

LegCo Panel on Financial Affairs

Follow-up to meeting on 4 April 2005

Briefing on the Securities and Futures (Amendment) (No.2) Bill 2005 – Proposals to give statutory backing to major listing requirements

Q3. To facilitate members' consideration of the proposals and to address members' concern about the checks and balances on the powers of the Securities and Futures Commission (SFC) in the regulation of listing, the Administration is requested to provide information on practices in overseas jurisdictions (including United Kingdom and Canada), as follows:

- (a) The compositions of relevant overseas regulatory bodies and whether they are comparable to that of SFC;
- (b) The powers of relevant overseas regulatory bodies, in particular whether they have the power to impose civil fines on issuers, directors and officers and if they have, the upper limit; and
- (c) The mechanism for reviews/appeals on the regulatory decisions relating to listing made by relevant overseas regulatory bodies.

A3. (a) On the composition of overseas regulatory bodies, we note that the Information Note on "Overseas Securities and Futures Regulators" prepared by the Research and Library Services Division of the Legislative Council Secretariat (Paper No.IN12/04-05) (**Annex A**) has also provided an international comparison of the governing bodies of overseas regulators, including the composition of the Board of the Financial Services Agency in the United Kingdom (UK).

As for Canada, the regulation of the Canadian securities industry is carried out by individual provinces and territories,

each of which has its own securities regulator. We have chosen to look at the Ontario Securities Commission in view of the fact that the majority of Canada's equity trading is done at Toronto.

According to information provided by Hong Kong's Securities and Futures Commission (SFC), the Ontario Securities Commission consists of at least 9 and not more than 14 commissioners. These commissioners are appointed by the Lieutenant Governor in Council for a term not exceeding 5 years. Currently, the board consists of 11 members, including 3 executive members and 8 non-executive members.

We understand from SFC that the National Securities Market Commission in Spain is headed by an Executive Board which comprises a president, a vice president, 5 committee members and a secretary, all of whom are appointed by the government.

Whether the compositions of overseas regulatory bodies are comparable to that of SFC had been discussed by Members at the meeting of the LegCo Panel on Finance Affairs on 3 January 2005. The differences in regulatory structures among various regulators had been noted.

- (b) Information on the sanctioning powers, including the power to impose fines on issuers, directors and officers, of the regulatory bodies in Canada, the United States (US), Spain, UK, Australia, and Singapore provided by SFC is at **Annex B**.
- (c) Information on the mechanism for reviews/appeals on the listing-related decisions made by the regulators in Canada, US, Spain, UK, Australia, and Singapore provided by SFC is at **Annex C**.

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

INFORMATION NOTE

Overseas Securities and Futures Regulators

1. Introduction

1.1 The Panel on Financial Affairs of the Legislative Council (the Panel), at its meeting on 10 November 2004, requested the Research and Library Services Division (RLSD) to collect information regarding the governance structure of selected overseas securities and futures regulators. The Panel requested RLSD to study the United Kingdom (UK), Singapore, Sweden, Australia, the United States (US) and Germany.

1.2 Among the selected places, the UK, Singapore and Sweden have separated the functions of the Chairman and the Chief Executive Officer (CEO) of the securities and futures regulators. There is no such separation in Australia, the US and Germany. Enquiries were sent to all selected places requesting for information. As at the date of publication of this information note, the regulator in Germany had not provided us with the relevant information. Therefore, this note only discusses the situation in the UK, Singapore, Sweden, Australia and the US.

2. The United Kingdom

2.1 The Financial Services Authority (FSA) is the sole statutory regulator responsible for the authorization and supervision of deposit-taking, insurance and investment businesses in the UK. FSA has operated under the framework of the Financial Services and Markets Act 2000 (FSMA) since December 2001. It is a company limited by guarantee funded solely by levies on the financial businesses it regulates, such as banks and insurers.

Appointment

2.2 The Board of FSA is the governing body of the regulator, and its structure is dictated by the requirements of Schedule 1 of FSMA. The Chairman must be a member of the Board.¹ The majority of Board members must be non-executive. FSMA has no provision regarding the separation of the posts of the Chairman and the CEO. At present, the Board consists of a Chairman, a CEO, three Managing Directors, and 11 non-executive Directors (including a lead non-executive member, the Deputy Chairman).

¹ Section 2(2), Schedule 1, FSMA.

2.3 All Board members are appointed by the Treasury in accordance with the principles for public appointments issued by the Commissioner for Public Appointments.² One of these principles is the public advertisement of vacancies³. Board members are appointed in a personal capacity and do not serve as representatives of particular interests or associations. There are no statutory appointment criteria for the post of the Chairman.

2.4 The Chairman is appointed for a five-year term, subject to renewals. All other board members are appointed for three-year terms. All board members are liable to removal from office by the Treasury. The Chairman is responsible for the recruitment of the CEO, who is an employee of FSA. The Treasury is responsible for appointing the CEO to the Board of FSA. There is no information on the appointment criteria for the post of the CEO.

2.5 When the draft Financial Services and Markets Bill was published in 1998 for public consultation, a Joint Parliamentary Committee was set up to study the draft Bill. The Committee recommended that the posts of the Chairman and the CEO of FSA should be separated and that a non-executive Chairman should be appointed.⁴ However, the government did not agree that the posts should be separated.⁵

² The Commissioner for Public Appointments is independent of the government and her role is to monitor, report and advise on over 11 000 Ministerial appointments to public bodies in the UK. Government departments are required to follow the Commissioner's principles and detailed Code of Practice when processing public appointments.

³ Other principles include merit, independent scrutiny, openness and transparency, equal opportunities and proportionality.

⁴ The Committee said: "[w]e understand the reasons for combining the roles of Chairman and Chief Executive at this stage of the FSA's existence, particularly when accompanied by the appointment of a senior non-executive director as Deputy Chairman. The parallels with the corporate model are not necessarily appropriate. However, in the longer term we recommend that the posts of Chief Executive and Chairman should be separated and that a non-executive Chairman should be appointed. We see advantages in this of limiting the power of and focus on a single individual; enhancing the power of non-executive directors; and ensuring that control of the agenda does not lie exclusively with the executive." See *Joint Committee on Financial Services and Markets — First Report* (1999, paragraph 113).

⁵ When the government responded to the Joint Parliamentary Committee's report, it argued that "[u]nder the current arrangements, there is a full time Chairman and Chief Executive and a non-executive Deputy Chairman. The Government is very happy with these arrangements and does not intend to change them. It understands the thinking behind the Committee's view that in the longer term there may be other arrangements which could work. It is however mindful of the fact that parallels with other models of corporate governance are not exact. There is also a good case for a strong line of direct accountability to Treasury Ministers from the senior executive of the regulator." See *HM Treasury's Response to the First Report of the Joint Committee* (1999, Section IV).

2.6 When FSA became the sole statutory financial services regulator in November 2001, it had an executive Chairman taking up the roles of the Chairman and the CEO. However, the current Board has the post of the Chairman separated from the post of the CEO. Both of them were appointed in 2003 following the government's decision to split the roles of the Chairman and the CEO.⁶ According to FSA, the rationale for the change was the FSA's desire to continue to comply with best standards in corporate governance, which recommended separating the posts. The change did not require legislative amendments. However, FSA had made some administrative arrangements, which are discussed in paragraph 2.9.

Duties and responsibilities

2.7 FSA is accountable to the Treasury and ultimately to Parliament for its own performance. The Chairman leads the Board in establishing priorities for FSA and has no responsibility for the day-to-day running of FSA. Under the law, FSA must report on the achievement of its statutory objectives to the Treasury every year. The Treasury Ministers must then lay the report before Parliament. FSA is also regularly called to give evidence to the Treasury Select Committee in Parliament.

2.8 The CEO is accountable to the Board. He is responsible for implementing the strategies agreed by the Board and has the executive responsibility for FSA's business under authority delegated to him by the Board.

2.9 In view of the separation of the posts of the Chairman and the CEO in 2003, the Board agreed and published a document setting out the detailed division of responsibilities between the Chairman and the CEO (see the Appendix). The Board also made a formal resolution concerning the governance of FSA in March 2004.⁷ The resolution set out the arrangements for the discharge of the functions of the Board and those delegated to executive Board members, as well as the terms of reference of the various Board Committees.

Remuneration

2.10 The remuneration of the Chairman and the CEO is decided by the Remuneration Committee of the Board. The Remuneration Committee is a subcommittee of the Committee of non-executive Directors (NedCo)⁸, and both Committees are chaired by the Deputy Chairman. The functions of the Remuneration Committee are to:

⁶ The present Chairman is appointed on the basis of working four days per week.

⁷ See FSA (2004b).

⁸ NedCo is established under the provisions of Schedule 1 of FSMA. One of its statutory functions is to determine the remuneration of the Chairman and other executive directors.

- (a) determine the remuneration package of the Chairman and executive members of the Board, including their participation in annual incentive arrangements, contract terms, pension rights and entitlement to compensation for loss of office;
- (b) report annually to NedCo on its determinations; and
- (c) make recommendations to the Board on policies in relation to the remuneration of FSA's senior executives.

2.11 The remuneration level of the CEO is in line with comparable roles in the financial services markets and other institutions with a regulatory or public role. The CEO also receives a performance-related bonus payment. There is, however, no information on the criteria used by the Remuneration Committee to determine the remuneration level of the Chairman.

Review

2.12 The Board has recently undertaken a review of its effectiveness, with the assistance of external consultants. An outline of the outcomes of the review and follow-up actions will be published in the FSA Annual Report for 2004/2005, which is expected to be released in the summer of 2005.

3. Singapore

3.1 In 1970, the Singapore Parliament passed the Monetary Authority of Singapore Act, leading to the formation of the Monetary Authority of Singapore (MAS) on 1 January 1971. The MAS Act gives MAS the authority to regulate all elements of monetary, banking and financial aspects of Singapore. MAS not only performs the role of a financial regulator, but also acts as a banker to and financial agent of the government. MAS is funded by its own capital and reserves.

Appointment

3.2 The structure of the MAS Board (the Board of Directors of MAS), is provided by the MAS Act. The Board can have up to 10 members. Currently, there are eight members. The Managing Director (i.e. the CEO), who is also a Director of the Board, is an employee of MAS. Although the MAS Act does not specify that the posts of the Chairman and the Managing Director must be filled by two different persons, the two positions have always been filled by different individuals.⁹

⁹ The current Chairman is Mr Goh Chok Tong, the Senior Minister of Singapore.

3.3 Under the MAS Act, all Directors are appointed by the President of Singapore. The Directors, including the Chairman and the Managing Director, are required to be public servants within the meaning of law.¹⁰ The Chairman of the Board is appointed by the President on the recommendation of the Cabinet.¹¹ The Managing Director is appointed by the President on the advice or recommendation of the Public Service Commission.¹²

3.4 All Directors, including the Chairman and the Managing Director, are appointed on the basis that they must not act "*as delegates on the board from any commercial, financial, agricultural, industrial or other interests with which they may be connected.*"¹³ Furthermore, there is a requirement for Directors to be unrelated to financial institutions supervised by MAS.¹⁴

3.5 The President has powers not to appoint any person as the Chairman or Directors of MAS or to revoke an appointment if he does not agree with the recommendations for the appointment. The President may also terminate the appointment of any Director if the Director becomes incapable of carrying out his duties, becomes bankrupt, is convicted of an offence involving dishonesty, or is guilty of serious misconduct.¹⁵

3.6 In order to avoid conflicts of interest, Directors appointed to the MAS Board should not advance any interests with which they are connected when attending board meetings.¹⁶ Board appointments are for terms not exceeding three years. Following the expiry of each term, Directors may be reappointed by the President for subsequent terms.

Duties and responsibilities

3.7 The MAS Board is ultimately accountable to the Parliament of Singapore through the Minister in charge of MAS. The Board, led by the Chairman, is responsible for the policies and general administration of the affairs and business of MAS and informing the government of the banking and credit policies of MAS.

3.8 The Managing Director is answerable to the Board for his acts and decisions.¹⁷ The Managing Director and his management team execute the day-to-day operations according to policies determined by the Board.

¹⁰ Section 16, the MAS Act.

¹¹ Section 7(3)(a), the MAS Act.

¹² Section 9(1), the MAS Act. The Public Service Commission is responsible for the appointment, promotion, transfer, dismissal and exercising disciplinary control over public officers.

¹³ Section 8(2)(a), the MAS Act.

¹⁴ Section 10(1), the MAS Act.

¹⁵ Section 10(2), the MAS Act.

¹⁶ Section 13, the MAS Act.

¹⁷ Section 9(4), the MAS Act.

Remuneration

3.9 The President determines the remuneration and allowances for all Directors, including the Chairman and the Managing Director.¹⁸ The current Chairman is a Cabinet Minister. His salary is paid by the Singapore government and not by MAS. The present Managing Director is seconded from the Administrative Service of the government, and his salary is paid by MAS. According to the reply from MAS, the salaries of both the Chairman and the Managing Director "*follow the framework of public sector salaries which are benchmarked against private sector incomes*".

Review

3.10 MAS has not conducted any reviews on its governance structure.

4. Sweden

4.1 The Swedish Financial Supervisory Authority (SFSA) is the public authority responsible for supervising companies in the insurance, credit and securities markets. SFSA became the single regulator and supervisor of the Swedish financial market in 1991. The operations of SFSA are financed through the national budget.

4.2 Before 2003, there was no separation of the posts of the Chairman of the Board and the CEO of SFSA. The Chairman of the Board was also the CEO of SFSA. This was changed in 2003 with a new division of responsibilities between the Board of Directors and the Director General (i.e. the CEO). The change was based on a government decision to increase the competence and independence of financial institutions. The decision was supported by a commission inquiry report entitled *Future Financial Supervision*, which was published in 2003.

Appointment

4.3 The Swedish government appoints the Board of Directors of SFSA, which consists of nine members including the Chairman. The post of the Chairman is a non-executive post. The government also appoints the Director General, who is not a member of the Board. There is no information on the appointment criteria for the posts of the Chairman and the CEO.

Duties and responsibilities

4.4 The SFSA Board reports to the Ministry of Finance, which is accountable to the Swedish Parliament. The Board, led by the Chairman, determines overall strategies and provides general direction for SFSA's operation. The Director General reports to the Board, and is responsible for the day-to-day operations of SFSA.

¹⁸ Sections 8(2)(c) and 9(2), the MAS Act.

Remuneration

4.5 The Swedish government determines the remuneration of both the Chairman and the Director General. There is, however, no information on the criteria used for the determination.

Review

4.6 Since the new governance structure has been in place for less than two years, there is no review on its effectiveness.¹⁹

5. Australia

5.1 The Australian Securities and Investment Commission (ASIC) was set up in 1991 to regulate financial markets, securities, futures and corporations. ASIC is an independent government body, and its operations are financed through the national budget.

Appointment

5.2 The governing structure of ASIC (the Commission) is dictated by Part 2, Division 1 of the ASIC Act 2001. ASIC can have not fewer than three nor more than eight Commissioners. All Commissioners, including the Chairman and the Deputy Chairman, are required to be appointed by the Governor-General on the nomination of the Treasurer.²⁰ Both the Chairman and the Deputy Chairman are required to be full-time Commissioners. According to the Act, at least three Commissioners must be full-time Commissioners.

5.3 In making nominations for Commissioners, the Treasurer selects people who possess qualified knowledge or experience in business, administration of companies, financial markets, financial products and financial services, law, economics or accounting.²¹ Commissioners are appointed on fixed terms of at most five years²² and may be terminated earlier for reasons set out in section 111 of the ASIC Act.²³

5.4 At present, ASIC operates under the direction of three full-time executive Commissioners, including the Chairman and the Deputy Chairman. Full-time membership let Commissioners monitor and direct ASIC's complex and wide-ranging activities, and avoid conflicts of interest that might otherwise affect part-time Commissioners who are still active in business, law or accounting.²⁴

¹⁹ Information provided by SFSA.

²⁰ Section 9(2), the ASIC Act.

²¹ Section 9(4), the ASIC Act.

²² Section 108(1), the ASIC Act.

²³ The reasons include misbehaviour or the physical or mental incapacity of a Commissioner, or bankruptcy of a Commissioner.

²⁴ The Australian Securities and Investment Commission (2004, p. 50).

Duties and responsibilities

5.5 ASIC reports to the Australian Parliament, the Treasurer and the Parliamentary Secretary to the Treasurer. Commissioners are responsible for reviewing the strategic plans of ASIC, setting national priorities and approving business plans of each directorate. In addition, the Commission receives written monthly and quarterly reports from management on operational performance, finance, human resources and information technology. The Commission is also assisted by six Executive Directors who look after the operations of ASIC.

Remuneration

5.6 The Commissioners' remuneration is set by the Remuneration Tribunal. The Tribunal, which is an independent statutory authority, has the powers to determine, report on or provide advice about remuneration that is within its jurisdiction. The Commissioners' remuneration levels are expected to be comparable to similar positions in other regulatory bodies.²⁵

Review

5.7 In recent years, a number of reviews have been conducted relating to the regulation of the financial industry in Australia. They include the "Financial System Inquiry" in 1997, the "Review of the Corporate Governance Arrangements of Statutory Authorities and Office Holders"²⁶ (the Uhrig Report) in 2003, and the Financial Sector Advisory Council's "Review of the Outcomes of the Financial System Enquiry"²⁷ in August 2003.

5.8 The Uhrig Report proposed two templates to ensure good governance of statutory bodies: the first template considered that the "executive management" would provide the best governance, while the second template considered that the "board" would provide the best governance. The Uhrig report concluded that the board structure might not provide a suitable form of governance for statutory bodies engaged in regulatory or service delivery function.²⁸

²⁵ For further information, see The Remuneration Tribunal (2004).

²⁶ In November 2002, John Uhrig was appointed by the Australian government to conduct a review of the corporate governance of Commonwealth statutory authorities and office holders. For details, see Commonwealth of Australia (2003).

²⁷ The Financial Sector Advisory Council (2003).

²⁸ According to the Report, "[a] board does not provide an appropriate governance structure for statutory authorities operating in the fields of Commonwealth service provision or regulation, as it is unlikely that such a board can be delegated full power to act. In these types of authorities government typically retains, and is expected to retain, control of policy and approval of strategy. Creativity by the statutory authority is limited to achieving the most efficient methods of executing the service provision or regulatory function. A board in these circumstances is likely to struggle with establishing an effective role for itself and may dilute accountability by adding a layer between Ministers and management." Commonwealth of Australia (2003, p. 8-9).

5.9 The Australia government is conducting an assessment on the ASIC's governance structure against these templates, which is expected to be completed in the first quarter of 2005.²⁹

6. The United States

6.1 Congress established the Securities and Exchange Commission (SEC) in 1934 under the Securities Exchange Act of 1934. The objectives of SEC are to protect investors and maintain the integrity of the securities markets. Its operations are mainly financed through the national budget.

Appointment

6.2 SEC is led by five Commissioners who are appointed by the US President with the advice and consent of the Senate.³⁰ Their terms last five years and are staggered with one Commissioner's term ending on 5 June each year. The President also designates one of the Commissioners as Chairman of SEC who is the top executive of SEC.³¹

6.3 To ensure that SEC remains non-partisan, no more than three Commissioners may belong to the same political party.³² Commissioners are not allowed to engage in business, vocation, or employment other than that of serving as Commissioner.³³ In addition, Commissioners are prohibited to participate, directly or indirectly, in any stock market operations or transactions regulated by SEC.

Duties and responsibilities

6.4 The congressional accountability of the Commissioners is mainly achieved through the requirement for the Senate to give consent to their appointments. The Commissioners meet to discuss and resolve a variety of issues (including regulatory and operational issues) the staff brings to their attention. At these meetings, the Commissioners:

- (a) interpret federal securities laws;
- (b) amend existing rules;
- (c) propose new rules to address changing market conditions; and/or
- (d) enforce rules and laws.

²⁹ See the Minister for Finance and Administration's response to the Uhrig Report on 12 August 2004.

³⁰ Section 4(a), the Securities Exchange Act of 1934.

³¹ Section 3, the Reorganization Plan No. 10 of 1950.

³² Section 4(a), the Securities Exchange Act of 1934.

³³ Ibid.

- 6.5 The Chairman of SEC has the powers with respect to³⁴:
- (a) the appointment and supervision of personnel employed under SEC;
 - (b) the distribution of business among such personnel and among the administrative units of SEC; and
 - (c) the use and expenditure of funds.

6.6 The Chairman is governed by general policies established by the Commission and by regulatory decisions, findings, and determinations legally made by the Commission. Appointments by the Chairman of the heads of major administrative units are subject to the approval of the Commission.³⁵

6.7 There are three Managing Executives in the Chairman's Office, who are responsible for Policy and Staff, External Affairs, and Operations and Management respectively. In addition, the Office of the Executive Director, in conjunction with the Managing Executive for Operations and Management, develops and executes the management policies of SEC. The Office of the Executive Director is led by the Executive Director.

Remuneration

6.8 The Commissioners' remuneration is governed by law. The Chairman is paid at a rate for Level III [US\$145,600 (HK\$1,135,680) per annum] of the Executive Schedule³⁶, while other Commissioners are paid at a rate for Level IV [US\$136,900 (HK\$1,067,820) per annum]. All Commissioners' payment level is adjusted annually by an amount linked to the employment cost index.³⁷ There is no information on the remuneration of the Managing Executives and the Executive Director.

Review

6.9 There has been no review conducted in recent years on the enhancement of the effectiveness of the present governing structure of SEC.³⁸

³⁴ Section 1(a), the Reorganization Plan No. 10 of 1950.

³⁵ Section 1(b), the Reorganization Plan No. 10 of 1950.

³⁶ The Executive Schedule, which is divided into five pay levels, is a basic pay schedule for certain senior executive posts.

³⁷ 5 U.S.C. 5318. The index deals with changes in the wages and salaries of private industry workers.

³⁸ Information provided by SEC.

7. Comparison of the governance structure

7.1 Table 1 compares the governance structure of the selected overseas securities and futures regulators.

Table 1 — Comparison of the governance structure of selected overseas securities and futures regulators

	United Kingdom	Singapore	Sweden	Australia	United States
Name of the regulator	The Financial Services Authority (FSA).	The Monetary Authority of Singapore (MAS).	The Swedish Financial Supervisory Authority (SFS).	The Australia Securities and Investment Commission (ASIC).	The Securities and Exchange Commission (SEC).
Responsibilities of the regulator	A sole regulator responsible for the authorization and supervision of deposit-taking, insurance and investment business.	A sole regulator responsible for all elements of monetary, banking and financial aspects.	A sole regulator responsible for supervising companies in the insurance, credit and securities markets.	A sole regulator responsible for regulating financial markets, securities, futures and corporations.	The objectives of SEC are to protect investors and maintain the integrity of the securities markets.
Separation of duties of the Chairman and the Chief Executive Officer (CEO)	Yes.	Yes.	Yes.	No.	No.
Appointment	The Chairman is appointed by the Treasury. The CEO is recruited and appointed by FSA. The Treasury appoints the CEO to the Board of FSA.	The Chairman is appointed by the President of Singapore on the recommendation of the Cabinet. The Managing Director is appointed by the President on the advice or recommendation of the Public Service Commission.	The Chairman is appointed by the government. The Director General is also appointed by the government, but he is not a member of the Board.	All Commissioners, including the Chairman and the Deputy Chairman, are appointed by the Governor-General on the nomination of the Treasurer.	The five Commissioners are appointed by the President of the United States with the advice and consent of the Senate. The President designates one of the Commissioners as the Chairman.

Table 1 — Comparison of the governance structure of selected overseas securities and futures regulators (cont'd)

	United Kingdom	Singapore	Sweden	Australia	United States
Duties and responsibilities	<p>The Chairman leads the Board in establishing priorities for FSA.</p> <p>The CEO is responsible for implementing the strategies agreed by the Board and has the executive responsibility for FSA's business under authority delegated to him by the Board.</p>	<p>The Board, led by the Chairman, is responsible for the policies and general administration of the affairs and business of MAS, and informing the government of the banking and credit policies of MAS.</p> <p>The Managing Director and his management team execute the day-to-day operations according to policies determined by the Board.</p>	<p>The Board, led by the Chairman, determines overall strategies and provides general direction for SFSA's operation.</p> <p>The Director General is responsible for the day-to-day operations of SFSA.</p>	<p>Commissioners are responsible for reviewing the strategic plans of ASIC, setting national priorities and approving business plans of each directorate.</p>	<p>The Chairman of SEC has the powers with respect to:</p> <p>(a) the appointment and supervision of personnel employed under SEC;</p> <p>(b) the distribution of business among such personnel and among the administrative units of SEC; and</p> <p>(c) the use and expenditure of funds.</p>

Table 1 — Comparison of the governance structure of selected overseas securities and futures regulators (cont'd)

	United Kingdom	Singapore	Sweden	Australia	United States
Accountability	<p>FSA, governed by the Board, is accountable to the Treasury and ultimately to Parliament for its own performance.</p> <p>The CEO is accountable to the Board.</p>	<p>The MAS Board is ultimately accountable to the Parliament of Singapore through the Minister in charge of MAS.</p> <p>The Managing Director is answerable to the Board for his acts and actions.</p>	<p>The SFSA Board reports to the Ministry of Finance, which is accountable to the Swedish Parliament.</p> <p>The Director General reports to the Board.</p>	<p>ASIC reports to the Australian Parliament, the Treasurer and the Parliamentary Secretary to the Treasury.</p>	<p>The congressional accountability of the Commissioners is mainly achieved through the requirement for the Senate to give consent to their appointments.</p> <p>The Chairman is governed by general policies established by the Commission and by regulatory decisions, findings, and determinations legally made by the Commission.</p> <p>Appointments of the heads of major administrative units made by the Chairman are subject to the approval of the Commission.</p>

Table 1 — Comparison of the governance structure of selected overseas securities and futures regulators (cont'd)

	United Kingdom	Singapore	Sweden	Australia	United States
Remuneration	<p>The remuneration of the Chairman and the CEO is decided by the Remuneration Committee of the Board.</p> <p>The CEO's remuneration level is in line with comparable roles in the financial markets and other similar regulatory bodies.</p> <p>No information on the criteria to determine the remuneration level of the Chairman.</p>	<p>The President determines the remuneration and allowance for the Chairman and the Managing Director.</p> <p>Both the salaries of the Chairman and the Managing Director <i>"follow the framework of public sector salaries which are benchmarked against private sector incomes"</i>.</p>	<p>The government determines the remuneration of both the Chairman and the Director General.</p> <p>No information on the criteria to determine the remuneration levels of the Chairman and the CEO.</p>	<p>The Commissioners' remuneration is set by the Remuneration Tribunal.</p> <p>The Commissioners' remuneration levels are expected to be comparable to similar positions in other regulatory bodies.</p>	<p>The Commissioners' remuneration is governed by law. The Chairman is paid at a rate for Level III of the Executive Schedule, while other Commissioners are paid at a rate for Level IV.</p>

Table 1 — Comparison of the governance structure of selected overseas securities and futures regulators (cont'd)

	United Kingdom	Singapore	Sweden	Australia	United States
Review	The Board has recently undertaken a review of its effectiveness, with the assistance of external consultants. The outcome of the review and follow-up actions are expected to be released in the summer of 2005.	No.	No.	The government is conducting an assessment on the ASIC's governance structure which is expected to be completed in the first quarter of 2005.	No.

Prepared by CHAU Pak kwan
 28 December 2004
 Tel: 2869 9593

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Appendix**The Roles of the Chairman and the Chief Executive of
the Financial Services Authority****Role of the Chairman**

1. The Chairman has no executive responsibility for the day-to-day running of the FSA.
2. His key responsibilities are to:
 - i. establish and develop an effective Board;
 - ii. lead the Board as a team;
 - iii. plan and manage the Board's business;
 - iv. establish priorities for the FSA;
 - v. maintain and develop a productive relationship with the FSA Chief Executive, for whose recruitment he is responsible;
 - vi. with the Chief Executive, lead the communication of FSA policies with a wide range of constituencies. One purpose of this communication programme is to establish a clearer profile for the FSA, rather than one of an individual;
 - vii. represent the FSA on particular national and international financial institutions;
 - viii. establish and maintain high level contacts with the most important financial institutions worldwide;
 - ix. act as an accountability focus for the FSA, chairing its annual public meeting, giving evidence to select committees, and writing to the Chancellor (if needed) on the most significant issues arising under the formal exchange of letters of December 2000; and
 - x. represent the FSA in the most senior meetings of the Tripartite Standing Committee, alongside the Chancellor and Governor.
3. The Chairman discharges his responsibilities by ensuring:
 - i. the effectiveness of the Board in relation to (insofar as the Treasury can be influenced) the balance of Board appointments; the responsibilities, chairmanship and effectiveness of Board committees; the agenda for Board meetings; the relationship between executive and non-executive Board members; and the provision of appropriate, quality and timely information for directors;
 - ii. that the FSA's strategy is formulated clearly and is well understood internally and externally;
 - iii. that he provides a source of counsel and of challenge to the Chief Executive on how the FSA is run. This includes feedback to the Chief Executive on senior management performance, development and succession, and on organisational structure;
 - iv. regular evaluation of the performance of the Board, its committees and individual directors; and
 - v. that he is properly briefed on FSA business to enable him to discharge his duties as Chairman, and to represent the FSA publicly. The Chairman has an unlimited right to consult any FSA employee, require information on any aspect of FSA business, and attend any executive meeting within the FSA. He will not normally chair any executive committee.



Appendix (cont'd)

4. The Chairman and Chief Executive will discuss all major issues and emerging policies through frequent and normally informal meetings.
5. The Company Secretary will report to the Chairman.
6. The Chairman will chair the Appointments Committee of the Board.
7. The Chairman will represent the FSA on the Court of the Bank of England, CESR and the Financial Stability Forum.

Role of the Chief Executive

1. The Chief Executive is responsible for implementing the strategy agreed by the Board, in whose formulation he will have played a major part. He has the executive responsibility for the FSA's business under authority delegated to him by the FSA Board.
2. The key responsibilities of the Chief Executive are:
 - i. reporting regularly to the Board with appropriate, timely and quality information so the Board can discharge its responsibilities effectively
 - ii. informing and consulting the Chairman on all matters of significance to the Board so that the Chairman and Board can properly discharge their responsibilities;
 - iii. developing and delivering the strategic objectives agreed with the Board;
 - iv. recommending to the Board significant operational changes and major capital expenditures where these are beyond his delegated authority;
 - v. assigning responsibilities clearly to senior management and overseeing the establishment of effective risk management and control systems;
 - vi. recruiting, developing and retaining talented people to work at the FSA; and in particular establishing a strong management team which is fairly and fully evaluated;
 - vii. communicating throughout the FSA the strategic objectives and the values of the FSA agreed with the Board, and ensuring that these are achieved in practice;
 - viii. sharing with the Chairman and with other members of the FSA senior management the responsibility for communicating the FSA's messages externally;
 - ix. represent the FSA on selected international financial institutions.
3. All FSA staff, other than the Chairman's immediate staff and the Company Secretary, report to the Chief Executive.

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Powers to Impose Sanctions on Listed Issuers and Directors

Jurisdiction	Powers to Impose Sanctions on Listed Issuers and Directors	Regulatory Decision Making Process
North America		
Canada – Ontario	<p>On April 7, 2003, Ontario’s Securities Act was amended so that the Ontario Securities Commission (OSC) has the new power under s.127 to order –</p> <ol style="list-style-type: none"> 1. The payment of an “administrative penalty” of up to CAD\$1 million (US\$808,600) if a person or issuer fails to comply with the Securities Act. 2. The disgorgement of amounts obtained as a result of the non-compliance. The OSC will be able to apply amounts it receives from disgorged profits to funds used to aid any third parties approved by the Minister of Finance. <p>Other sanctions that the OSC may impose include –</p> <ol style="list-style-type: none"> 3. An order that a person or company be reprimanded. 4. An order that a person resign one or more positions that the person holds as a director or officer of an issuer. 5. An order that a person is prohibited from becoming or acting as a director or officer of any issuer. 	<p>The OSC has adopted a model in which Board members (Commissioners) sit in panels of three to decide disciplinary cases. Currently, eight out of the 11 Commissioners are non-executive.</p>
United States	<p>The US is one of the most complex of the regimes with laws at both Federal and State levels and considerable jurisprudence built</p>	<p>The SEC, like all other public agencies in the US, is required by the Administrative Procedure Act 1946 to</p>

	<p>up over 80 years.</p> <p>Under s.21(d)(3) of the Securities Exchange Act of 1934, the US Securities and Exchanges Commission (SEC) may bring an action in court seeking money penalties in civil actions up to US\$100,000 (a natural person) or US\$500,000 (any other person) for each breach and/or disgorgement of profits. Proceedings are settled with corporations agreeing to pay far higher penalties. In each of its last two fiscal years, the SEC has obtained judgments (principally settlements approved by the Court) for more than US\$2 billion in civil penalties. According to the SEC, this has resulted in a profound shift in the corporate culture towards cooperation and compliance.</p> <p>At the Federal level, the SEC does not have specific power to impose monetary penalties on issuers and their directors in its own administrative proceedings unless they are regulated entities. However, in practice it uses undertakings in administrative settlements to achieve the same result. Corporations agree to settlements to stem the cost and negative publicity of otherwise protracted litigation with the SEC, whilst bringing finality without any admission of wrongdoing. Corporations fear that formal findings in administrative proceedings will provide a basis for class action lawsuits resulting in the award of damages for which directors may be personally liable.</p> <p>Legislation has been proposed (H.R. 2179) that would empower</p>	<p>appoint Administrative Law Judges to make disciplinary decisions. The Act provides that “[a]n employee or agent in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision...”. The SEC has five Administrative Law Judges who operate independently from the SEC but whose offices are co-located with those of the SEC.</p>
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the SEC to impose monetary penalties of up to US\$1,000,000 for a natural person and US\$2,000,000 for a corporation. This was supported by the SEC and sponsored by Representative Oxley (of Sarbanes-Oxley Act fame). It has not yet been approved by Congress.

At the State level, Eliot Spitzer, Attorney General of New York State, has also achieved notable settlements in a number of cases commenced under the New York State Securities Law, commonly known as the Martin Act. Adverse publicity and the fear of class action law suits have, again, been key elements motivating corporations to settle.

Apart from financial penalties, in the SEC's own proceedings, the SEC may make an order –

1. Requiring disgorgement of any ill gotten gains by issuers and their directors.
2. Requiring the issuer or director to cease and desist from committing violations of the securities laws and from any future violation of the same provisions and may, in addition, require compliance or future compliance with the laws.
3. Prohibiting any person who has violated s.10(b) of the Securities Exchange Act from acting as an officer or director of a listed issuer (i.e. disqualification).

Europe		
Spain	<p>The imposition of sanctions for “very serious infringements” of the Securities Markets Act (SMA) (e.g. failure by a securities issuer to disclose price sensitive information which may have a significant effect on the price of an issuer’s shares) rests with the National Securities Markets Commission which can impose sanctions including –</p> <ol style="list-style-type: none"> 1. Administrative fines on persons and entities related to the securities market of up to 5 times the amount of the gross profit obtained as the result of the actions or omissions of which the infringement consists. In the event that this criterion is not applicable, fines may be imposed up to the <u>greatest</u> of the following amounts: <ul style="list-style-type: none"> - 5% of the equity of the breaching company; - 5% of the total funds whether or not belonging to the company, used to commit the breach; and - about Euro 300,000 (US\$391,700). <p>As the fine is a multiple of the gross profit this is effectively a combined fining/disgorgement power.</p> 2. Suspension for up to one year, of the exercise of any director or management position within the breaching entity. 3. A public reprimand. 4. A private reprimand. 	<p>The disciplinary process follows defined steps and the whole procedure must be in writing. The National Securities Markets Commission internally then decides whether to impose sanctions. If the behaviour is considered a very serious infringement, the National Securities Markets Commission proposes the sanction and the Ministry of the Economy makes the decision.</p>

	<p>Where the breaching party is an entity (not a person), the National Securities Markets Commission may also impose one of the following sanctions <u>on members of the senior management</u> of the entity who are responsible for the infringement :</p> <ol style="list-style-type: none"> 1. A fine up to the <u>greater</u> of the following amounts: <ul style="list-style-type: none"> - 5% of the total funds, whether or not belonging to the company, used to commit the breach. - about Euro 300,000 (US\$391,700). 2. Suspension for up to three years from exercising his position within the breaching company. 3. A public reprimand. 4. A private reprimand. 	
United Kingdom	<p>Under the Financial Services and Markets Act (FSMA), if an issuer of listed securities or a listing applicant has contravened any provision of the UK listing rules, the FSA may –</p> <ol style="list-style-type: none"> 1. Impose on the corporation and its directors a monetary penalty of such amount as it considers appropriate (i.e. an unlimited fining power). 2. Publish a censure statement. 3. Issue private warnings to issuers or directors. <p>The sanctioning decisions are made by the independent regulatory decision committee made up of non-official members.</p>	<p>The Financial Services Agency (FSA) set up the Regulatory Decisions Committee (RDC) administratively as an FSA committee in response to section 395(2) of the FSMA. This section provides that the decision-making “procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give any...[supervisory, warning or decision]...notice is taken by a person not directly involved in establishing the evidence on which that decision is based”. The RDC is made up of 24 persons, all but one of whom (the chairman) being external to the FSA. It sits in</p>

		<p>separate panels of eight to consider warning notices and panels of three to consider decision notices. The RDC is under review. The FSA is currently conducting the Enforcement Process Review which covers “the options for making regulatory decisions based on a fair procedure by persons not directly involved in establishing the evidence on which those decisions are based, as required by the FSMA”.</p>
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Asia-Pacific		
Singapore	<p>Under the Securities and Futures Act 2001 (SFA), the Monetary Authority of Singapore (MAS) may commence civil proceedings in court for failure to provide the securities exchange with information that the listing rules require to be disclosed (i.e. contravention of s.203 SFA).</p> <p>For an individual, including directors and officers, the maximum level of fines is 3 times the amount of profit gained/loss avoided or S\$50,000 (US\$30,200), whichever is greater. If no profit gained/loss avoided, then the maximum is S\$2 million (US\$1.21 million).</p> <p>For an issuer, the maximum level of fines is 3 times the amount of profit gained/loss avoided or S\$100,000 (US\$60,400), whichever is greater. If no profit gained/loss avoided, then the maximum is S\$2 million (US\$1.21 million).</p> <p>MAS may, at its discretion, compound (settle) any offence under the SFA which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence (s.336 SFA).</p>	Under the SFA, the MAS can, with the consent of the public prosecutor, seek an order from the court requiring that a person pays a civil penalty to MAS.
Australia	In July 2004, the Australian Securities and Investment Commission (ASIC) was given a new power under the Corporations Act to issue	The ASIC has adopted a model of internal decision-making by a director of enforcement (who

	<p>infringement notices where there is a breach of continuous disclosure requirements. Infringement notices are designed to provide a fast and effective remedy so that redress is proportionate and proximate in time to the alleged breach.</p> <p>The penalty issued in the infringement notice imposed on issuers can be A\$33,000 (US\$25,800), A\$66,000 (US\$51,600) or A\$100,000 (US\$78,150) depending on the severity of the breach.</p> <p>If the notice is not complied with, and ASIC commences civil proceedings, a court could impose a fine of up to A\$1 million (US\$781,500).</p>	<p>has not been involved in the investigation) to whom such power has been delegated.</p>
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Mechanism for Reviews/Appeals on Regulatory Decisions Relating to Listing

Jurisdiction	Appealable decisions	Bodies handling appeals	Further appeals [if any]
North America			
Canada - Ontario	Decisions of a panel (comprising 3 Commissioners of the Ontario Securities Commission (OSC))	A review panel of OSC comprising 3 Commissioners of OSC	Divisional Court
United States of America	Decisions by an Administration Law Judge of the Securities and Exchange Commission	Commission [Review by Commissioners]	US Court of Appeals

Jurisdiction	Appealable decisions	Bodies handling appeals	Further appeals [if any]
Europe			
Spain	Decisions to impose sanctions for very serious infringements of the Securities Markets Act (e.g. failure to disclose price sensitive information is a “very serious infringement”) by the National Securities Market Commission	Spanish Administrative Courts	[Information not readily available]
United Kingdom	Any decision of the Financial Services Agency	Financial Services and Markets Tribunal	Court of Appeal or Court of Session in Scotland

Jurisdiction	Appealable decisions	Bodies handling appeals	Further appeals [if any]
Asia-Pacific			
Australia	Any decision (save decision to issue an infringement notice) by the Australian Securities and Investment Commission	The Administrative Appeals Tribunal	The Federal Court of Australia
Singapore	Any decision by the Monetary Authority of Singapore (MAS) [Note: Administrative sanction, which includes a civil penalty fine agreed pursuant to a settlement, is not a decision of MAS but imposed pursuant to a court order]	Minister for Finance [who will constitute an Appeal Advisory Committee of 3 members to make a recommendation to him, though he is not bound to accept the recommendation]	Nil (The decision of the Minister for Finance will be final)