



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

**Consultation Conclusions on the Proposed Repeal
of Certain Class Exemptions made under
section 38A(2)/342A(2) of the Companies Ordinance**

Hong Kong
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香港
2004年11月

Introduction

1. On 17 August 2004, the SFC issued a consultation paper to seek the views of the public on the proposed repeal of sections 3 and 7 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32L) (“**Exemption Notice**”).
2. Section 3 of the Exemption Notice exempts Hong Kong-incorporated companies and their prospectuses from compliance with the content, dual Chinese/English language and maximum offer duration requirements of the Companies Ordinance (“**CO**”) when making an offer of shares or debentures to “*persons whose ordinary business is to buy or sell shares or debentures whether as principal or agent*”. Section 7 of the Exemption Notice exempts Hong Kong and overseas-incorporated companies which are also collective investment schemes authorized by the SFC under section 104 of the Securities and Futures Ordinance (“**SFO**”) from compliance with the content and dual language requirements of the CO.
3. The consultation period ended on 17 September 2004. Four submissions were received, all of which expressed support for the proposed repeal. This document explains the conclusions drawn by the SFC and should be read in conjunction with the consultation paper.

Summary of Conclusions

4. Schedule 1 of the Companies (Amendment) Ordinance 2004 (“**Amendment Ordinance**”) makes changes to Parts II and XII of the CO dealing with offers to the public of shares and debentures. These include the proposed new Seventeenth Schedule to the CO, which contains a list of 12 categories of offers that would be exempt from the entire prospectus regime. For the purposes of the Exemption Notice, two categories of such exempt offers are relevant, namely an offer to professional investors within the meaning of the SFO (“**New SFO Professional Investors CO Exempt Offer**”) and an offer in connection with an SFC-authorized collective investment scheme when the issue of each advertisement or document has also been authorized by the SFC (“**New CIS CO Exempt Offer**”).
5. The class of professional investors described in section 3 of the Exemption Notice is narrower in scope and less specific than the class of professional investors covered by the New SFO Professional Investors CO Exempt Offer. The New CIS CO Exempt Offer covers the same subject matter as section 7 of the Exemption Notice. The two new exempt offers however go further than the existing class exemptions also because they apply to all of the prospectus-related requirements of the CO. The two existing class exemptions will therefore be superseded and become redundant upon the commencement of Schedule 1 of the Amendment Ordinance. The SFC proposes to repeal the

relevant class exemptions in order to avoid unnecessary duplication and complexity in this area of the law.

6. In light of the favourable reception afforded to the proposal in the consultation paper, the SFC has determined to proceed with the proposed repeal of the two class exemptions. The proposed repeal is being effected by publication in the Gazette on 12 November 2004 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2004 (“**Amendment Notice**”). The Amendment Notice will, subject to negative vetting by the Legislative Council, come into operation on 7 January 2005.

Final note

7. The SFC would like to thank the market participants who committed time to this consultation exercise.