

**Consultation Document**  
**Proposed Licensing Fees under the Securities and Futures (Fees) Rules**  
**(the “Proposed Licensing Fee Schedule”)**

**Introduction**

1. The Securities and Futures Bill gives the Commission the necessary rule-making power under clause 382 to prescribe fees in the subsidiary legislation. 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 quickly address changing market practices and global conditions, by amending the rules rather than the primary legislation.
2. There are controls already built into the legislative system whereby any rules made by the Commission must be subject to negative vetting by the Legislative Council. In addition, the Commission has now released the Proposed Licensing Fee Schedule under the Securities and Futures (Fees) Rules.
3. The SFC has sent copies of this Consultation Document to all licensed intermediaries using the FinNet communication network . In addition, the public may obtain copies of the consultation document free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.
4. The public is invited to submit comments before the close of business on **8 April 2002**. Written comments may be sent:

By mail to:                   SFC Application and Annual Fees  
                                  12/F Edinburgh Tower  
                                  The Landmark  
                                  15 Queen’s Road Central  
                                  Hong Kong

By fax to:                    2293-5686

By on-line submission: <http://www.hksfc.org.hk>

By e-mail to:                Application\_annual\_fees@hksfc.org.hk

**Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper as Appendix 2.**

**You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.**

## **Background**

5. The Securities and Futures (Fees) Rules (the “Rules”) is a proposed piece of subsidiary legislation to be made under the Securities and Futures Bill (“the Bill”). All fees and charges, including licensing fees payable to the Commission, will be specified in the Rules.
6. Since the structure of the new licensing regime (Appendix 1) will differ significantly from the existing one, a new set of licensing fees should be adopted.
7. The SFC intends to reduce license fees. However, this must be considered in light of the fact that these fees have been in place and unchanged since 1993/94 and at present licensing fee revenue accounts for only 68% of total costs of licensing and supervision of intermediaries and market conduct expended by the SFC. Furthermore, the Consumer Price Index has risen 28.3% since March 1993 with no increase made to licensing fees.
8. The SFC is in the process of re-engineering and streamlining our licensing procedures in preparation for the new Single Licensing regime to be promulgated in the Bill. In the process of re-engineering, we are designing a more efficient and cost-effective licensing regime and we hope to pass on some of the savings made directly to the registrants. However, the amount of savings made must be balanced against the fact that the SFC is running a deficit of \$88 million for 2001/02 and a possible \$118 million deficit for 2002/03.
9. With this in mind, the SFC has decided to pass on a 3% direct discount on licensing fees to registrants. There will also be an additional discount of 5% to encourage registrants to apply early, bringing the total discount to a maximum of 8%.
10. A copy of the Proposed Licensing Fee Schedule is attached as Appendix 3. This consultation paper is issued to seek the market’s view on these proposals.

## **Highlights**

### ***Application Fees and Annual Fees***

11. It is proposed that a standard fee will be charged for each of the regulated activities, with the exception of leveraged foreign exchange trading. As is the case under the current regime, a higher fee will be charged for leveraged foreign exchange trading under the new regime.
  
12. As registrants are currently operating under difficult economic conditions, it is proposed that all license application and annual fees (for companies and individuals) will be reduced by 3%. However, no reduction will be granted in respect of applications for temporary licences. In addition, there will be no reduction for Registered Institutions but instead a moderate increase in the annual fees. This is to reflect the enhanced functions and responsibilities assumed by the Hong Kong Monetary Authority under the new regime in respect of the on-going supervision of Registered Institutions.
  
13. Intermediaries including Registered Institutions have a transitional period of two years from commencement of the Bill to apply to migrate to the new regime. As an incentive for existing licensees and exempt persons to apply early, a 5% discount on the fees will be given to intermediaries who apply during the first year of the transitional period. This discount will be applicable to both the application fee and any annual fees for the period starting from the date of the submission of the application for migration until the expiry of the transitional period.

### ***Waiver***

14. It is proposed that securities and futures dealers who carry out Internet dealing services need not pay additional application and annual fees for providing automated trading services. This waiver will also be available to Registered Institutions.

### ***Transitional Period***

15. During the transitional period, existing licensees and exempt persons are deemed to be licensed for regulated activities that they are already licensed for or exempt from registration under the existing regime. This arrangement will stand irrespective of when these licensees and exempt persons choose to apply to migrate to the new regime.
  
16. It is proposed that during the transitional period, these licensees or exempt persons do not incur additional fees over and above those that they are currently required to pay under the existing regime. This arrangement entails that the following fees be waived for the duration of the transitional period whether or not the relevant licensee or exempt person has applied to migrate to the new regime:

- Existing licensees and exempt persons who carry out more than one regulated activity under one licence will only need to pay a single annual fee (i.e. a fee for only one regulated activity) under the new regime.
  - Sole-proprietors will need to incorporate their businesses and appoint at least two responsible officers. However, the newly incorporated firm is only required to pay the annual fee for one responsible officer.
  - Under the current regime, the responsible directors of leveraged foreign exchange traders and securities margin financiers do not have to pay any additional fees as opposed to representatives. These responsible directors will continue to enjoy this fee waiver during the transitional period.
  - Corporate licensees who currently have one supervisory director will have to appoint an additional responsible officer under the new regime. The fee for the additional responsible officer will be waived.
17. The waivers stated in paragraph 16 will also be available to existing licensees and exempt persons applying to migrate to the new regime during the transitional period.

### ***New Fees***

18. New fees will be introduced for industry participants who take advantage of certain policy initiatives. This includes:
- An application fee for a provisional licence<sup>1</sup>;
  - Application fee for approval of premises, or alternative premises, for keeping records or documents;
  - Application fee for approval as a substantial shareholder of a licensed corporation;
  - Application fee for a waiver or modification under various sections of the legislation; and
  - Application fee for written confirmation on a person's licensing status.

As the Commission will incur additional processing costs, it is appropriate that the costs should be borne by the applicants.

### ***Final Note***

19. The Bill introduces a single licensing system for market intermediaries. Such an approach would do away with the need for a firm to apply for two or more licences or to set up subsidiaries to engage in different regulated activities, thus allowing for a more efficient allocation of capital and deployment of resources. It is therefore expected that this new regulatory initiative will cut down the compliance costs for intermediaries. However, the economic benefits of it

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<sup>1</sup> The Bill empowers the Commission to issue provisional licences (i.e. prior to the completion of the necessary vettings). These provisional licences can be issued within a matter of days, as compared to an average of 6 weeks for a normal application.

would not be apparent until the firms streamline their businesses in an effort to reduce the number of licensed entities.

20. There has been speculation that there will be significant reduction in licensing fees following the implementation of the new licensing regime. In real fact, the savings to the Commission are derived mainly from a reduction in clerical work due to the sharing of information between regulated activities under a single licensing system. This saving is almost insignificant relative to the cost of managerial resources required to assess and supervise the nine different regulated activities.

### **Consultation**

21. The Commission welcomes any comment industry practitioners and members of the investing public may have on the Proposed Licensing Fee Schedule.

## **SALIENT FEATURES OF THE NEW REGIME**

The structure of the new licensing system is based on a “one licence, multiple categories” approach. Intermediaries will only require one licence which indicates the area(s) in which the intermediary is authorised to provide services. The following are some of the key features of the new licensing system:

- There will be nine categories of regulated activities under the new licensing system. Firms performing different regulated activities will now be able to register under the name of one corporate entity to reduce their administrative burden and costs. The nine types of regulated activities are:
  - Type 1: dealing in securities;
  - Type 2: dealing in futures contracts;
  - Type 3: leverage foreign exchange trading;
  - Type 4: advising on securities;
  - Type 5: advising on futures contracts;
  - Type 6: advising on corporate finance;
  - Type 7: providing automated trading services;
  - Type 8: securities margin financing;
  - Type 9: asset management.
- The current system will be replaced by a two-tier system, consisting of corporations and representatives only. All registered or licensed individuals under the current system will be licensed as representatives under the new system.
- Under the new system, intermediaries will be required to appoint at least two qualified “responsible officers” for each regulated activity for which the intermediary is licensed. The same persons may be designated as responsible officers for different activities of the same intermediary provided they are found to be fit and proper to carry out each respective activity.
- Intermediaries will no longer be allowed to be registered as sole-proprietors or partnerships. Current registrants under these categories will have to form corporations in order to be licensed under the new regime.

There will be a transitional period of two years during which existing registrants can continue to do business under their current registration.

## **Personal Information Collection Statement**

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>2</sup> will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (“PDPO”).

### **Purpose of Collection**

2. The Personal Data provided in your submission to the SFC in response to the Consultation Document on the Proposed Licensing Fee under the Securities and Futures (Fees) Rules (“the Consultation Document”) may be used by the SFC for one or more of the following purposes:
  - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
  - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
  - for research and statistical purposes
  - other purposes permitted by law

### **Transfer of Personal Data**

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Document. The names of persons who submit comments on the Consultation Document together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

### **Access to Data**

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the

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<sup>2</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

### **Enquiries**

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Document, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer  
The Securities and Futures Commission  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road  
Central  
Hong Kong

**A copy of the Privacy Policy Statement adopted by the SFC is available upon request.**



**PROPOSED LICENSING FEE SCHEDULE UNDER THE NEW LICENSING REGIME**

	<b>Proposed new fee</b>
	\$
<b>Application fees to be Licensed</b>	
(1) Fee payable on application by a corporation under section 115 of the Ordinance for a licence to carry on any one Type, and per additional Type, of regulated activity, other than Type 3 regulated activity	4,750
(2) Fee payable on application by an individual under section 119 of the Ordinance for a licence to carry on any one Type, and per additional Type of regulated activity, other than Type 3 regulated activity	1,790
(3) Fee payable on application by a corporation under section 115 of the Ordinance for a licence to carry on Type 3 regulated activity	129,730
(4) Fee payable on application by an individual under section 119 of the Ordinance for a licence to carry on Type 3 regulated activity	2,420
(5) Additional fee payable on request by an individual under section 119(2) for a provisional licence	800
(6) Fee payable on application by a corporation under section 116 of the Ordinance for a temporary licence to carry on any one Type, and per additional Type, of regulated activity, other than Type 3 regulated activity	4,900
(7) Fee payable on application by an individual under section 120 of the Ordinance for a temporary licence to carry on any one Type, and per additional Type, of regulated activity	1,850

	<b>Proposed new fee</b>
	\$
<b>Application fees for Changes to a Licence</b>	
(8) Fee payable on application by a licensed representative under section 121(1) of the Ordinance for additional accreditation(s)	200
(9) Fee payable on application by a licensed representative under section 121(2) of the Ordinance for transfer of accreditation, per Type of regulated activity	200
(10) Fee payable on application by a licensed representative under section 125(1) of the Ordinance for approval as a responsible officer, per Type of regulated activity	2,950
(11) Fee payable on application by a licensed corporation under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for any one additional Type of regulated activity, other than Type 3 regulated activity	4,750
(12) Fee payable on application by a licensed corporation under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for additional of Type 3 regulated activity	129,730
(13) Fee payable on application by a licensed corporation under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for the reduction of regulated activity/activities [except for the last activity/activities]	200
(14) Fee payable on application by a licensed representative under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for any one additional Type of regulated activity, other than Type 3 regulated activity	1,790
(15) Fee payable on application by a licensed representative under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for additional of Type 3 regulated activity	2,420

	<b>Proposed new fee</b>
	\$
(16) Fee payable on application by a licensed representative under section 126 of the Ordinance to vary the regulated activity specified in the applicant's licence for the reduction of regulated activity/activities [except for the last activity/activities]	200
(17) Fee payable on application by a licensed corporation or licensed representative for amendment of the applicant's licence	200
 <b>Annual Fees for Licensed Persons</b>	
(18) Annual fee payable under section 135(1) of the Ordinance by a corporation licensed under section 115 of the Ordinance, per Type of regulated activity for which it is licensed, other than Type 3 regulated activity	4,750
(19) Annual fee payable under section 135(1) of the Ordinance by an individual licensed under section 119 of the Ordinance, per Type of regulated activity for which he is licensed, other than Type 3 regulated activity	1,790
(20) Annual fee payable under section 135(1) of the Ordinance by an individual licensed under section 119 of the Ordinance and approved under section 125 (1) of the Ordinance as a responsible officer, per Type of regulated activity for which he is licensed, other than Type 3 regulated activity	4,750
(21) Annual fee payable under section 135(1) of the Ordinance by a corporation licensed under section 115 of the Ordinance for Type 3 regulated activity	129,730
(22) Annual fee payable under section 135(1) of the Ordinance by an individual licensed under section 119 of the Ordinance for Type 3 regulated activity	2,420
(23) Annual fee payable under section 135(1) of the Ordinance by an individual licensed under section 119 of the Ordinance and approved under section 125(1) of the Ordinance as a responsible officer for Type 3 regulated activity	5,380

	<b>Proposed new fee</b>
	\$
<b>Fees for Registered Institutions</b>	
(24) Fee payable on application by an authorized financial institution under section 118 of the Ordinance for registration as a registered institution to carry on any one Type, and per additional Type, of regulated activity	23,500
(25) Annual fee payable under section 135(1) of the Ordinance by a registered institution, per Type of regulated activity	35,000
(26) Fee payable on application by a registered institution under section 126 of the Ordinance to vary the regulated activity specified in the applicant's certificate for any one additional Type of regulated activity	23,500
(27) Fee payable on application by a registered institution under section 126 of the Ordinance to vary the regulated activity specified in the certificate of registration for the reduction of regulated activity/activities [except for the last activity/activities]	200
(28) Fee payable on application by a registered institution for amendment of the certificate of registration	200
<b>Miscellaneous Fees</b>	
(29) Fee payable on application under section 129 of the Ordinance for approval of premises, or alternative premises, for keeping records or documents required under the Ordinance	1,000
(30) Fee payable on application under section 130A(1) of the Ordinance for approval to become or continue to be substantial shareholder(s) of a corporation licensed under section 115 of the Ordinance	3,000

	<b>Proposed new fee</b>
	\$
(31) Fee payable on application under section 131(1) of the Ordinance for a waiver or modification in respect of -	
(a) any condition specified in section 117 of the Ordinance or imposed under sections 115, 116, 118, 119, 120, 120(2)(a), 125 or 130A of the Ordinance	2,000
(b) sections 115(2)(b) and 124(1) and (2) of the Ordinance	2,000
(c) sections 115(2)(c) and 129 of the Ordinance	2,000
(d) section 128 of the Ordinance	4,000
(32) Fee payable on application under section 123(1) of the Ordinance for a duplicate licence or certificate of registration	200
(33) Fee payable on application by a licensed corporation or an associated entity of a licensed corporation -	
(a) under section 151(3)(a) of the Ordinance, for approval to alter its financial year end	2,000
(b) under section 151(3)(b) of the Ordinance, for approval to adopt a period exceeding 12 months as its financial year	2,000
(c) for approval of the matters specified in paragraphs (a) and (b) on the same occasion	2,000
(d) under section 152(4) of the Ordinance for extension of the period within which to lodge the requisite documents	2,000
(34) Fee payable for certificate of a copy of a document as a true copy	200
(35) Fee payable to obtain under section 133(5)(b) a copy of an entry in, or extract of, the register	9 per page
(36) Fee payable for a copy of a document for which no fee is otherwise specified in this Schedule	9 per page

**Proposed new fee**

	\$
(37) Fee payable by a licensed corporation or registered institution requesting the Commission to issue a confirmation letter to an authority or regulatory organization which performs a function similar to the Commission	2,000
(38) Fee payable by any person requesting the Commission to issue a confirmation letter to another person (other than an authority or regulatory organization which performs a function similar to the Commission) in relation to a person's licensing status with the Commission	200