

## SECURITIES AND FUTURES COMMISSION

### PUBLIC CONSULTATION PROCEDURES

#### **Why we consult the public**

The Securities and Futures Commission (SFC) understands the importance of regulatory transparency and believes that the process of public consultation on regulatory proposals enhances this.

Effective consultation helps market participants to understand the goals of our proposals and enables them to contribute to producing and maintaining a relevant, balanced and effective regulatory regime. It also assists in our decision-making process, helps to ensure that our proposals meet the needs of the market and the investing public and enhances our accountability. The SFC relies on the active co-operation of market participants to ensure the quality of the rules, codes and guidelines that are eventually adopted.

Our public consultation procedures were fully vetted in 2002-2003 by the Process Review Panel, an independent body appointed by the Chief Executive of the HKSAR to review the SFC's internal procedures.

#### **What we are required to do**

The SFC has the power to make rules under various provisions of the Securities and Futures Ordinance (SFO) and section 398 of the SFO requires us to consult the public (and also Hong Kong Monetary Authority (HKMA) in certain circumstances) if we are proposing to make such rules. We are required to -

- publish a draft of the proposed rules for consideration by the public;
- publish an account setting out in general terms the public's representations on the draft rules and our response to the representations; and
- where the rules are made with modifications which in our opinion result in the rules being significantly different from the draft, publish details of the difference.

The SFO also specifies the limited circumstances when public consultation is not required, i.e. if it is inappropriate or unnecessary or the delay involved in consulting the public would not be in the interest of the investing public or in the public interest.

#### **What we do in addition**

Although the SFC is only required to consult the public on rules we propose to make under the SFO, we consistently exceed statutory requirements by consulting on proposed non-statutory codes and guidelines and amendments to them as well. Our



consultation documents are readily accessible to the public and we arrange for comments to be received through various means.

Our practice is to conduct both formal and informal consultation in respect of a proposal among relevant stakeholders to seek their views at various stages during the consultation process. We carefully consider all feedback about a proposal, although we may not adopt every suggestion. To ensure transparency, we summarise the suggestions and provide our comments on them (including explaining why a particular suggestion is not being adopted) in the consultation conclusions paper. The main features of our procedures are set out below.

### **Stages of a typical consultation**

#### ***1. Pre-consultation stage***

Depending on the nature of the proposal, the SFC will consider whether it should hold joint discussions with other agencies, such as the HKMA and the Financial Services and the Treasury Bureau.

The SFC may meet with relevant industry representatives and working groups (consisting of members from various sectors of the market) to discuss the proposal. We try to seek the views of a balanced mix of industry participants. We may also seek advice from other bodies (such as the SFC's Advisory Committee or Shareholders' Group or the Consumer Council) before finalising the consultation paper. The SFC also has regular meetings with industry bodies (such as brokers' associations) at which the proposal may be discussed.

The SFC considers whether the proposal requires public consultation or if a proxy form of public consultation (e.g. a focused consultation of the interested parties) would be acceptable. We will only dispense with public consultation in very limited circumstances, e.g. where the proposed changes are minor in nature and uncontroversial or where delay in implementing the proposal would not be in the interest of the investing public or the public interest.

#### ***2. Consultation***

The SFC prepares a consultation paper containing: a detailed description of and reasons for the proposal; the text of any draft rules or code or guideline encapsulating the proposal; and mail/fax/online/email details to enable comments to be sent in.

The consultation paper is available, in Chinese and English, on our website and on FinNet. Copies are also available from the SFC's office and are sent to interested parties. The SFC issues a press release to inform the media about the consultation.

The SFC tries to allow sufficient time for the public to comment on the proposal and takes into account factors such as the urgency and complexity of the proposal and whether or not it is likely to be controversial. During this period, the SFC may also hold seminars for or meetings with selected stakeholders and working groups to explain the proposal and seek feedback.



### ***3. Analysis***

The SFC carefully considers all representations received during the consultation process and assesses the level of market support for the proposal. We then consider whether or not the proposal needs to be amended in the light of representations received from the public. If so, the rules or code or guideline in question is amended accordingly.

### ***4. Conclusions***

Depending on the subject matter of the proposal, the SFC may consult relevant industry working groups prior to finalising the conclusions paper.

Following the analysis stage, we will prepare a consultation conclusions paper, summarising the main comments received from the public and setting out our conclusions and responses (including whether the comments are accepted, the reasons for any non-acceptance and details of amendments to the proposal).

The SFC issues a press release to inform the media about the consultation conclusions. The consultation conclusions are readily accessible to the public and are available in Chinese and English. Copies of the conclusions paper are available from the SFC's office and are also sent to interested parties. The consultation conclusions are posted on the SFC's website and in many cases copies of the actual submissions received from members of the public are also available there (except where a respondent has withheld permission to do so).

As an example of the transparency of our public consultation procedures, the consultation documents on the rules and codes and guidelines required to enable the SFO to commence are all available in the SFO section of our website.