Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

Summary of Public Comments and Administration's Response on Part VI of the Securities and Futures Bill

Clause no.	Respondent	Respondent's comments	Administration's response
Part VI – Capital Requirements, Client Assets, Records and audit relating to Intermediaries			
142	HKISD	Under the existing Financial Resources Rules (FRR), a regulated company might have breached the FRR under circumstances beyond its control. For instance, the violation may be due to the substantial decline of the prices of shares held by its clients, or mergers resulting in the securities held by clients relating to connected companies, or financial difficulties of clients leading to bloated bad debts on the part of the company. In such cases, it may take the securities company some time to rectify the situation . It is very undesirable to require cessation of business at this stage, which is prejudicial to the interests of both the company and the investing public.	We take failure by a licensed corporation to maintain financial resources in accordance with the prescribed amount, which may cause financial damages to its clients, counter-parties and the clearing house, for example, most seriously. For this reason, there is an early warning system under the FRRs (a licensed corporation is required to notify the SFC when their liquid capital becomes less than 120% of the required minimum) to alert the licensed corporations and the SFC of potential financial compliance problems. The licensed corporations should keep a reasonable "buffer" against market movements and where possible prepare for the risk of actual breach by arranging capital injection. That said, as explained in paragraph 6 of Paper No.6/01, we are conscious that "unnecessary" cessation of business of a licensed corporation is indeed not in the clients' best interest. Clause 142(2) therefore provides the SFC with the flexibility to allow the relevant licensed corporation to continue business subject to conditions as the SFC may impose. Currently, the SFC has indeed given the concerned companies a chance to find the necessary funding to rectify the deficiency and may also allow trading to continue subject to conditions. The SF Bill seeks to codify the practice.
142(4)(a)	HKISD	Very vague requirement. Need supplementary guidelines.	This clause, requiring companies to keep records in sufficient detail to ascertain whether the FRRs are being complied with, is not new (see section 83(4A) of the Securities Ordinance). This has not caused any problem so far. In practice, it is difficult to be more prescriptive about the records kept given that licensed corporations are of varying size and nature. The SFC is prepared to respond to specific enquiries on the records required.
142(14) or 143	HKISD	It is absolutely unfair to impose imprisonment when there is no public damage created.	Clauses 142(14) and 143(8) are consistent with other enabling powers in Part VI. Breaches of the FRR are serious offences and custodial sentences need to be available as a deterrent where appropriate. The SFC will specify in the FRR only those essential requirements the breach of which (if without reasonable excuse), as constituting criminal offence. The comment goes to the court's sentencing discretion. We agree a prison term will not often be appropriate. (Please also see the Administration's response to comments on SFC's rule-making power on page 10.)

Clause no.	Respondent	Respondent's comments	Administration's response
143(8)	HKISD	The term "imprisoning a licensed corporation" is vague. Guidelines should be made to clarify who would be held liable, eg, employees without knowledge.	By virtue of clause 378, where the commission of an offence by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or person purporting to be acting in any such capacity, that person will also be guilty of the offence. "Officer" in relation to a corporation means a director, manager or secretary of, or any other person involved in the management of the corporation.
144	HKAB	In the event that one bank in a group (the associated entity AI) acts as custodian of securities or collateral of clients of another bank in the group (which is an exempt AI) it should be made clear that rules under Part VI may only apply to the former where the latter received the securities or collateral in the course of regulated activities.	"Client securities" and "client collateral" are defined in Schedule 1 to the SF Bill to mean in so far as an exempt AI is concerned those assets in relation to the conduct of the regulated activity. The enabling rule-making power in clause 144 is phrased as "The Commission may make rules requiring intermediaries and their associated entities to treat and deal with **client securities** and **collateral of the intermediaries**, and to ensure that **client securities** and **collateral of the intermediaries** that are received or held by any other person on their behalf are treated and dealt with, in such manner as is specified in the rules.". It should be apparent that the rules to be made under clause 144 apply only to client securities and client collateral of an exempt AI in relation to the conduct of the regulated activity. Clauses 144(6) and (7) serve as additional safeguards.
144	HKAB	Exempt AIs should not be required to create separate custodian accounts or to differentiate between securities received in the course of regulated activities and those not so received. Such a requirement would cause immense practical difficulties and increase cost. Moreover, customers prefer one account and a single set of account-opening documents. It may also be difficult for associated entity AIs to identify whether securities and collateral received from an intermediary are in fact client securities and collateral of that intermediary. In addition, it would be impracticable and increase cost to have to provide separate security documents and to have to enforce security interests separately, in respect of regulated business and other business.	It is a requirement under existing legislation, for both dealers and exempt dealers, that clients' securities and securities collateral received must be dealt with in accordance with the law (currently sections 121AB, 81 and 81A of the Securities Ordinance). There is actually no differentiation, for the exempt dealers, as to how these securities and securities collateral came about – i.e., whether from regulated activities or not. The SF Bill does not mandate such segregation. The rules to be made under clause 144 will be drafted wide enough to ensure that current banking practice that allows cross collateralisation can continue. Moreover, we have ensured that the rules will not hamper the current practice regarding enforcement of securities.

Clause no.	Respondent	Respondent's comments	Administration's response
144	HKAB	The restrictions imposed by section 81(5) of the Securities Ordinance on the ability of a dealer to dispose of the client's securities (even where the client is in default) are not necessary as long as the dealer has an express power of sale in its terms of business with the client. Unlike under section 81(6) of the Securities Ordinance, it is understood and welcomed that the rules to be made under the Bill will expressly permit a Hong Kong intermediary, with a client's authority, to participate in securities lending programs on the client's behalf.	This refers to the restrictions whereby the dealer has to first dispose of other assets that have been pledged as collateral. The SFC will propose in the Client Securities Rules to be made under clause 144 that this restriction as regards the disposal of client's assets does not apply if there is written client agreement authorizing the disposal and the disposal is in accordance with the requirements. This is a correct understanding.
144	HKAB	Unlike under section 81A(6) of the Securities Ordinance, dealers should be able to use securities as collateral in respect of transactions of the dealer on overseas exchanges. This should be set out in the rules to be made under clause 144.	The new client securities rules will only cover securities and collective investment schemes listed on a recognized exchange company and received or held in Hong Kong, and will not generally prohibit, for example, clients' securities to be deposited with overseas exchanges or clearing houses as collateral.
144	HKAB	It is unnecessary for the client's consent to the use or disposal of securities by the intermediary to be renewed annually because the clients are able to withdraw such consent at any time (save in respect of liabilities already in existence).	The new client securities rules provide for the right of disposal to be incorporated in a written agreement. This written agreement does not have to be renewed annually. However, for the repledging of securities collateral with banks, use of securities collateral for securities borrowing and lending, deposit securities collateral with clearing houses as collateral, intermediaries (both licensed and exempt) must obtain client authority. And this client authority has to be renewed annually, although this annual renewal can in writing or through conduct clearly indicating an intention to renew. We do not intend to drop in this regard the annual renewal requirement for client authority as we wish to give investing public an annual opportunity to be reminded that they should consider whether they need to continue with the client authority. We may also further relax this with regards to professional investors in due course.

Clause no.	Respondent	Respondent's comments	Administration's response
144(2)	HKAB	Rather than being set out in rules, the Bill itself should include provisions that permit disposals of securities held for safe custody or as collateral in certain specified circumstances with the written consent of the client. Similarly it should be clarified in the Bill that any sales proceeds from such disposal may then be used to reduce the liability of the client to the intermediary.	The overall regulatory thrust is to leave the detailed requirements to the Rules to retain the flexibility to respond quickly to market changes. We have worked closely with the working group on the right of disposal to ensure that they do not create practical difficulties for the AIs. Please see the response in page 10 in respect of the rule-making power of the SFC. Again, we are satisfied that the situation can be addressed properly and adequately through the client securities rules to be made under clause 144.
146	HKAB	Where an intermediary has deposited client securities with an authorized institution as security for a loan, it is essential for the protection of the lender that its security rights remain enforceable notwithstanding that (unknown to the lender) the client had not given the necessary authority or the authority had not been renewed. Clause 146 is insufficient since a lien would not give the lender the right to dispose of the securities. There should be a broader provision to protect lenders who, in good faith, accept client securities from an intermediary as security for a loan.	The HKAB's question cannot be addressed in the Bill (which seeks to maintain the status quo by retaining the same provision on lawful claims and liens as we have now in ss.81B, 86 and 121AO of the SO). The concern raised is in fact a general issue, whether it is about client securities pledged by an intermediary or not. Pending further development, we take the view the matter is best left to the Court to decide. It is our understanding that pledges or charges are routinely entered into to secure a loan so bolstering a lien and these accord a right of sale in cases of default.
147	HKAB	There may be a concern that an AI will need to keep parallel records to satisfy both SFC and HKMA requirements, involving duplication of effort and an artificial separation of regulated and other activities. It should be ensured that the rules made by the SFC do not result in separate records needing to be maintained.	We entirely agree that duplication should be avoided. The SFC is engaging the banking sector (and the broking community as well) in preparing the draft rules to make sure they are appropriate. Moreover, the SFC shall consult the HKMA on the making of any rules affecting exempt AI, and endeavor to minimize regulatory overlap.
147	HKAB	It would be helpful if the rules made clear that records could be maintained by an affiliate or by a service provider, whether in or outside Hong Kong, as long as there are appropriate arrangements in place to ensure that the records are accessible to the Hong Kong intermediary and the SFC.	Agreed. The SFC will prepare the rules to the effect that they will not reject generally premises of an affiliate of an intermediary or an overseas premises, provided the premises are suitable and there are appropriate arrangements in place to ensure that the records are accessible to the intermediary in Hong Kong and the SFC.

Clause no.	Respondent	Respondent's comments	Administration's response
147	HKAB	Under the current laws and regulations, there are various record-keeping and accounting requirements. These include Section 67 of the Securities Ordinance, which requires a dealer or investment adviser to maintain a register of the securities in which it has an interest, in a manner and form approved by the SFC. The reason for this requirement is unclear, and it is to be hoped that it will not be repeated in the rules to be made under the Bill.	The rules to be made under the SF Bill will not seek to re-enact the present requirement (section 67 of the Securities Ordinance) for the maintenance of a register in a form and manner approved by the SFC. Instead, the SFC will prescribe by rules the requirements that a licensed corporation or an exempt AI shall cause records to be kept to show all securities that are the dealer's property, showing by whom the securities are held and where they are held by some other person, whether or not they are held as security against loans or advances.
148	HKAB	There is concern that the application of these rules to exempt AIs may lead to duplication of effort and artificial separation of banking and investment-related services provided to a customer. In particular, it does not make sense to require AIs under Clause 148(2)(b) to send statements of account separate from the general banking statements to clients to whom financial accommodation has been provided.	We entirely agree that duplication should be avoided. The SFC is engaging the banking sector (and the broking community as well) in preparing the draft rules to make sure they are appropriate. Moreover, the SFC shall consult the HKMA and endeavor to minimize regulatory overlap. As regards the specific concerns over the provision of financial accommodation, clause 148(5) reads "Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are exempt persons, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute the regulated activities for which they are exempt as exempt persons." As the provision of financial accommodation by AIs on its own is not a regulated activity the rules made under clause 148 will not have application in respect of financial accommodation provided by AIs.
148	HKAB	It would be helpful if the rules could make clear that with the client's consent all the information required to be provided under this clause can be provided electronically.	The SFC intends to write a paragraph on this in the Rules.
150(1)	HKISD	One business day is very short notice, especially as the fine is set at level 5. Does this section specifically refer only to the "removal of an auditor" before the expiry of its term?	One business day actually relaxes the existing requirement in section 87B of the Securities Ordinance which requires immediate written notice to the SFC. The fine at level 5 is considered reasonable and is consistent with other penalty provisions in Part VI. The clause covers in addition to removal of an auditor before the expiry of his term, also the replacement of an auditor or the decision not to re-appoint an auditor upon the expiration of his term, and also any other circumstances where an auditor ceases to be an auditor of a licensed corporation prior to the expiration of his term.

Clause no.	Respondent	Respondent's comments	Administration's response
150(2)	HKISD	It appears that the duty to report the removal of an auditor in respect of an associated entity is the responsibility of the licensed corporation. What is the definition of "associated entity"? What if the associated entity has different major shareholders and management?	A licensed corporation or an associated entity is caught only if it "contravenes subsection (1)", and hence the requirement regarding notification of removal of auditors of an associated entity applies directly to the associated entity, not indirectly via the licensed corporation. "Associated entity" is defined in Schedule 1. "Controlling entity" and "controlling entity relationship" are also defined in Schedule 1 and depict the exact relationship by which, among others, a company will be regarded as an associated entity of an intermediary.
153	HKAB	Under clause 153 an auditor of an associated entity which is also an AI should be required to report certain matters to the HKMA only, but not to SFC..	The concern here is about an AI that is an associated entity of a licensed corporation, which is under direct regulation by the SFC. Given the intertwining nature between the operation of a licensed corporation and its associated entity, we take the view the SFC should at the first instance be informed of the irregularities and take action as appropriate.
153(2)	HKISD	A licensed corporation cannot enforce the rules against an auditor.	The requirement applies directly to the auditor, not indirectly via the licensed corporation.
154	CK Low	It is not advocated that there should be a duty to detect fraud. However, an auditor should be mandated to report irregularities if these are detected in the ordinary course of the audit.	Clause 153 does impose a duty upon the auditor of a licensed corporation and an associated entity of a licensed corporation an obligation to report certain "reportable matters" to the SFC and the HKMA. Clause 154 indeed deals with the immunity in respect of more general communications that may be made by the auditor to the regulators. The policy intention is for this to cover where an auditor is "reporting" and not to cover "detecting", as clause 154(1)(a) stipulates that it is the information that the auditor "becomes aware of".
155 & 156	HKAB	It would be desirable for the power of appointing auditors under clauses 155 and 156 to be exercisable by the HKMA, instead of the SFC.	The concern here is about an AI that is an associated entity of a licensed corporation. Given the intertwining nature between the operation of a licensed corporation and its associated entity, we take the view the SFC should be the authority to appoint an auditor in the circumstances. At any rate, under clause 155(3), the SFC shall consult the HKMA in respect of the appointment and the scope of examination.

Clause no.	Respondent	Respondent's comments	Administration's response
156	HKSA	The reference to an auditor being appointed by the Commission to "examine and audit … the accounts and records of the licensed corporation …" may not be appropriate. The term "audit" in relation to the work of auditors has a specific technical meaning. It is unclear what is intended in the context of this provision as the juxtaposed terms "examination" and "audit" would ordinarily represent two completely different things. It appears that an auditor appointed under clause 156 will not have been appointed to give an opinion on the financial statements of the company as such, in which case the term "audit" would need to be qualified.	We have used the word "audit" to mean a series of steps which auditors take in relation to matters of concern, for example, to vouch for the existence of an asset, to reconcile records, to circularize balances of bank accounts, clients and counterparties, and check reasonableness of valuation etc. The word "audit" is now used in similar contexts in section 53 of the Commodities Trading Ordinance, sections 91 and 121AX of the Securities Ordinance and section 34 of the Leveraged Foreign Exchange Trading Ordinance. One would generally expect the terms of reference to outline the scope of auditor's work being different for each assignment and not for these to be laid out in the primary legislation. Generally, the scope of work in such a case will well be something less than a full audit.
		The engagement under clause 156(2) should be confined to looking into the specific allegations to which the provision refers so that it is not open-ended and uncertain.	Note that the terminology is the same under the existing legislation. A full audit may be necessary in exceptional cases and the inquiry may extend beyond specific allegations - these allegations may simply point to more widespread problems.
		It is questionable that a decision to appoint an auditor should be an excluded decision under Schedule 7, and therefore not susceptible to appeal to the Securities and Futures Appeals Tribunal.	"Excluded decisions" set out in Part 3 of Schedule 7 to the SF Bill refer to those decisions made in respect of AIs and are appealable to the Chief Executive in Council, as governed by clause 225 of the SF Bill. The arrangement is consistent with the appeals lodged by an AI under the Banking Ordinance. Clause 156 is included as item 9 of the list in Part 3. In the case where the decisions are made in respect of non-AIs under the SF Bill, they would be appealable to the Securities and Futures Appeals Tribunal if they are "specified decisions" and included in Part 2 of Schedule 7 to the SF Bill. Clause 156 is included as item 45 of the list in Part 2.

Clause no.	Respondent	Respondent's comments	Administration's response
156(1)(b)	HKSbA	A compliant by the client that his instructions were not followed should not be a statutory cause of complaint leading to an audit on the intermediary as it could be abused by the clients and would be a nuisance to the industry. The Commission should not depart from its power to investigate the dispute and leave it to an appointed auditor.	The SFC is required to give the concerned licensed corporations and the associated entity an opportunity of being heard. The SFC will only appoint an auditor where, having considered the explanations from the licensee or its associated entity, it is satisfied that the person making the application has a good reason to do so, and the appointment would be in the interest of concerned parties or the public. Moreover, the SFC may, having taking into consideration, among others, the conduct of the relevant parties, order the person making the application to bear the cost of the examination and audit. We consider this would deter irresponsible applications. Further, in the light of the market concerns, we have introduced in the SF Bill an additional safeguard that the person making the application must verify all statements in his application by statutory declaration. Moreover, we have confined the previous immunity available to the person making the application against any civil liability (proposed under the White Bill) to liabilities arising from the law of defamation only. This revised scope of immunity is in line with the existing immunity conferred under section 121AX(4) of the Securities Ordinance which is the origin of clause 156. The decision of the SFC to appoint an auditor is appealable to the Securities and Futures Appeals Tribunal.
156 – 158	HKISD	The cash deposit payable by a licensed corporation for the costs of an auditor may disrupt normal business and constitute a penalty imposed before a verdict is given. The amount payable should be capped (eg, at 200K). There should be provision for recovery of expenses by the licensed corporation if it is exonerated by an audit. Auditors cannot be given the power to examine on oath. There is a strong reservation against a transfer of the SFC's authority of inquiry to auditors.	See above The payment for the costs of auditor is on a reimbursement basis. No cash deposit on the part of the licensed corporation is required. The SFC in exercising its power under clause 156(8) to direct payment of costs of an auditor will have regard to, among others, the conduct of the licensed corporation before or after the appointment of the auditor. In addition, the cost recovery may not necessarily be from the licensed corporation; it may be from the person making the application. See above. This is not new; such a power is contained in current law: see sections.93(a) and 121AZ(1)(a) of the Securities Ordinance, section 55(1)(a) of the Commodities Trading Ordinance and section 36(1)(a) of the Leveraged Foreign Exchange Trading Ordinance. Again, similar arrangement can be found in existing law: see sections 93 and 121AZ of the Securities Ordinance, section 55 of the Commodities Trading Ordinance and section 36 of the Leveraged Foreign Exchange Trading Ordinance. Moreover, this is also similar to the appointment of an external firm under section 143 of the Companies Ordinance to conduct an investigation.

Clause no.	Respondent	Respondent's comments	Administration's response
159(3)	HKSbA, HKISD	It is suggested that the presumption of guilty intent be removed from sub-paragraph (3) of section 159 because it is wrong to presume criminal intent in relation to neutral words such as "delete" and "alter". What exactly is meant by "it is proved…but … in the absence of evidence to the contrary, be presumed to have done"? Why is a person presumed to have done something? Please check this for compliance with the Bill of Rights Ordinance.	To "alter" or "delete" requires an action to be taken, rather than just an omission of an action. Hence, the person is presumed to have taken the action deliberately, in the absence of evidence to the contrary. Clause 159(3) is similar to current law; see section 96(2) of the Securities Ordinance, section 56(2) of the Commodities Trading Ordinance and section 152D of the Companies Ordinance. As regards compatibility with the Bill of Rights, the Department of Justice advised that Article 11(1) of the Hong Kong Bill of Rights does not prohibit presumptions of fact or of law that may operate against the accused. However, it does require that the states confine such presumptions "with reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence." The approach adopted by the Hong Kong courts is that if the fact to be presumed rationally and realistically follows from that proved and also if the presumption is no more than proportionate to what is warranted by the nature of the evil against which society requires protection, the presumption is compatible with Article 11. In the present case, Part VI imposes a duty on a licensed person or an exempt AI to keep accounts and records relating to his business. Further, rules will be made to provide for the period over which the records are to be kept. Thus, if a person deletes or alters the accounts or records, a logical connection exists between the facts relied on (the act of deletion or alteration) and the conclusion which is to be presumed (the deletion or alteration is done with intent to obstruct the examination and audit.) In other words, it appears more likely than not that the deletion or alteration is done with intent to obstruct the audit. As to the requirement of proportionality, the presumption is to go no further than is necessary in infringing the right to presumption of innocence having regard to the evil that is aimed at and the difficulty Government would have in combating it without the aid of the presumption. In the present case, the preservation of the integrity of the securities market and the protection of the interest of the investors may be regarded as of sufficient importance to warrant overriding a constitutional right. Further, it is difficult for the prosecution to prove the intention of the accused person in this kind of offences except by inference drawn from the acts done to the accounts or records whereas it would be a matter of comparative simplicity for a person with a bona fide reason to discharge the burden. The presumption is thus regarded as within acceptable bounds and a measured response to the legitimate aim to be achieved.

Clause no.	Respondent	Respondent's comments	Administration's response
General comments on the Bill			
Rule-making powers of the SFC	Charles Schwab/ HKSbA/ Group of Nine investment bankers/ Law Society/ KGI	Constructive comments can only be made when the rules are available in draft form. The public should be given ample time to study and comment on all the rules to be made by the SFC at a very early stage. This should be an express requirement in the Bill e.g. along the lines of clause 384(3). It could include an express 90 day consultation period as in some other jurisdictions. Even guidelines should be subject to public notice and adequate time for comment. There should be guidance on when the SFC will exercise its rule making power (under clause 163) or instead choose to issue a code of conduct (under clause 164). It is troubling that the SFC should have the power, in effect, to create criminal offences punishable with substantial fines and imprisonment. These offences could be offences of strict liability (subject only to the defence of "reasonable excuse"). This goes well beyond the current rule-making power of the SFC. The propriety, necessity and constitutionality of this is questionable. Any matters that attract criminal liability should be provided for in the Bill itself. If the SFC were to be given such power, its use must be carefully scrutinized e.g. subject to public consultation, vetting by LegCo and/or approval by CE in Council.	The prescription of those detailed and technical requirements as well as those requirements that require updating over time through subsidiary legislation, is fundamental to the scheme of the SF Bill. The basis for this approach is that, consistent with modern securities legislation such as the UK Financial Services and Markets Act, effective regulation depends upon the regulator having the flexibility to address changing market practices and global conditions by amendments to rules rather than amendments to the primary legislation. Such rule-making power is already a part of the existing law. By way of example, the FRRs introduced by the SFC in April 2000 was laid before the Legislative Council and examined by a Subcommittee before they came into effect. The rules made by the SFC are and shall continue to be subsidiary legislation and require negative vetting by the Legislative Council. The rule-making provisions in Parts VI and VII seek to enshrine the scope of these rules and the penalty maxima imposed for breach of such rules. These rules cover the handling of client's securities and money, the financial resources of a licensed corporation and the keeping of accounts and records, etc, which are essential tools for the SFC to protect the investors. As a standard practice, the SFC does conduct consultation with the market and allow reasonable period for the exercise, on emerging draft subsidiary legislation, just as it does with codes and guidelines. To illustrate, the SFC has already started preparing the key rules and guidelines to be made under the SF Bill. As a first step, the SFC has formed various working groups with market participants, and where appropriate, professional bodies to seek market input at an early stage in drafting those rules which are of more concern to the industry. The plan is to expose the draft rules to the market for consultation by phases. This should allay market concerns that either unworkable rules will be produced in a vacuum or that there might not be an early chance to consider and comment on the draft rules. Moreover, we have introduced changes to the effect that an offence will only be committed for breaches of most of the rules made under Parts VI and VII if the relevant act or omission is done without reasonable excuse or with intent to defraud.

Clause no.	Respondent	Respondent's comments	Administration's response
Territorial applica-tion	HKAB	In view of the additional regulation applying to an authorized institution conducting regulated activities as an exempt AI, it is important to have greater certainty as to the territorial scope of the new regime. For example, if a foreign bank with a branch in Hong Kong obtains exempt AI status, we assume that the Hong Kong regulatory regime will not apply if its London branch enters into securities or futures transactions with customers based in Hong Kong. Otherwise, duplicating and potentially inconsistent regulatory requirements would apply. Conversely, if a Hong Kong bank has a branch outside Hong Kong, while the HKMA exercises overall prudential supervision of the bank's operations as a whole, we assume that the detailed Hong Kong regulatory regime for investment-related activities (eg customer agreements, contract notes etc.) is not intended to apply to such activities conducted from that branch, which will be subject to the regulatory regime in the country where the branch is located.	The two assumptions in the HKAB comment are correct. Whether the activities of an overseas entity are subject to the regulatory regime under the SF Bill depends on whether they fall within the meaning and territorial scope of the SF Bill. They will not be required to be brought within the regulatory regime by reason only of having a branch or an affiliate that is subject to the regulatory regime under the SF Bill.

Details of Submissions referred to in the Comment / Response Table

Date received	Organization /party
30 January 2001	Hong Kong Institute of Securities Dealers ("HKISD")
23 January 2001	Hong Kong Association of Banks ("HKAB")
30 January 2001	Professor LOW Chee Keong, CUHK ("CK Low")
31 January 2001	Hong Kong Society of Accountants ("HKSA")
29 January 2001, 15 February 2001	Hong Kong Stockbrokers Association ("HKSbA")
29 January 2001	Charles Schwab
23 January 2001, 15 February 2001	Linklaters & Alliance representing – Bear Stearns Asia Limited – Credit Suisse First Boston (Hong Kong) Limited – Dresdner Kleinwort Wasserstein – Goldman Sachs (Asia) L.L.C. – Merrill Lynch (Asia Pacific) Limited – JP Morgan – Morgan Stanley Dean Witter Asia Limited – Salomon Smith Barney Hong Kong Limited – UBS Warburg ("Group of nine investment bankers")
23 January 2001	Law Society of Hong Kong ("Law Society")
23 January 2001	KGI Asia Limited ("KGI")

Financial Services Bureau
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