

Response to the Hong Kong Small and Medium Enterprises Association

Schedule 1 – Amendments updating the prospectus regime

SFC may only grant exemptions under the proposed new sections 38A and 342A on the following statutory grounds -

- (a) compliance with any or all of certain prospectus-related requirements would be irrelevant or unduly burdensome; and
- (b) the exemption will not prejudice the interest of the investing public¹.

2. Notice published in the Gazette under the proposed new sections 38A(2)/342A(2) to exempt any class of companies or any class of prospectuses issued by companies will be subsidiary legislation subject to negative vetting by the Legislative Council.

3. In exercising its powers, including those provided for under this Bill, SFC must take into consideration its statutory regulatory objectives and functions under sections 4 – 6 of the Securities and Futures Ordinance. In addition, to ensure transparency of SFC's operations, we propose in the Bill that SFC shall publish on-line such particulars of exemptions granted under the new sections 38A(1) and 342A(1) as it considers appropriate. SFC's plan is to set up a designated webpage on the SFC website setting out all the relevant prospectus-related provisions in the Companies Ordinance in respect of which an exemption has been granted to an applicant, the statutory grounds on which it is granted (i.e. the grounds set out in (a) and (b) above) and the reasons therefor. This will be formatted to ensure maximum transparency and utility. The information set out in SFC's website mentioned above will also be published in the relevant prospectus.

Financial Services and the Treasury Bureau
Securities and Futures Commission
11 November 2003

¹ The ground that the exemption would not prejudice the interest of the investing public is a new ground proposed in the Companies (Amendment) Bill 2003.