



香港證券經紀業協會有限公司
HONG KONG STOCKBROKERS ASSOCIATION LIMITED

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**RESPONSE TO
PROPOSAL OF SPLITTING THE POST OF
THE CHAIRMAN OF SFC INTO
A CHAIRMAN POST & CEO POST**

**Hong Kong Stockbrokers Association
16 December 2004**



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Corporate Governance

1. We are in agreement that good corporate governance is essential to the Hong Kong's status as an international financial centre. As the primary regulator of our securities market, we agree that the SFC should be, and should be seen to be, a model of good corporate governance.
2. One of the key issues in good corporate governance is the separation of roles between the Chairman of the Board of Directors (Chairman) and the Chief Executive Officer (CEO). We note that other quasi governmental organizations such as the HKMA, the MTRC, the KCRC, and the Airport authority have already implemented this structure.

Why Separate the Roles?

3. The primary function of the Board of Directors (Board) is to formulate policies that best serve the long term interests of the securities market (including the SFC, the participants and the investors), and to oversee the implementation of these policies by the executive arm. Thus, the roles of the Chairman and the CEO are very distinct:
 - a. The Chairman leads the Board in the formulation of policies and in the subsequent monitoring of the implementation, and performance of the executive team.
 - b. The CEO leads the executive team in implementing the policies set by the Board, and as a member of the Board serves as a linkage between the Board and the executive arm
4. We believe that the separation of roles will have a number of advantages, viz:
 - a. Strengthening the independence and oversight role of the Board;
 - b. Enhancing the objectivity of the Board;
 - c. Providing appropriate "checks and balances" and ensures that power and authority is not concentrated;
 - d. Clearly defining the functions of the Board and the executive arm.

Perceived Problems if the Roles are not Separated

5. Where the CEO is also the Chairman, the general public may perceive this as concentration of power which presents a number of problems, including potential for conflict of interests, and reducing the independence of the directors in fulfilling their responsibility for oversight of executive management.
6. The perception will be that it would be difficult for the independent members of the Board to oversee and evaluate the executive team, if the CEO, who leads the executive team, is also leader of the Board. Essentially, it would give the impression that the CEO/Chairman is in a position to set his own priorities and evaluate his own performance.



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7. We understand that although the Standing Committee on Company Law Reform (SCCLR) did not recommend mandatory separation of the roles, it does recommend amending the Code of Best Practices to give prominence to the need for separation. As the primary regulator of listed companies in Hong Kong, the SFC should adopt the Best Practices for good corporate governance as a role model.

Issues that Need to be Addressed

8. The Paper prepared by FSTB identified a number of issues that need to be addressed, the key ones being:
 - a. The independence of the Chairman;
 - b. Whether the Chairman will be an executive or non-executive;
 - c. Whether the Chairman will be full-time or part-time;

Pre-requisites for the Position of Chairman

9. We believe that the Chairman must be seen by the general public as being fully independent. We are somewhat concerned that dependence on internal policies with regards to conflicts of interests will not be seen as sufficient.
10. The position of Chairman calls for in-depth knowledge and understanding of the workings of the “local” market. Although we believe we have many potential candidates in Hong Kong who satisfy this pre-requisite, we have large concern about their availability after filtering all the possible linkage and actual business relationship regarding the independency factor.
11. We also believe that Hong Kong’s future lies in being the fund raising centre for the mainland, and that the Chairman should be very much in tune to the particular needs of the local market. Thus, he should also possess the appropriate language skills and knowledge of the mainland market to ensure that we stay competitive with other international markets and not erode our unique advantages.

Remuneration to the Position of Chairman

12. The paper does not make clear whether the Chairman will be paid with any remuneration. Given the importance of the position, and the pre-requisite qualifications, it is highly likely that an appropriate candidate will already be in a highly paid position in the industry. Thus, we are interest in the remuneration package, if any, of the Chairmanship position, and how the package is determined.