



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

Consultation Conclusions on the Proposed Licensing Fees under the Securities and Futures (Fees) Rules

《證券及期貨(費用)規則》下的建議牌照費用 諮詢總結

Hong Kong
July 2002

香港
2002年7月

Introduction

1. On 8 March 2002, the Securities and Futures Commission (“SFC”) issued a Consultation Document to solicit comments on the Proposed Licensing Fees under the Securities and Futures (Fees) Rules (“the Fees Rules”).
2. The consultation period lasted until 8 April 2002.
3. The purpose of this document is to summarize the major comments and enquiries received during the consultation period and the SFC’s responses.
4. It is advisable to read this document in conjunction with the Consultation Document.

Public Consultation

5. In addition to the public announcement inviting comments, the SFC distributed the Consultation Document to all licensed intermediaries using the FinNet communication network. The Document was also published on the SFC website.
6. On 2 April 2002, the SFC held an information session to brief about 200 industry practitioners on the Proposed Licensing Fees.
7. A total of three submissions were received. One was submitted collectively by a group of five international brokerage firms¹ through their solicitors. The other two were submitted by Hong Kong Stockbrokers Association Limited and the Hong Kong Association of Banks. These submissions are published on the SFC website.
8. Apart from written submissions, the SFC also received verbal comments at the information session held on 2 April 2002.

¹ Deutsche Securities Asia Limited, Goldman Sachs (Asia) L.L.C., Merrill Lynch (Asia Pacific) Limited, Morgan Stanley Dean Witter Asia Limited and Salomon Smith Barney Hong Kong Limited.

Summary of Comments and Enquiries and the SFC's Responses

9. Respondents generally welcomed the SFC's proposal to reduce licensing fees. In their submissions, they mainly sought clarification on issues concerning the need to be licensed for a particular regulated activity under specific circumstances after the new licensing regime commences. Some respondents also suggested that more fee waivers should be provided in the Fees Rules.
10. A summary of the comments and enquiries received and the SFC's responses are set out as at **Attachment**.

Consultation Conclusions

11. Having taken into consideration the comments received, the SFC decided to adopt the fees as proposed in the Consultation Document except for two fees payable for the issuance of confirmation letters by the SFC in relation to a person's licensing status or other relevant matters. On reflection, the SFC considers it not necessary to prescribe any fees for the two items (i.e. items (37) and (38) of the Proposed Licensing Fee Schedule) as originally proposed.
12. Certain additional fee waivers will be included in the Fees Rules so that during the transitional period, existing licensees or exempt persons will not incur extra licensing costs over and above the amounts they are currently required to pay under the existing regime. These additional fee waivers are detailed as follows.

Application fees for migration waived

13. During the two-year transitional period immediately after the commencement of the Securities and Futures Ordinance ("the SFO"), existing licensees and exempt persons are deemed to be licensed for regulated activities they are already registered for or exempt from registration under the existing regime. In order to continue such regulated activities after the transitional period, they will need to apply to the SFC for licence or registration, as the case may be, under the new regime before the

transitional period ends. In this connection, it is proposed that no fees will be levied on those applications submitted solely for the purpose of migration.

14. The above arrangement is aimed to ensure that existing licensees and exempt persons will not be worse off when migrating to the new regime. They are, however, still obliged to pay the on-going annual fees as prescribed in the Fees Rules in accordance with section 138(1) of the SFO.
15. As proposed in the Consultation Document, in order to encourage existing licensees and exempt persons to submit their applications for migration early, if such applications are submitted within the first year of the transitional period, a 5% discount on the applicants' annual fees (based on current fees scale) payable from the date of application submission till the end of the transitional period will be offered.
16. For instance, assuming that the transitional period commences 1 January 2003, if an existing securities dealer whose registration anniversary date is the 1st of July in each year submits his application for migration on 1 April 2003, a 5% discount on the annual fee payable for the period from 1 April 2003 to 31 December 2004 will be offered to him. To this end, an amount equivalent to 5% of the pro-rata annual fee payable for the period from 1 April 2003 to 30 June 2003 will be deducted in calculating the next annual fee payable by this dealer. For the period from 1 July 2003 to 31 December 2004, together with the 3% reduction in annual fee proposed in the Consultation Document, this dealer can enjoy a total of 8% reduction in annual fee as compared with the existing fee level. All relevant fee discounts entitled by this dealer as a result of his early submission of application for migration will be reflected by corresponding reduction in the forthcoming annual fee payable by him.

Fees payable by exempt persons maintained at current levels during transitional period

17. For the purpose of migration, exempt persons which are authorized financial institutions can apply to become registered institutions under the new regime. As proposed in the Consultation Document, a higher annual fee will be charged against a registered institution as compared to the existing fee level applicable to an exempt person.

18. As for exempt persons which are not authorized financial institutions, they will need to apply to become licensed corporations under the new regime. By so doing, they may incur higher overall costs having regard to the licensing requirements imposed on their staff as opposed to none under the current regime.
19. In view of the aforesaid, it is proposed that during the transitional period, the annual fees payable by exempt persons will be at the levels applicable to them under the current regime. The early-bird discount on annual fees as mentioned in paragraph 15 will also be applicable.
20. Furthermore, if an exempt person, not being an authorized financial institution, applies to become a licensed corporation, the application and annual fees payable in relation to its staff accredited to the corporation will be waived during the transitional period. This is proposed because they are currently not subject to any fee under the existing regime.

Application and annual fees waived for certain licensed banks

21. According to the current legislation, licensed banks are exempted from the registration requirement if they carry out investment advisory activities concerning securities. However, under the new licensing regime, licensed banks will have to apply to become registered institutions if they intend to carry out such regulated activity after the transitional period.
22. In adopting the “no worse off” principle, it is proposed that during the transitional period, if a licensed bank applies to become a registered institution in respect of the relevant regulated activity² which it has been carrying out without the necessity of any registration requirement under the current regime, the related application fee as prescribed in the Fees Rules will be waived.
23. In addition, during the transitional period, where a licensed bank is or was deemed to have been registered under section 119(1) of the Ordinance in accordance with section 32 of Schedule 10 to the Ordinance, the annual fee payable by that registered institution shall be waived.

² Type 4, Type 6 and/or Type 9 regulated activity as defined in Schedule 5 to the SFO.

24. This fee waiver will have the effect that the licensed bank concerned will not be required to pay any fee in respect of its carrying out of the relevant regulated activity during the transitional period. Following approval of the application, the licensed bank concerned will have to pay the annual fee for the period from the date immediately after the transitional period to the following registration anniversary date.

Fee payable for amendment of licence/certificate of registration

25. The SFC confirms that the fee payable for amendment of licence/certificate of registration (i.e. items (17) and (28) of the Proposed Licensing Fee Schedule) will be applicable only if the amendment does not result from any other application which is subject to separate payment of fee specified in the Fees Rules, e.g. application for variation of regulated activities, transfer of accreditation or approval of responsible officer.

26. The interpretation in paragraph 25 will be valid during as well as after the transitional period.

Final Note

27. The SFC would like to thank all industry practitioners and interested persons who have made valuable suggestions and comments in response to the Consultation Document.

28. The proposed licensing fees will form part of the draft Securities and Futures (Fees) Rules which will be released for public consultation shortly.

**Securities and Futures Commission
July 2002**

Summary of comments/enquiries received on the Proposed Licensing Fees under the Securities and Futures (Fees) Rules

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
<i>Regulated activities conducted "wholly incidental" to dealing in securities / futures contracts</i>				
(1)	-	-	<p>Hong Kong Stockbrokers Association Limited ("HKSA") seeks confirmation as to whether an existing broker dealer will be able to carry out the following regulated activities without incurring additional licensing costs as compared to the current regime:</p> <p>(i) Type 1: dealing in securities;</p> <p>(ii) Type 4: advising on securities;</p> <p>(iii) Type 7: providing automated trading services ("ATS");</p>	<p>A stockbroker needs to be licensed for Type 1 regulated activity in order to deal in securities. This resembles the registration as a Securities Dealer under the current regime.</p> <p>As defined in Schedule 5 to the Securities and Futures Ordinance ("SFO"), "advising on securities" does not include such advice as provided by a person who is licensed for Type 1 and gives such advice wholly incidental to the carrying on of Type 1 regulated activity. Under such circumstances, a licence for Type 4 would generally not be necessary for a stockbroker.</p> <p>For a stockbroker who conducts securities dealing through the Internet, it needs a licence for both Type 1 and Type 7 regulated activities. In this regard, the SFC considers that such Type 7 regulated activity is an integral part the stockbroker's securities dealing business and that levying separate licensing fees on Type 7 regulated activity would not be necessary.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
			<p>(iv) Type 8: securities margin financing; and</p> <p>(v) Type 9: asset management.</p> <p>HKSA also seeks the SFC's confirmation as to whether existing registered individuals will be able to provide the activities mentioned above without incurring extra costs under the new regime.</p>	<p>The definition of "securities margin financing" in Schedule 5 to the SFO does not include the provision of financial accommodation by a person who is licensed for Type 1 regulated activity. Type 8 is thus not required for persons already licensed for Type 1.</p> <p>According to the definition of "asset management", brokers are not required to be licensed for Type 9 regulated activity so long as such services provided are wholly incidental to their carrying on Type 1 or Type 2 regulated activity.</p> <p>The SFC confirms that an existing stockbroker who:</p> <ul style="list-style-type: none"> • carries out dealing in securities through the Internet; • advises on securities and provides asset management services wholly incidental to its dealing business; and • carries out securities margin financing <p>will require a licence for Type 1 and Type 7 regulated activities under the new regime. However, the fees in relation to Type 7 will be waived. As such, only the fees for Type 1 will become payable and the stockbroker will not incur extra costs when compared with the existing regime.</p> <p>The above analysis also applies to individuals licensed as the broker's representatives.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
(2)	-	-	<p>Linklaters asks for clarification as to which types of regulated activities are required under the following scenarios:</p> <p>(i) Portfolio managers who are also involved in promoting funds to clients. Need Type 1 and Type 9?</p> <p>(ii) Sales staff who provide advice to clients, and/or are granted discretionary authority by some of his clients. Need Type 1, Type 2 and Type 9?</p> <p>(iii) Corporate finance professionals who also advise on capital raising by way of private placement. Need Type 1, Type 4 and Type 6?</p> <p>(iv) Research analysts who solicit interest in a particular stock without going so far as to take the order. Need Type 1 and Type 4?</p>	<p>Portfolio managers in this scenario will be required to be licensed for Type 1 and Type 9 regulated activities. Type 1 is necessary because they induce other persons to deal in securities by promoting funds. It is no different from the current regime as to whether a person is required to be registered as a dealer.</p> <p>In this scenario, where the provision of asset management services are carried out incidental to dealing in securities and/or futures contracts, the sales staff are only required to be licensed for Type 1 and/or Type 2 regulated activity.</p> <p>In this scenario, advising on capital raising involves giving advice concerning compliance with or in respect of rules governing the listing of securities and/or the relevant code published by the SFC. Therefore, a licence for Type 6 regulated activity is required.</p> <p>Type 1 regulated activity is also necessary if the individuals concerned induce others to acquire the shares of public companies by way of private placement or otherwise. However, they may not be required to be licensed for Type 4 regulated activity if such advisory services are provided wholly incidental to their Type 1 regulated activity.</p> <p>In general, research analysts are required to be licensed for Type 4 regulated activity. In this scenario, they are also required to be licensed for Type 1 regulated activity due to their involvement in soliciting (or inducing) others to deal in securities.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
<i>Provision of automatic trading services</i>				
(3)	-	-	<p>HKSA comments that the definition of Type 7 regulated activity (i.e. providing ATS) is too wide in the SFO. As it currently stands, it can apply to brokers who provide Internet trading, software houses selling trading systems as well as Electronic Communication Networks (“ECNs”). It considers that Internet trading is just another way for receiving trade orders that is no different from the current telephone system, and believes that it should not be subject to separate licensing requirement.</p>	<p>The SFO provides that where a stockbroker provides ATS in the form of Internet trading, it has to be licensed for Type 1 and Type 7 regulated activities.</p> <p>Although Type 7 relating to Internet broking is generally considered to form a part of the stockbroking activity (as reflected by the proposal to waive licensing fees in relation to Type 7), the SFC is of the view that Type 7 regulated activity has to be licensed separately because such activity normally calls for additional consideration on specific areas in respect of system integrity and controls, security measures and contingency issues.</p>
(4)	-	-	<p>Linklaters comments that it is unclear when a securities dealer or futures dealer needs to apply for a licence to provide ATS (Type 7)?</p> <p>Although there is no fee implication, it may be very significant in respect of on-going training and competence requirements for dealing staff.</p>	<p>The term “providing ATS” is defined in Schedule 5 to the SFO. For example, a dealer who conducts dealing activities through the Internet needs to be licensed for Type 7 regulated activity.</p> <p>In February 2002, the SFC published the “Guidelines for the Regulation of Automatic Trading Services”. The approach in regulating this type of regulated activity is set out in these Guidelines.</p> <p>The SFC is aware of this concern and is currently developing new guidelines relating to competence and training to address the issue. Meanwhile, no additional requirement, whether in terms of fee, competence or on-going training, will be imposed in this regard as compared to the current regime during the transitional period.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
(5)	-	-	Hon. Henry WU comments that to be fair to all intermediaries, Internet brokers should pay licensing fees in relation to Type 7 regulated activity whilst the licensing fees for brokers not providing ATS should be reduced to reflect the cost of regulating ATS. He views that related regulatory cost should not be borne by those intermediaries not providing ATS.	As noted in (1)(iii) above, securities or futures dealing through the Internet is regarded as a part of the overall dealing business of a licensee. It is therefore inappropriate to identify specific activity (in this case Internet trading) within a regulated activity (Type 1 or Type 2) for the purposes of levying licensing fees. As in the current regime, the SFC does not intend to impose separate fees for different products or channels of service delivery in respect of the same business activity.
<i>Asset management</i>				
(6)	-	-	<p>HKSA submits that while brokers managing discretionary accounts are asset management functions, it does not believe that the SFC intends to license brokers separately in this regard.</p> <p>It also believes that Type 9 is more applicable to fund management companies that manage funds sold by public subscription.</p>	<p>Yes. Stockbrokers who manage discretionary accounts for clients incidental to their carrying on of dealing in securities are only required to be licensed for Type 1 regulated activity.</p> <p>This is generally an accurate observation.</p>
<i>Responsible officers</i>				
(7)	-	-	HKSA seeks confirmation as to whether the same "responsible officer" will be allowed to be appointed for several regulated activities under the new regime.	The SFC confirms that the same individual can be licensed as a responsible officer for one or more regulated activities as long as he can satisfy the SFC that he is fit and proper to be so licensed and there is no conflict of interest for him to carry out the regulated activities concerned at the same time.
(8)	-	-	HKSA comments that if a "responsible officer" needs to be licensed in several activities, the total costs should not be more than under the current system of registration.	As noted in (1) above, the SFC envisages that in general, responsible officers of stockbroker firms will incur licensing costs in relation to only one type of regulated activity (i.e. Type 1).

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
				<p>In adopting the “no worse off” principle, where an existing registered person applies for a new licence in respect of such regulated activities for which he is deemed to have been licensed pursuant to Schedule 10 to the SFO, the annual fee to be payable by that person during the transitional period will be based on:</p> <p>(a) the number of licence(s) that he holds under the current regime immediately before commencement of the SFO; or</p> <p>(b) the number of regulated activity type(s) that he is licensed for under the SFO,</p> <p>whichever is less.</p>
(9)	-	-	<p>Linklaters comments that the requirement to appoint at least two responsible officers for each regulated activity appear to result in a multiplicity of fee payments because:</p> <p>(i) under the SFO, each responsible officer will also need to be a licensed representative of the licensed corporation. Two application fees, and two annual fees each year, therefore appear to be payable, even if only a single regulated activity is involved.</p>	<p>Fees payable for a responsible officer include the part of licensing as a representative (\$1,790) and the part of approval as a responsible officer (\$2,950). The total of \$4,740 (i.e. \$1,790 + \$2,950) is less than the existing application or annual fee payable for dealing/supervisory director amounting to \$4,900.</p> <p>The necessity to have at least 2 responsible officers for each type of regulated activity is provided by the legislation. It is noted that most corporate registrants under the current regime have appointed two or more dealing/supervisory directors for carrying out registrable activities. So, in effect they are no worse off under the new regime.</p> <p>Existing sole proprietors and certain corporations which have only one dealing/supervisory director may be affected by the new requirement. In this regard, the fee waiver proposed in respect of the additional responsible officer applicable during the transitional period will provide the necessary fee relief to the licensees concerned.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
			(ii) Assuming that an individual is to be a responsible officer/licensed representative in respect of more than one type of regulated activity, it appears that a separate application fee and annual fee will be payable in respect of each type of regulated activity.	This is no different from the current regime in the sense that an existing registrant needs to pay application and annual fees in respect of different registrable activities, e.g. securities dealing and commodities trading.
(10)	-	-	<p>Linklaters comments that there may be increase in licensing costs because:</p> <p>(i) two responsible officers will be required in respect of each regulated activity;</p> <p>(ii) a person can become a responsible officer without being an executive director. It is thus likely that quite a large number of individuals who are not currently registered as “dealing directors” or “investment advisers” will apply to become responsible officers;</p> <p>(iii) some people who are already registered as a “dealing director” or “investment adviser” will need to become responsible officers in respect of more than one type of regulated activity.</p>	<p>See (7) and (9)(i) above.</p> <p>The person must, however, satisfy the SFC that he is fit and proper and has sufficient authority within the licensed corporation before he can become a responsible officer. In addition, so long as section 125(1) of the SFO is complied with, it is up to a licensed corporation's own decision as to whether a licensed representative of the corporation who is not an executive director will apply for approval as an responsible officer.</p> <p>As mentioned in (1), in principle, a person licensed for Type 1 regulated activity can carry out Type 4, Type 6 and/or Type 9 regulated activity without the necessity to be licensed for those latter activities if they are carried out incidental to Type 1.</p> <p>Whilst it appears that an “investment adviser” may need to be licensed for multiple regulated activities (i.e. Types 4, 6 and 9) under the new regime, in reality it is unlikely that the same individual will seek to be licensed for all 3 types of regulated activities in view of the specialized expertise required for each type of activities and the potential conflict of interest that may arise should such activities be conducted by the same individual at the same time, say carrying out Types 6 and 9 simultaneously.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
			Linklaters suggests a waiver of fees in respect of applications made during the transitional period for persons becoming "responsible officers", whether for one or several regulated activities.	In adopting the "no worse off" principle, the SFC has already proposed the necessary fee waiver to relieve financially the affected licensees during the transitional period, e.g. the waiver mentioned in (9)(i) above.
<i>Transitional arrangement</i>				
(11)	-	-	<p>Linklaters considers that the application process for existing licensed persons to migrate to the new regime should be streamlined and simplified, and that existing licensed persons will effectively be "grandfathered" to the new regime.</p> <p>The respondents also comment that an existing licensed person may incur additional cost if he needs to pay an application fee for migration to the new regime in addition to the on-going annual fee.</p>	<p>The SFC is aware of the concerns about transitional arrangements and will endeavor to make the process of migration to the new regime as simple as possible. A detailed transitional guideline will be issued around September 2002 to assist intermediaries in this regard.</p> <p>The SFC notes that existing intermediaries will be largely "grandfathered" to the new regime as provided by the SFO in granting deemed licences or registrations during the transitional period.</p> <p>The SFC is fully aware of this concern and proposes that all fees payable for applications which are submitted solely for migration purposes will be waived. This is to ensure that during the transitional period, existing licensees and exempt persons will not incur extra licensing costs over and above the amounts they are required to pay under the current regime.</p>

	Reference to the Proposed Licensing Fee Schedule (i.e. Appendix 3 of the Consultation Document)	Details of the Fee	Respondent's Comments/Enquiries	SFC's Response
(16)	Item 25	Annual fee payable under section 138(1) of the SFO by a registered institution, per Type of regulated activity (\$35,000)	<p>The Hong Kong Association of Banks is concerned about the possibility of double-charging banks in relation to the supervision of their securities business by both the SFC and the Hong Kong Monetary Authority (“HKMA”).</p> <p>It also comments that the moderate increase in fees for Registered Institutions is not specifically mentioned and accounted for.</p>	<p>The HKMA has confirmed that it does not intend to charge banks for supervising their securities business on top of the fees proposed by the SFC.</p> <p>The increase in annual fees for registered institutions reflects the enhanced regulatory oversight and effort by the HKMA. In this regard, the fees collected by the SFC will be shared with the HKMA.</p>
(17)	Item 29	Fee payable on application under section 130 of the SFO for approval of premises, or alternative premises, for keeping records or documents required under the SFO (\$1,000)	Linklaters seeks clarification on the scope of section 130 of the SFO. They note that “in the past, SFC officers have suggested that where records are maintained in computerized form, with the data center (and/or back-up facilities) being located somewhere other than the premises of the SFC licensed person, the data center or back-up facility needs to be approved by the SFC as being a place at which records of the business are kept (even though the records can be accessed on-screen at the registered person's premises in Hong Kong)”.	This is correct.

List of Respondents

Date received	Respondent
2 April 2002	Hon. Henry WU
4 April 2002	The Hong Kong Association of Banks
8 April 2002	Linklaters (on behalf of Deutsche Securities Asia Limited, Goldman Sachs (Asia) L.L.C., Merrill Lynch (Asia Pacific) Limited, Morgan Stanley Dean Witter Asia Limited and Salomon Smith Barney Hong Kong Limited)
10 April 2002	Hong Kong Stockbrokers Association Limited