staff attend Board meetings to explain policy proposals, report on important operational matters and regulatory issues. Members are briefed on the financial position of the SFC and provided with monthly financial statements.
- 3. To play an effective oversight role, the Board has delegated most of the regulatory powers and functions to the individual EDs or Committees, with power to sub-delegate to staff within their respective operational divisions. Non-delegable and other key powers are retained at Board level.
- 4. Each of the Audit Committee, Remuneration Committee and Budget Committee is chaired by a NED. Apart from the Budget Committee (which has three ED members), all members of the Audit Committee and Remuneration Committee are NEDs. So far as the Audit Committee and Remuneration Committee are concerned, whilst certain senior SFC staff are invited to attend these Committee meetings, they have no voting rights in respect of decisions to be made by the Committees.

#### Division of roles and responsibilities between the EDs and NEDs

#### (I) EDs

- 5. Each ED assumes full management responsibility for his or her Division. This responsibility includes:
  - a) exercising statutory powers as delegated under the SFO or where appropriate making recommendations to the Board regarding the exercise of statutory powers;
  - b) establishing procedures which ensure that SFC powers are exercised properly and judiciously, bearing in mind the legal responsibilities of SFC:
  - c) leading policy development and formulation in relation to respective functions of the Divisions with regard to international standards and experience of overseas regulatory bodies;
  - d) participating in general policy formulation and collective decisionmaking as members of the Board;

- e) liaising with relevant Government Departments, local agencies, appropriate market organisations and participants as well as overseas financial and regulatory bodies; and
- f) managing the Divisions including leading, motivating and training staff and developing succession plans.

#### (II) Chairman

- 6. The SFO expressly provides that the following functions are to be performed by the SFC Chairman:
  - a) to be the channel for consultation by the Chief Executive (CE) when the CE is contemplating issuing directions to the SFC under section 11, SFO;
  - b) to sign financial statements of the SFC under section 15 and of the Investors Compensation Fund under section 240, SFO;
  - c) to designate an ED as acting chairman under section 6 of Part 1 of Schedule 2, SFO;
  - d) to preside at Board meetings and exercise a casting vote under sections 15 and 19 of Part 1 of Schedule 2, SFO;
  - e) to authorise affixing of the seal under section 25 of Part 1 of Schedule 2, SFO; and
  - f) to convene and chair meetings of the Advisory Committee under sections 27-29 of Part 1 of Schedule 2, SFO.
- 7. Apart from these express statutory functions, the current SFC Chairman also has the following roles and responsibilities.
- 8. The current Chairman is the public face of the SFC, accountable for the SFC's policy and regulatory decisions. He is responsible for:
  - a) providing leadership to the Board and the management;
  - b) ensuring that Members of the SFC are fully briefed on matters to be discussed at Board meetings and that key issues are discussed by the Board in a timely manner, that the Board has adequate support and is provided with all the necessary information on which to base decisions;
  - c) giving all Members an opportunity to express their views at Board meetings, encouraging all Members to contribute fully to the Board's affairs. In addition to Board meetings, the Chairman also telephones or meets with NEDs regularly to consult them on various corporate governance and important issues;
  - d) overseeing the implementation of the Board's strategies and decisions;
  - e) ensuring that procedures are in place so that all due process, checks and balances are followed in the performance of the SFC's functions;
  - f) evaluating performance of EDs' and senior management and discussing these with the NEDs;
  - g) ensuring proper control of and effective use of financial resources;
  - h) advising and reporting to the Financial Secretary and Secretary for Financial Services and the Treasury on matters relating to the securities and futures industry; and

- i) ensuring that the SFC communicates effectively with the Administration, Legislative Council, the investors, the public and the industry.
- 9. The current SFC Chairman is also actively involved in cross-border and international work. He is presently the Chairman of the Technical Committee of IOSCO, the international organization of securities commissions, which is a standard-setting body. The Chairman is responsible for:
  - a) meeting with international financial institutions and foreign visitors to brief them on Hong Kong and relevant international financial issues;
  - b) engaging in dialogue with the international financial sector to maintain Hong Kong's participation at the top level in international consultations on financial issues;
  - c) contributing to the development of international standards/policies in the financial industry in particular the securities and futures industry;
  - d) ensuring that Hong Kong's standards are on a par with international standards;
  - e) developing cooperative arrangements with other jurisdictions;
  - g) attending important international conferences for the benefit of the HKSAR and SFC; and
  - h) engaging the Mainland regulatory organizations, exchanges and policy makers on cross-border issues of mutual interest.

#### (III) NEDs

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- 10. NEDs are independent of the management and play the role of supervising the SFC's executive functions. Their responsibilities include:
  - a) participating in Board meetings to bring their independent judgment to issues of strategy, policy, performance, accountability, resources etc.
  - b) promoting critical review and control of the management process;
  - c) taking the lead where potential conflicts of interest arise (e.g. audit report on anonymous complaint letters)
  - d) leading and serving on the SFC's Audit Committee, Budget Committee and Remuneration Committee (the Audit Committee and Remuneration Committee only comprise NEDs);
  - e) giving the Board and any Committees on which they serve the benefit of their skills, expertise and varied backgrounds and qualifications through regular attendance and active participation;
  - f) bringing a wide range of business and financial experience to the Board which contributes to the effective direction of the Commission; and
  - g) positively contributing to the development of the SFC's strategy and policies, scrutinising the SFC's performance in achieving agreed corporate goals and objectives, and monitoring the reporting of performance.

#### Question 1(c):

Whether and how such existing arrangements will apply to the non-executive Chairman and the Chief Executive officer if the splitting proposal is implemented.

- 1. Among the functions of the SFC Chairman expressly provided for in the SFO, a non-executive Chairman might have difficulties in performing the function under s.11. Under the current arrangement, the SFC Chairman is the channel for CE consultation when directions are contemplated under section 11, SFO. However, it would be difficult for a Chairman with no executive functions (and who may not work full-time) to respond on what is achievable without the assistance of the CEO in such a dialogue, which is likely to take place in an emergency. In fact, the nature of the work calls for the full time attention of the SFC Chairman in order that s/he understands the complex regulatory issues that the SFC faces on a daily basis.
- 2. However, the splitting of roles will not affect the statutory functions of the SFC Chairman to designate an ED as acting chairman under section 6 of Part 1 of Schedule 2 and to preside at Board meetings and exercise the casting vote under sections 15 and 19 of Part 1 of Schedule 2. As for signing the financial statements of the SFC under section 15 and the Investor Compensation Fund under section 240, it would seem more appropriate for the CEO, who will have detailed knowledge about the financial statements, to do so. Similarly, the functions of authorising the affixing of the seal under section 25 of Part 1 of Schedule 2 and convening and chairing meetings of the Advisory Committee under sections 27-29 could be delegated administratively to the CEO by a Board resolution.
- 3. The real practical issue is how the actual functions of the SFC should be split between the SFC Chairman and the CEO. In practice, given the complexities involved in exercising the regulatory role of the SFC, it would be difficult, if not impossible, to separate policy from individual regulatory decisions that can have huge implications for future cases. The SFC Chairman would not be able to function effectively and discharge his or her responsibility for policy without some hands-on understanding of the regulatory details of individual cases. Accordingly, it would be difficult for the SFC Chairman not to be involved in the day-to-day regulatory work as currently proposed by the Administration. More importantly, it would be difficult, if not impossible, for the SFC Chairman to avoid putting himself/herself in a conflict of interests position (real or perceived) if s/he, as a regulator, were to work part-time and hold other positions.
- 4. Having a non-executive Chairman may reduce Hong Kong's standing in the IOSCO Technical Committee, which Hong Kong has had the honour to chair twice in 10 years. As background, the fifteen members of the IOSCO Technical Committee are responsible for the leading securities markets in the world, accounting for overseeing over US\$25 trillion of stock market capitalisation. Within Asia, only Hong Kong, Australia and Japan are members of the Technical Committee, which is the standard setting body. All Chairmen of members of the Technical Committee are executive chairmen and are effectively full time. There would be a risk for Hong Kong, if the SFC is

#### Annex A

denied the opportunity in the future of being offered such important chairmanship positions in the international community because some full-time Chairs may not consider a part-time non-executive Chair as an equal. It is suggested that the Legislative Council consult the Executive Chairman of IOSCO and the Deputy Chairman of the Technical Committee of IOSCO for an independent assessment of this issue.

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#### Question 1(d):

The arrangements through which information relating to the division of responsibilities between the future SFC Chairman and the Chief Executive Officer can be made known to the public.

Once the division of responsibilities between the future SFC Chairman and the Chief Executive Officer is decided and agreed by the Board, the SFC may issue a press release setting out the details of the division of responsibilities, and post such details on the SFC corporate website.

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SECURITIES AND

Gazette Number: L.N. 12 of

**FUTURES ORDINANCE** 

2003

Schedule: 2

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SECURITIES AND

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01/04/2003

**FUTURES COMMISSION** 

#### PART 2

#### NON-DELEGABLE FUNCTIONS OF COMMISSION

- 1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.
- 2. The following functions of the Commission-
  - (1) to borrow money, under section 5(4)(d) of this Ordinance;
  - (2) to publish or otherwise make available materials, under section 5(4)(e) of this Ordinance:
  - (3) to establish any committee, under section 8(1) of this Ordinance;
  - (4) to refer any matter to a committee, under section 8(2) of this Ordinance;
  - (5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
  - (6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
  - (7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
  - (8) to prepare any financial statements, under section 15(2) of this Ordinance;
  - (9) to prepare any report, under section 15(3) of this Ordinance:
  - (10) to appoint auditors, under section 16(1) of this Ordinance;
  - (11) to invest funds, under section 17 of this Ordinance;
  - (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
  - (13) to amend or revoke conditions, or impose new conditions, under section 19 (3) of this Ordinance;
  - (14) to give a company a reasonable opportunity of being heard, under section 19 (7) of this Ordinance;
  - (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
  - (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
  - (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
  - (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;

- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28 (1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;

(25) to extend a direction, under section 29(3) of this Ordinance;

- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37 (2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37 (5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1) (a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59 (3) of this Ordinance;
- (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
- (38) to give a company a reasonable opportunity of being heard, under section 59

(18) of this Ordinance;

- (39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
- (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;
- (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
- (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
- (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
- (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
- (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
- (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
- (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;

- (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
- (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;
- (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
- (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
- (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
- (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
- (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
- (55) to amend or revoke conditions, or impose new conditions, under section 79 (2) of this Ordinance;
- (56) to give a company a reasonable opportunity of being heard, under section 79 (5) of this Ordinance;
- (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
- (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
- (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
- (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
- (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
- (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
- (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
- (64) to serve a notice, under section 92(1) of this Ordinance;
- (65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
- (67) to make a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
- (70) to cause a report to be published, under section 183(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
- (73) to present a petition, under section 212 of this Ordinance;
- (74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- $\sim$  (79) to appoint an auditor, under section 240(5) of this Ordinance;

- (80) to invest money, under section  $2\overline{41(1)}$  of this Ordinance;
- (81) to make report to the Financial Secretary, under section 252(8) of this Ordinance;
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1 (2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.



Annex C

Organización Internacional de Comisiones de Valores International Organisation of Securities Commissions Organisation internationale des commissions de valeurs Organização Internacional das Comissões de Valores

12 January 2005

Ms. Edna Wong
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)
Government of the Hong Kong Special
Administrative Region
18th Ploor
Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

Subject: Proposed Legislative Changes Concerning the Hong Kong Securities and Futures Commission

Governance

Dear Ms. Wong,

We have received you letter dated 8 January 2005 concerning the above mentioned subject.

IOSCO has endorsed in 1998 a comprehensive set of Objectives and Principles of Securities Regulation (IOSCO Principles) and has encouraged all its members to implement them in their respective jurisdictions. The IOSCO Principles are sufficiently broad to be adapted to all existing domestic contexts and, in particular, provide some flexibility with respect to the governance structure of securities regulators.

Each IOSCO member is responsible for designating the persons who act as its representatives during IOSCO meetings, including the person who acts as head of its delegation. Other IOSCO members obviously assess the level and authority of these representatives and take decisions, in part based of this assessment. The international credibility of an IOSCO member regulator is no doubt related to that of its representatives and to their ability and authority to provide strong input to the critical work undertaken within the Organization.

The appointment of the IOSCO Technical Committee Chairman is a personal appointment based on the recognized experience and authority of the appointee. Mr. Andrew Sheng is the current Chairman of the Technical Committee. Should Mr. Sheng resign his current position as Chairman of the Kong Kong Securities and Futures Commission, the members of the Technical Committee would need to appoint a new Technical Committee Chairman.

Sincerely yours,

Philippe Richard Secretary General

> Calle Oquendo 12 28006 Madrid ESPAÑA

Tel.: (34.91) 417.55.49 • Fax: (34.91)

555.93.68

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**FUTURES ORDINANCE** Regulatory objectives of

Version Date:

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Commission

The regulatory objectives of the Commission are-

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to provide protection for members of the public investing in or holding financial products:
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

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5

Heading:

FUTURES ORDINANCE
Functions and powers of

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Commission

- (1) The functions of the Commission are, so far as reasonably practicable-
  - (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
  - (b) to supervise, monitor and regulate-
    - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
    - (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
  - (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
  - (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
  - (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
  - (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
  - (g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
  - (h) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
  - (i) to promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
  - (j) to encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the

Commission under any of the relevant provisions;

- (k) to promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;
- (l) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;
- (m) to promote, encourage and enforce-
  - (i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
  - (ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;
- (n) to suppress illegal, dishonourable and improper practices in the securities and futures industry;
- (o) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
- (p) to recommend reforms of the law relating to the securities and futures industry;
- (q) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and
- (r) to perform functions conferred or imposed on it by or under this or any other Ordinance.
- (2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.
- (3) The Commission, in performing any of its functions in relation to-
  - (a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or
  - (b) any person as an associated entity of an authorized financial institution that is a registered institution,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.

- (4) For the purposes of this Ordinance, the Commission may-
  - (a) acquire, hold and dispose of property of any description;
  - (b) make contracts or other agreements;
  - (c) receive and expend moneys;
  - (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
  - (e) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and
  - (f) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.

(5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

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## Remuneration of Chairmen and Non-executive Directors (NEDs) of major organizations (as at 10 May 2005)

	Organisation	Remuneration of Chairman	Remuneration of NEDs
1.	Hong Kong Exchanges and Clearing Limited (HKEx)	\$240,000 per annum	\$240,000 per annum
2.	Mandatory Provident Fund Schemes Authority	Nil	Nil
3.	Airport Authority	\$220,000 per annum	Board members: \$110,000 per annum
4.	Kowloon-Canton Railway Corporation	\$220,000 per annum	Board members: \$110,000 per annum
5.	Mass Transit Railway Corporation Limited <sup>1</sup>	Between \$500,001 - \$1 million per annum (exact figure not disclosed)	

1

Source: 2004 Annual Report of Mass Transit Railway Corporation Limited



#### RECRUITMENT OF 'CHAIRMAN' SECURITIES AND FUTURES COMMISSION HONG KONG SPECIAL ADMINISTRATIVE REGION

The Securities and Futures Commission (SFC) is the Hong Kong Special Administrative Region's (HKSAR) regulatory authority responsible for regulating the securities and futures markets in Hong Kong, overseeing the operation of the Hong Kong Exchanges and Clearing Limited, its clearing houses and market intermediaries. The SFC is an independent statutory body. Its regulatory objectives are –

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

In line with good corporate governance practice, the HKSAR Government has introduced a Securities and Futures (Amendment) Bill 2005 (the Bill) into the Legislative Council in April 2005 to split the current executive Chairman post into a Chairman post and a Chief Executive Officer (CEO) post. The Bill is currently being considered by the Legislative Council.

We are now looking for qualified candidates to lead the executive team in the SFC. Under existing legal framework, the successful candidate will be entitled Chairman. On the other hand, upon the passage of the Bill, the candidate will fill the CEO post but may still be required to perform the duties of the Chairman in addition to those of the CEO until the Chairman position is filled. The separation of the roles of the Chairman and the CEO is intended to be along the following lines –

The future chairman will not be involved in the day-to-day regulatory work. He/she will focus on the following responsibilities -

- (a) lead the governing body in setting SFC's directions, policies, strategies and priorities having regard to local and international developments;
- (b) enhancing the governing body's effectiveness in monitoring the performance of the executive arm in meeting the objectives and policies set by the governing body;
- (c) facilitating effective contribution of non-executive directors;
- (d) facilitating communication and cooperation between executive and non-executive directors in promoting the work of SFC; and
- (e) representing the SFC publicly, in liaison with local and international financial institutions and other stakeholders.

The CEO will have the executive responsibility on the day-to-day management of the SFC. He/she will implement the objectives, policies and strategies set by the SFC governing body, and facilitate the effective functioning of the governing body. The key responsibilities include –

- (a) reporting to the governing body regularly with appropriate, timely and quality information;
- (b) informing and consulting the chairman on all matters of significance to the SFC;
- (c) developing and delivering the strategic objectives agreed with the governing body; and
- (d) overseeing the day-to-day operation and regulatory work of the Commission and ensuring that the Commission is equipped with the necessary staffing and financial and risk management systems for meeting its mission.

He/She must maintain effective communication and relationships with the SFC governing body, other regulatory agencies, market operators and other relevant authorities in the HKSAR, Mainland China, the region and globally.

Candidates for the post should possess solid executive and management ability and experience in order to implement the policy agenda set by the SFC governing body. He/she should have hands-on experience and knowledge of the financial markets and the regulatory and compliance issues involved. He/she should also be a person with integrity and a good team leader, particularly as a motivator of staff and possess excellent communication skills.

Hong Kong is an international city and the position is open to all nationalities who possess the appropriate skills and credentials. Proficiency in the Chinese language would be an advantage but not mandatory.

Please reply in writing with personal particulars to the following address.

Mr. Raymond Tang or Mr. David Ng or Ms. May Tung Russell Reynolds Associates 24/F Central Tower 28 Queen's Road Central Hong Kong

Fax: (852) 2521-8191

Email: SFC@russellreynolds.com

RUSSELL REYNOLDS ASSOCIATES
http://www.russellreynolds.com

The closing date for application is May 21, 2005. Applicants not invited for interview within eight weeks from the closing date may assume their applications unsuccessful. All information and personal data collected will be solely used for recruitment related purpose.