

Questions & Answers Session on Licensing Related Matters

Licensing Department

9 September 2003

Outline

1. Advising Group Company Exemption
2. Compliance with Financial Resources Requirements
3. Type 7 Regulated Activity
(Providing Automated Trading Services)
4. Management Companies for Real Estate Investment Trusts ("REITs")
5. Submission of Audited Accounts
6. Common Anniversary Date Program
7. Common Mistakes in Completing Migration Application Forms

Advising Group Company Exemption (1)

- ❖ In Schedule 5 to the SFO, the definition of “asset management” excludes a corporation providing portfolio management service **solely to any of its wholly owned subsidiaries, its sole holding company or other wholly owned subsidiaries of that holding company.**
- ❖ Similar exclusions are also provided in the definitions of “advising on securities”, “advising on futures contracts” and “advising on corporate finance”.

Advising Group Company Exemption (2)

Q: Does this mean that a Hong Kong corporation providing portfolio management service under a delegation agreement on behalf of its group company (which may be an offshore fund manager) needs not be licensed to provide asset management service, notwithstanding that the assets under management belong to the clients of that group company?

A: The group company exclusion is only applicable to a corporation providing asset management service to its group company (on a wholly owned basis) **in respect of that group company's assets**. It should not apply to the management of assets belonging to the group company's clients. Managing assets belonging to third parties would constitute "asset management" and attract a licensing requirement.

Advising Group Company Exemption (3)

Q: If the Hong Kong corporation were to only advise its group company on securities/futures contracts, does it need to be licensed to advise on securities/futures contracts?

A: In the case of the Hong Kong corporation advising its group company **pertaining to the investment of that company's assets**, the exclusion should apply. However, it should not be read as applying to the Hong Kong corporation advising its group company in respect of that group company's client assets.

Compliance with FRR Requirements (1)

- ❖ The 6-month transitional period under the Securities & Futures (Financial Resources) Rules will expire on **30 September 2003**.
- ❖ Particular attention required for firms previously registered as:-
 - *Investment Advisers*
 - *Commodity Trading Advisers*
 - *Exempt Dealers and Exempt Investment Advisers which were **not** authorized financial institutions*

Compliance with FRR Requirements (2)

- ❖ Required to fully comply with all applicable financial resources requirements (including submission of periodic financial resources returns) upon expiration of the transitional period.
- ❖ For details, please refer to our circulars of 4 July 2003 and 11 August 2003.

Type 7 Regulated Activity (1)

Q: In addition to Type 1 (dealing in securities) and/or Type 2 (dealing in futures contracts) regulated activities, does a corporation need to be licensed for Type 7 regulated activity (providing automated trading services ("ATS")) if it also provides services which merely route the trade orders placed by clients to the Exchanges for execution via electronic means?

A: The provision of **order routing services** generally will not be regarded as Type 7 regulated activity. However, the intermediary should ensure that the order routing services or other electronic services that it wishes to provide do not meet the definition of "providing ATS" under Schedule 5 to the SFO....

Type 7 Regulated Activity (2)

....As transitional arrangements, we would, however, deem all those intermediaries which have indicated to us that they wish to provide ATS to be licensed for Type 7 regulated activity.

The SFC will consider whether they need to be so licensed in the migration exercise (in particular, whether their operations fall under the definition of “providing ATS”).

Management Companies for REITs (1)

Q: Does a REITs management company need to obtain a licence from the SFC?

*A: A REITs management company is required to be licensed for **Type 9** regulated activity (asset management). Whether it needs to be licensed for other types of regulated activity depends on its mode of operation.*

For instance, if it intends to undertake matters relating to the listing application of REITs without appointing a listing agent, it will need to be licensed for **Type 6** regulated activity (advising on corporate finance). If it wishes to distribute REITs or other securities, it will need to be licensed for **Type 1** regulated activity (dealing in securities).

Management Companies for REITs (2)

Q: What are the requirements pertaining to the management personnel of a REITs management company?

A: Like other licensed corporations, each REITs management company shall appoint **at least 2 responsible officers** approved by the SFC to directly supervise its business.

Apart from complying with the general competence requirements applicable to responsible officers, each of them has to possess not less than **5 years'** experience in managing collective investment schemes including private funds.

Submission of Audited Accounts (1)

Q: Under the former regime, an investment adviser or commodity trading adviser firm was only required to submit its audited accounts on the anniversary date of its licence. Thus, the submission period may be longer than 4 months after its financial year end (as currently required under the SFO).

If the financial year end of a deemed licensed corporation, which was previously a registered investment adviser or a commodity trading adviser, falls on 31 March 2003, when will it be required to submit its audited accounts for the relevant financial year?

Submission of Audited Accounts (2)

A: The licensed corporation will be required to submit its audited accounts for the financial year ended 31 March 2003 on the anniversary date of its licence. However, its audited accounts for the year ending 31 March 2004 will have to be submitted by 31 July 2004, and not on the anniversary date of its licence.

It may be added that if such a licensed corporation's financial year end falls on or after 1 April 2003, it will be required to submit its audited accounts within 4 months after its financial year end.

Common Anniversary Date Program

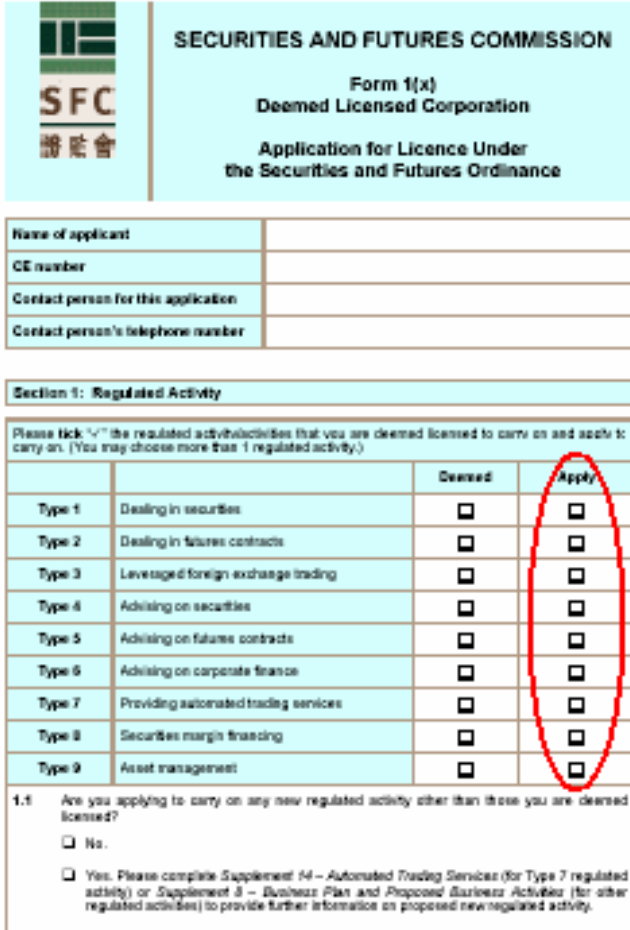
- ❖ Licensed corporations participated in the Program can select a common anniversary date ("CAD") for the purposes of annual submissions. The CAD will then apply to the corporation, its group companies (if so wish), and all relevant licensed representatives.
- ❖ Reduce administrative cost in preparing submissions of annual returns and annual fees as this can be processed in one single batch every year.
- ❖ **Optional** program (no fee required).
- ❖ For details and application method, see our circular of 12 July 2003.

Common Mistakes in Completing Migration Application Forms (1)

- ❖ Over 20,000 licensees need to seek migration into the new regime before 31 March 2005.
- ❖ **Sample Completed Migration Forms** posted on the SFC website.
- ❖ Incomplete migration applications will be returned to applicants. See attached **Checklists** to avoid common mistakes.

Common Mistakes in Completing Migration Application Forms (2)

- ❖ **Form 1(x)** – for deemed corporation's application
- ❖ Fail to check the type(s) of regulated activity the corporation intends to apply.



SECURITIES AND FUTURES COMMISSION
Form 1(x)
Deemed Licensed Corporation
Application for Licence Under the Securities and Futures Ordinance

Name of applicant	
CE number	
Contact person for this application	
Contact person's telephone number	

Section 1: Regulated Activity

Please tick "✓" the regulated activities that you are deemed licensed to carry on and apply to carry on. (You may choose more than 1 regulated activity.)

		Deemed	Apply
Type 1	Dealing in securities	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Dealing in futures contracts	<input type="checkbox"/>	<input type="checkbox"/>
Type 3	Leveraged foreign exchange trading	<input type="checkbox"/>	<input type="checkbox"/>
Type 4	Advising on securities	<input type="checkbox"/>	<input type="checkbox"/>
Type 5	Advising on futures contracts	<input type="checkbox"/>	<input type="checkbox"/>
Type 6	Advising on corporate finance	<input type="checkbox"/>	<input type="checkbox"/>
Type 7	Providing automated trading services	<input type="checkbox"/>	<input type="checkbox"/>
Type 8	Securities margin financing	<input type="checkbox"/>	<input type="checkbox"/>
Type 9	Asset management	<input type="checkbox"/>	<input type="checkbox"/>

1.1 Are you applying to carry on any new regulated activity other than those you are deemed licensed?
 No.
 Yes. Please complete Supplement 14 – Automated Trading Services (for Type 7 regulated activity) or Supplement 8 – Business Plan and Proposed Business Activities (for other regulated activities) to provide further information on proposed new regulated activity.

Common Mistakes in Completing Migration Application Forms (4)

- ❖ Fail to duly sign and date the application by 2 directors of the corporation.

Section 3: Anniversary Date

Please tick "x" any one of the options below to indicate your preferred anniversary date for the purpose of annual submissions under section 138 of the Ordinance.

We would like to adopt the approval date of our licence under this application as the first anniversary date.

We have joined the Common Anniversary Date Program* and would like to retain the existing Common Anniversary Date _____ (day/month) of our firm for our new licence.

We have joined the Common Anniversary Date Program* but would like to alter the Common Anniversary Date* of our firm from _____ (day/month) to _____ (day/month) for our new licence.

We would like to participate in the Common Anniversary Date Program* and the preferred Common Anniversary Date of our firm is _____ (day/month).

*The SFC has implemented an optional annual submission arrangement for licensed corporations to apply for one common anniversary date applicable to the corporation and their accredited individuals. This Common Anniversary Date Program aims to save licensees' administrative cost by processing related annual submissions in one single batch instead of separately throughout a year.

Section 4: Other Information

Is there any change in the information that you have previously submitted to the SFC, in particular premises for keeping records or documents and substantial shareholders?

No.

Yes. We are filing a Form 4 Miscellaneous Applications or Form 5 Notification – Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder or Annual Return along with this application. (delete where not applicable)

Declaration

We, on behalf of _____ (Name of corporation applying for a licence)

- Declare that all the information provided in this application (including all supplements and attachments) is complete, true and correct to the best of our knowledge and belief.
- Declare that the board of directors has passed a resolution approving this application.
- Undertstand that providing false or misleading information in support of an application for a licence is an offence under section 182 of the Ordinance.
- Undertstand that the Commission may take disciplinary action against a person who has made a false or misleading statement in support of an application for a licence.
- Undertstand that if any information in this application changes after this application is approved, we must notify the Commission in writing immediately of the change.

Name of signatory	_____ (Name)	_____ (Name)
Signature	_____ (Signature of the signatory)	_____ (Signature of the signatory)
Date	_____ (Date)	_____ (Date)

Common Mistakes in Completing Migration Application Forms (5)

- ❖ **Form 3(x)** – for deemed representative's application
- ❖ Fail to check the type(s) of regulated activity and capacity (i.e. Representative or Responsible Officer) the individual intends to apply.



SECURITIES AND FUTURES COMMISSION
Form 3(x)
Deemed Licensed Representative and Responsible Officer
Application for Licence Under
the Securities and Futures Ordinance

Name of applicant	
CE number	
Name of primary principal	
CE number of primary principal	

Section 1: Regulated Activity

Please tick "✓" the regulated activity/activities and capacity that you are deemed licensed to carry or and apply to carry on. (You may choose more than 1 regulated activity.)

		Deemed		Apply	
		Responsible officer	Representative	Responsible officer	Representative
Type 1	Dealing in securities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Dealing in futures contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 2	Leveraged foreign exchange trading	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 4	Advising on securities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 5	Advising on futures contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 6	Advising on corporate finance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 7	Providing automated trading services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 8	Securities margin financing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Type 9	Asset management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1.1 Are you applying to carry on any new regulated activity other than those you are deemed licensed?

No.

Yes. Please complete Supplement 3(x) – Information on Qualifications and Experience.

1.2 If your new regulated activity is Type 2 regulated activity (leveraged foreign exchange trading), will you offer discretionary account services to your clients?

No.

Yes. Please complete Supplement 3(x) – Information on Qualifications and Experience.

Common Mistakes in Completing Migration Application Forms (6)

❖ Fail to check the appropriate boxes in the “Declaration” section by both the applicant *and* the applicant’s **principal**.

❖ Fail to duly sign and date the application by both the applicant *and* the applicant’s **principal**.

Section 4: Other Information

Is there any change in the information that you have previously submitted to the SFC?

No.

Yes. I am filing a Form S Notification – Licensed Corporation, Registered Institution, Licensed Representative and Substantial Shareholder or Annual Return along with this application. (delete where not applicable)

Declaration: I, _____ (name of applicant) • Declare that the information in this application (including all supplements and attachments) is complete, true and correct. For responsible officer applicant: • Declare that the Board of Directors has passed a board resolution appointing me as the responsible officer: <input type="checkbox"/> I, as a responsible officer, to supervise the regulated activities for which I will be responsible (unless the applicant is a director). <input type="checkbox"/> Responsible officer and granting me authority to supervise the regulated activities for which I will be responsible (where the applicant is not a director). • Understand that giving false or misleading information in support of an application for a licence is an offence under section 383 of the Ordinance. • Understand that the Commission may take disciplinary action against a person who has made a false or misleading representation when applying for a licence. • Understand that if any information in this application changes before this application is approved, I must notify the Commission in writing immediately of the changes. • Certify that I have read and understood the attached Personal Information Collection Statement. • Consent to the Commission using any personal information I have provided in this application, and any personal information I may provide in the future, for the purposes described in the Personal Information Collection Statement.	He, _____ (name of jointly proposed) Has reviewed: <input type="checkbox"/> The information provided in this application form (including all supplements and attachments). <input type="checkbox"/> The documents evidencing the applicant's academic, professional and industry qualifications stated in this form (including all supplements and attachments), where applicable. • Certifies that the other proposed principal(s) of the applicant has also agreed to the information herein (such information relates to the other principal(s) stated in this application). • Believe that the applicant is a fit and proper person to be licensed as our representative, and endorse this application.
	Name of signatory _____ Signature _____ Date _____

* Delete where not applicable.

¹ This will only be applicable if the representative is applying for regulated activities (i.e. the SFO's both regulated activities, for which he is deemed to be licensed under the Securities and Futures Ordinance. The regulated activities he is deemed to be licensed should include those included by virtue of licensing conditions under the SFO's regime.

4

Get More Information

- ❖ Visit the SFC website (www.hksfc.org.hk) for updated information, e.g. ***FAQs on Licensing Related Matters***
- ❖ ***Licensing Information Booklet*** (can be downloaded from the SFC website)
- ❖ **InfoLine** (2840-9393)
- ❖ **SFC's e-mail alert service**



End of Presentation

Thank you