

Proposed re-delineation of the Financial Services Functional Constituency

SUMMARY

The composition of the Financial Services Functional Constituency ("FS FC") is defined under section 20U of the Legislative Council Ordinance (Cap. 542). At present, the securities and futures industry "sub-constituencies" are composed of *members* of the Stock Exchange of Hong Kong ("SEHK") and *members* of the Hong Kong Futures Exchange ("HKFE") who are entitled to vote at their respective general meetings. It is proposed that the FS FC be redefined to replace "members" of the exchanges by "*exchange participants*" after the merger. The amendment is reflected in sections 71 to 73 of Schedule 2 of the Exchanges and Clearing Houses (Merger) Bill.

DETAILS

Current Composition of the FS FC

2. The composition of the FS FC is defined under section 20U of the Legislative Council Ordinance. It provides that –

"[t]he financial services functional constituency is composed of –

- (a) members of the [Stock Exchange of Hong Kong] entitled to vote at general meetings ...;
- (b) members of the [Hong Kong Futures Exchange] entitled to vote at general meetings ...; ..."

The FS FC also includes members of the Chinese Gold and Silver Exchange Society along a similar principle.

3. The eligibility of members to vote at general meetings of the SEHK and the HKFE are set out in their respective constitution. In essence, all SEHK members (who are also shareholders) are entitled to vote at general meetings except in the circumstances of death, bankruptcy or insolvency. Members whose membership is suspended are also not entitled to vote at general meetings. Suspension may be due to, for instance, disciplinary actions and failure to pay dues to the SEHK. Such members are therefore also not entitled to register as electors of the FS

FC under the current delineation of the constituency.

4. In respect of the HKFE, not all shareholders are members of the exchange. Essentially, only shareholders who can prove to the exchange that they are capable of conducting the futures business will be admitted as exchange members. As at mid-1999, there were 59 shareholders of the HKFE who were not members of the exchange and were not entitled to vote at general meetings. They are therefore also not eligible for elector registration under the current delineation of the FS FC.

Removal of membership structure of the exchanges

5. As set out in the Scheme of Arrangement documents of the two exchanges for the merger, the ownership of shares in the exchanges or, after the merger, the Hong Kong Exchanges and Clearing Limited ("HKEC") and access to the trading facilities of the exchanges will be separated upon merger. Persons who are shareholders of the two exchanges immediately prior to the coming into effect of the merger will be issued one trading right per each share they hold of the respective exchanges. The trading right will confer on its holder the eligibility to trade on the relevant exchange (such eligibility is presently derived from the holding of shares in the exchanges). Clause 23 of the Bill further provides that existing members of the two exchanges will be deemed to be exchange participants upon the coming into force of the Bill, provided that they continue to be validly registered with the SFC as dealers.

Proposed Re-delineation of the FS FC

6. Following the merger and the consequential removal of the existing membership structure of the exchanges, the current composition of the FS FC also needs to be changed. Notwithstanding the merger, it is believed that the FS FC should continue to be constructed upon the concept of "traders of the exchanges" which is also central to the current delineation. With the replacement of "members" by "exchange participants" following the merger, it is proposed that the FS FC should likewise be re-delineated. Subject to the enactment of the Bill, the re-delineation will apply to the 2000 Legislative Council election.

7. The general policy for the delineation of the functional constituencies is that the electorate should be representative of and have a substantial connection with their respective sectors. After the merger, existing members of the exchanges will in principle continue to be

allowed to trade on the respective exchanges in their new capacity as “exchange participants”. The Administration believes that it is in line with the general policy and the existing delineation of the FS FC that the “exchange participants” replace “members” for the purposes of registration as electors for the FS FC.

8. Currently, there are a small number of “active” members in SEHK who are for various reasons currently not trading on the market. After the merger, these non-trading members, depending on why they are not trading, may or may not be admitted as “exchange participants” by SEHK and therefore may or may not be eligible for registration as electors of the FS FC under the proposed re-delineation. Whether they will or will not be eligible depends essentially on whether they continue to be registered by the SFC as dealers and whether they continue to run their broking business as “exchange participants”. As at late October 1999, there are altogether 21 members out of a total of nearly 600 members of the Stock Exchange whose membership is active but who are not trading.

9. The proposed re-delineation will not affect the eligibility of the members of the HKFE for registration as electors under the FS FC.

Comparison with the Legal Functional Constituency

10. The basis for the new delineation of FS FC is not unique and an analogy can be drawn with the Legal Functional Constituency.

11. Section 20F of the Legislative Council Ordinance (Cap.542) defines the eligibility criteria of electors for the Legal FC. Section 20F(a) and (b) state that members of the Law Society of Hong Kong and of the Hong Kong Bar Association entitled to vote at the respective general meetings are eligible to be registered as electors for the Legal FC.

12. Article 3(a) of the Memorandum of the Law Society of Hong Kong states that “[e]very solicitor shall upon evidence that he is eligible to hold a Practising Certificate entitling them to practise as a solicitor of the Supreme [High] Court of Hong Kong be entitled to apply for admission to membership of the Society”. Article 34C states that every member shall have one vote at its general meeting.

13. Section 3 of the Rules and Regulations of the Hong Kong Bar Association defines the eligibility of its membership. According to this section, any “practicing barrister” or “employed barrister” is eligible to

become a member of the Bar Association.

14. Our understanding after consultation with the legal advice is that only a practising lawyer is eligible to be registered in the legal FC by virtue of membership of the Law Society of Hong Kong or the Hong Kong Bar Association. This is notwithstanding that a retired and non practising lawyer remains qualified for the profession. The basis for the delineation/re-delineation of Legal FC and FS FC are therefore similar to each other in the sense that both in effect require their electors to be directly involved in the relevant business, thereby observing the general principle that the electorate should be representative of and have a direct connection with the sector concerned.

Financial Services Bureau
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