

17th December 2004

To : The Legislative Council Panel on Financial Affairs

**Submission by The Hong Kong Society of Financial Analysts on
Splitting the post of the chairman of The Securities and Futures Commission
into the chairman and the chief executive officer posts**

The Hong Kong Society of Financial Analysts wish to comment on the issue of the separation of the role of chairman and chief executive officer (CEO) of The Securities and Futures Commission (SFC).

As an industry association representing financial professionals, we have a strong interest in the smooth, transparent, efficient and fair operations of the SFC. The SFC regulates our members and has the power to impose sanctions on them for regulatory infringements. The SFC also regulates the companies in which our members invest on behalf of clients, or on which they write research. In a broader sense, the SFC also safeguards the integrity of the stock and futures exchanges, and our livelihood over the long run depends on Hong Kong maintaining the most dynamic, open and fair markets in the region.

We thus obviously support any initiative that would improve the overall governance of the SFC. However, before we address the specific issue of the separation of the role of the chairman (“C/SFC”) and CEO (“CEO/SFC”), we are forced to ask ourselves two questions: 1) does anyone believe that there are deficiencies in the current governance system of the SFC? And 2) are there conceivable situations whereby the current system of governance at the SFC would be insufficient? We believe it is important to fully and clearly understand the reasons why such a proposal is required. We are obviously aware that the separation of the CEO and chairman position has been put into effect at other securities regulators around the world, and at other public bodies in Hong Kong. However, are these other regulators and public bodies strictly comparable? Do they have the same structure of governance that the SFC currently does? We think it is important to have clear answers to these questions before moving to a separate C/SFC and CEO/SFC, just because “everyone else is doing it.”

That being said, we do see some merit in the split role of the C/SFC and CEO/SFC. Indeed, there are quite separate skill sets required, we believe, for day to day regulation vs. strategic direction and strategy. We note that, in paper CB(1)177/04-05(01), the Legislative Council Panel on Financial Affairs underscores the importance of an SFC that is not only fully independent, but also is perceived to be fully independent. We agree most strenuously with this emphasis, and would say that the independence (especially perceived) of any C/SFC and CEO/SFC is the single most important determinant of the success of the SFC and the integrity of the Hong Kong financial markets. The position of C/SFC must be filled on the basis of professional and ethical merit, and **must not be**, under any circumstances, a political appointment. To politicize the appointment of the C/SFC would be severely detrimental to the perceived and real independence of the position, as well as to undermine the integrity of the Hong Kong financial markets. We believe that the recent public outcry regarding the demolition of the Hung Hom Peninsula HOS flats underscores the public’s strong desire for due process to be followed and for professional judgment to be exercised at all times. Any restructuring of the corporate governance regime of the SFC must bear this recent example in mind.

We thus feel that if the position is to be separated, the SFC must look to recruit proven professionals from the widest possible pool of candidates, including in the international arena. It must also seek to fully remunerate, at full market rates, both the C/SFC and the CEO/SFC. We agree with the Panel, that there must be certain strict rules in force, such as barring anyone who is a director of a public company in Hong Kong, but the best way to make sure no conflicts emerge would be to remunerate both roles competitively. In addition, the role of C/SFC should be full time to ensure that the person who holds that position is able to devote his/her full attention to the position. We believe that focusing on the increased cost to the SFC of separating the roles of C/SFC and CEO/SFC is entirely misguided, as the cost of hiring the wrong person is much higher in terms of detrimental impact on the SFC and on the Hong Kong capital markets in general.

In conclusion, the HKSFA is fully behind the idea of having the highest corporate governance at the SFC (although we are not convinced that the current system is flawed). However, in selecting the individuals to fill both roles, now and in the future, the government **must** first and foremost be focused on issues of independence of the key people, and make it clear to each of the C/SFC and the CEO/SFC that any action on their part that would undermine the independence and integrity of the SFC (or the perception thereof) would result in instant dismissal. The decision of separating the duties of the C/SFC and CEO/SFC is a complex one and needs to be made after considerable consultation, not simply a rush job to appease the current corporate governance fad. Similarly, the hiring of the two top people at the SFC must not be done in haste, as the wrong person would have a long lasting negative impact on the SFC.

We are happy to discuss any of the issues raised above in greater detail with the Panel.

For and on Behalf of
The Hong Kong Society of Financial Analysts



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