



Frequently Asked Questions on Licensing Related Matters

Licensing Department

20 March 2003



FAQ topics on the SFC website

- ❖ Regulated Activities
- ❖ Competence
- ❖ Continuous Professional Training
- ❖ Responsible Officers
- ❖ Change of Employment by Licensed Representatives
- ❖ Licensing conditions
- ❖ Temporary Licence
- ❖ Provisional Licence
- ❖ “Active Marketing” under section 115 of the SFO
- ❖ “Incidental” Exemption
- ❖ Professional Exemption
- ❖ Trustee Companies
- ❖ Transitional Arrangements
- ❖ Miscellaneous



Competence

Q: For a person who has been licensed before 1 April 2003 and re-applies within 3 years from the date of resignation, does he need to take the new exams in order to be licensed again?

A: He does not have to take any exam if he is to engage in regulated activities of the **same product category** and in the **same role** as he was previously licensed. Also, there is no exam requirement for Type 7 regulated activity (i.e. providing automated trading services).



Competence

Same product category:

Registered or licensed under the repealed Ordinances	Type of regulated activity to be engaged
<i>Securities Ordinance</i>	<i>1, 4, 6, 8 or 9</i>
<i>Commodities Trading Ordinance</i>	<i>2 or 5</i>
<i>Leveraged Foreign Exchange Trading Ordinance</i>	<i>3</i>

Same role:

Capacity under old regime	Capacity under new regime
DR, IR, CDR, CTAR SMFR (non-approved director) LFXTR (non-responsible director)	Licensed Representative (not being a Responsible Officer)
Dealer/Adviser director SMFR (approved director) LFXTR (responsible director)	Licensed Representative and approved as a Responsible Officer



Continuous Professional Training (CPT)

Q: How many CPT hours does a licensed person need to take under the new regime?

A: A minimum of 5 CPT hours for each regulated activity per calendar year (except Type 7) .

However, if the licensed person can demonstrate that a particular training is relevant to more than one type of regulated activity, he may apply the CPT hours to those relevant regulated activities accordingly.



Responsible Officer

❖ Requirements under the SFO

- ❖ At least **2 ROs** are appointed for each regulated activity
- ❖ At least **1 RO** is an “executive director”
- ❖ At least **1 RO** is available at all times to supervise the business of regulated activity
- ❖ All “executive directors” must be ROs

❖ “Executive director” specifically defined

- ❖ A director of the corporation who **actively participates** in, or is responsible for **directly supervising**, the business of a regulated activity for which the corporation is licensed



Responsible Officer

Q: Do all directors of a licensed corporation need to become ROs?

A: No. Only “executive directors” need to be licensed as ROs. If a director does not participate or is not involved in the day-to-day management of the regulated activity, he is unlikely to be regarded as an “executive director” for the purpose of licensing.

In general, a director responsible merely for compliance, financial control, internal audit, back-office administration or human resources need not become a RO.



Responsible Officer

Q: Can a RO supervise 2 or more regulated activities simultaneously?

A: The same individual can be approved as a RO for one or more regulated activities so long as he can satisfy the SFC that he is **fit and proper** to be so approved and that there is **no conflict of interest** for him to carry out the regulated activities concerned at the same time.



“Incidental” Exemption

Type 1 (dealing in securities)

- ❖ A **stockbroker** who is already licensed for Type 1 regulated activity does not need a licence for **Type 4** (advising on securities), **Type 6** (advising on corporate finance) and **Type 9** (asset management) if the latter activities are carried out wholly incidental to the stockbroker’s securities dealing business.
- ❖ Therefore, the stockbroker licensed for only Type 1 regulated activity may also, for instance, issue research reports concerning securities, provide corporate finance advisory services and manage discretionary accounts as part of its brokerage services provided to its securities clients.



“Incidental” Exemption

Type 2 (dealing in futures contracts)

- ❖ A **futures broker** who is licensed for Type 2 regulated activity (dealing in futures contracts) does not need a licence for **Type 5** (advising on futures contracts) or **Type 9** (asset management) if the latter activities are carried out wholly incidental to the futures broker’s dealing business.
- ❖ Therefore, the futures broker licensed for only Type 2 regulated activity may also, for instance, issue research reports concerning futures contracts and manage discretionary accounts as part of its brokerage services provided to its clients.



“Incidental” Exemption

Type 9 (asset management)

- ❖ A **fund manager** who is licensed for Type 9 regulated activity (asset management) does not need a licence for **Type 1** (dealing in securities) or **Type 2** (dealing in futures contracts) if such dealing activities are carried out wholly incidental to its asset management function.
- ❖ Therefore, the fund manager licensed for only Type 8 regulated activity may also, for instance, place trade orders of securities or futures contracts when it manages the investment portfolio for clients.



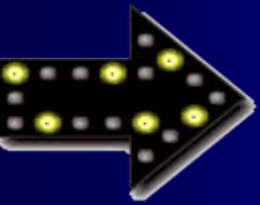
Transitional Arrangements

- ❖ **2-year** transitional period
(1 April 2003 – 31 March 2005)

- ❖ Basic principles
 - ☑ Smooth transition to the new regime
 - ☑ Minimal disruption
 - ☑ No worse-off fee-wise (See **Guidelines on Waivers of Certain Licensing Fees**)

- ❖ **Schedule 10** to the SFO
 - ❖ Existing registrants/exempt persons will become deemed licensees/registered institutions to continue carrying out their existing business.

- ❖ See **Guidelines on Transitional Arrangements**





Transitional Arrangements

Specified licensing condition

- ❖ Defined under the S&F (Financial Resources) Rules
 - ❖ in relation to Type 4, 5, 6 or 9 regulated activity, a licensed corporation **shall not hold client assets**

- ❖ Subject to less stringent financial resources requirements if a specified licensing condition is imposed

- ❖ See **Circular of 22 January 2003**
 - ❖ If you wish to have the condition imposed on your new licence, you need to return the **Reply Slip** before 1 Sept 2003



Transitional Arrangements

Q: If my registration is already subject to a condition similar to the “specified licensing condition”, do I need to return the *Reply Slip*?

A: No. If you have a condition which disallows you to “hold”, “handle” or “control” client assets, you need not return the *Reply Slip* to the SFC.



Transitional Arrangements

Change of employment

- ❖ A representative's deemed licence will become invalid immediately after ceasing his employment
- ❖ **Suggestion:** Migrate to the new regime before resignation in order to enjoy the 180-day period for seeking new job
- ❖ Representatives may apply for migration themselves (not necessarily together with their principals)



Transitional Arrangements

- Q:** If a representative resigns from his principal in late March 2003, will he be granted the 180-day grace period before revocation of his licence?
- A:** If the revocation process in relation to the representative's licence starts before the SFO commences, the grace period will be 60 days as in accordance with the current licensing regime.