



HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

13 Mar 2003

Application for Registration by an Authorized Institution to become a Registered Institution under the Securities and Futures Ordinance

Our Ref: G4/26/5C
B1/15C

13 March 2003

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Application for Registration by an Authorized Institution to become a Registered Institution under the Securities and Futures Ordinance

In the light of the impending commencement of the Banking (Amendment) Ordinance 2002 (BAO 2002) and the Securities and Futures Ordinance (SFO) on 1 April 2003, I am writing to inform you of the HKMA's role in handling an application by an authorized institution (AI) for registration under the SFO. You should pay attention to this letter if your institution will become a deemed registered institution¹ (RI) or intends to apply for registration under the SFO. Also covered in this letter are some important administrative issues applicable to an AI after registration with the Securities and Futures Commission (SFC) as a RI.

Introduction

Section 114 of the SFO stipulates that no person shall carry on a business in a regulated activity² or hold himself out as carrying on a business in a regulated activity unless it is a licensed corporation, a RI or a person authorized under section 95(2) of the SFO to provide automated trading services³. According to section 119 of the SFO, an AI may apply for a single registration with the SFC if it intends to engage in one or more regulated activities set out in Schedule 5 of the SFO.

Notwithstanding the two-year transitional period for deemed RIs to apply for registration with the SFC, they should begin to plan ahead and keep the HKMA informed of their intention. The Guidelines on Transitional Arrangements to be issued by the SFC will explain the arrangements applicable to deemed RIs.

Application for registration

Application forms

Under section 119 of the SFO, the SFC may, upon application by an AI, register the applicant for one or more regulated activities specified by the SFC.

To apply for registration with the SFC, an AI needs to complete the specified application forms and submit these, together with the required supporting documents, to the SFC. The following points should be noted:

- In the case of deemed RIs which are currently exempt dealers and/or exempt investment advisers under the to-be-repealed Securities Ordinance, there will be a separate set of application forms which require less information⁴.
- Those deemed RIs which are licensed banks that engage in investment advisory activities immediately before the commencement of the SFO but are not exempt dealers or exempt investment advisers have not previously been required to submit the details of their investment advisory activities to the SFC. They will therefore be required to complete a more comprehensive application form in the same manner as a non-deemed AI.
- The application forms for RI applicants will be available for download from the SFC's public website (www.hksfc.org.hk) and at the licensing counter of the SFC office.
- When there is a change of the information already submitted to the SFC and the relevant application for registration is still under the latter's consideration, as required by section 4(2)(a) of the Securities and Futures (Licensing and Registration) (Information) Rules, an applicant must notify the SFC within 7 business days after the change takes place. The notice must be in writing containing a full description of the change.

Any AI that intends to apply to the SFC for registration under the SFO must submit applications to obtain the consent of the HKMA for the appointment of at least two executive officers (EOs) in relation to each regulated activity not later than its application to the SFC for registration. Such submission should be made directly to the HKMA. Further details of the arrangements for applications in respect of EOs will be given in a separate letter to be issued soon.

To facilitate planning (and allocation of the necessary resources), **all deemed RIs should confirm with the HKMA that they intend to submit an application to become a RI at least 4 months before they lodge the application with the SFC**⁵. The HKMA may discuss with individual institutions whether to adjust their schedule in the light of the workload and available resources.

Assessment of an application to become a RI

In deciding whether to register or refuse to register an AI, the SFC will refer the application to the HKMA. Upon receiving an application referred by the SFC, the HKMA will consider the application and consult the SFC upon the merits of the application. In considering whether the applicant is fit and proper to be registered for the regulated activity(ies) concerned, the HKMA will take into account the factors set out in section 129 of the SFO as well as any relevant rules⁶, codes, guidelines or guidance⁷ made or published by the SFC under the SFO.

For an application from a deemed RI which is currently an exempt dealer or an exempt investment adviser, the HKMA will assess, among other things, the AI's previous experience in its deemed regulated activities with reference to the following:

- the findings of our previous examinations on such activities and the current status of implementation of our recommendations; and
- compliance history of the deemed RI with respect to the to-be-repealed Securities Ordinance under the previous regime, the SFO (and its subsidiary legislation), the BAO 2002, as well as those codes, guidelines or circulars issued by the SFC or the HKMA that are applicable to the deemed RIs' conduct of regulated activities.

For the purpose of assessing the fitness and propriety of an applicant that is not a deemed RI, the HKMA may request the applicant to provide additional information and documents. This will be necessary if the business plan and internal control procedures submitted in the application package fail to provide sufficient details for the purpose of the HKMA's assessment. The HKMA will evaluate the application taking into account matters such as the AI's management capabilities, controls and resources in relation to its intended scope and scale of regulated activities.

The HKMA will endeavour to advise the SFC, within 10 weeks of receiving the application, whether the HKMA is satisfied that the applicant is fit and proper to be registered for the regulated activity(ies) concerned. The HKMA's advice to the SFC may include recommendations in respect of any condition of registration. The HKMA may consider making such recommendation where the condition(s) can overcome concerns about the fitness and propriety of an applicant. One typical example of such concerns would be where the applicant cannot display sufficient experience and expertise in relation to a regulated activity, and the resulting condition may be an appropriate restriction on the scope of such activity.

Outcome of application

Pursuant to section 119 of the SFO, the SFC will have regard to any advice given by the HKMA and may rely wholly or partly on that advice in making its decision to approve (with or without conditions) or refuse (the whole or a part of) an application. The SFC will consult the HKMA before imposing any conditions on the registration of a RI.

Under section 140 of the SFO, if the SFC forms a preliminary view to:

- refuse the whole or a part of an application; or
- impose conditions on approving an application,

it will inform the applicant of the ground for the preliminary view and give such applicant a reasonable opportunity of being heard. When the SFC makes a final decision, it will notify the applicant in writing of its decision and the reasons for making such decision.

Under normal circumstances, it is expected that the SFC will take about 15 weeks (including the 10 weeks mentioned above) to process an application. It may take a longer time if the SFC considers imposing any condition on the registration as prior consultation with the HKMA is necessary.

The new Memorandum of Undertaking (MoU) signed between the HKMA and the SFC on 12 December 2002 sets out details of the referral and consultation procedures mentioned above in relation to Als' applications for registration. The MoU has been posted on the public website of the HKMA. You may also refer to the SFC's Licensing Information Booklet available on the SFC's public website, which will be updated to reflect the registration requirements under the new securities supervisory regime.

Registration status

Upon approving a registration, the SFC will grant a certificate of registration to the RI specifying the regulated activities for which the RI is registered. The conditions imposed on a registration, if any, will also be shown on the certificate.

As required under the Securities and Futures (Miscellaneous) Rules, after registration with the SFC, a RI must exhibit its certificate of registration in a prominent place at its principal place of business. If a RI has more than one place of business, it must exhibit a copy of the certificate in a prominent place at each of its other places of business that carries out any regulated activity. The copy of certificate should be certified by a director or an EO of the RI.

Upon commencement of the SFO, the SFC's public register will display specified particulars of RIs and deemed RIs as well as the EOs of RIs. The particulars of RIs' relevant individuals⁸ will be captured by the HKMA's public register to be maintained under the new section 20(1) (ea) of the Banking Ordinance.

Reporting of changes after registration

Pursuant to section 127 of the SFO, where a RI applies for variation of the regulated activities specified in its certificate of registration by adding any regulated activity, such application will be regarded as an application for registration in respect of that regulated activity. It will be required to provide additional information, e.g. business plan and internal control procedures, in relation to the new regulated activity. A RI that wishes to reduce the regulated activities specified in the certificate of registration should also submit an application to the SFC. To lodge such applications, the RI should complete the SFC's specified forms supported by relevant information/documents (as the case may be) and submit these documents directly to the SFC.

The duty to report mentioned in the following paragraphs applies to deemed RIs as well as RIs.

Under section 135 of the SFO and the Securities and Futures (Licensing and Registration) (Information) Rules, a RI is required to notify both the SFC and the HKMA in writing of the following events and within the specified time limits:

- at least 7 business days' advance notice of any intended cessation of any regulated activity;
- at least 7 business days' advance notice of any intended change of address at which it proposes to carry on any regulated activity⁹; and
- a notice (together with full description of the change) within 7 business days of any change in the information as specified in Part 2 of Schedule 3 to the Securities and

Futures (Licensing and Registration)(Information) Rules.

In line with the reporting requirements imposed by the SFC on licensed representatives under the Securities and Futures (Licensing and Registration) (Information) Rules, RIs are required to notify the HKMA in writing within 7 business days upon knowledge of certain information¹⁰ (including any subsequent changes) relating to any of their relevant individuals, whether deemed or not. RIs should have procedures and systems in place to meet the reporting requirements. To ensure full compliance, such notification requirements should be clearly communicated to all relevant individuals.

The SFC has designed specified forms for various purposes, such as variation of regulated activities and miscellaneous application/notification. These forms will be available for download from the SFC's public website and at the licensing counter of the SFC office.

Application fee and annual fee

According to the Securities and Futures (Fees) Rules, application fees and annual fees of RIs will be payable to the SFC. The fees will be imposed on the basis of the number of regulated activities¹¹.

During the transitional period, no application fee will be payable by deemed RIs which apply for registration solely for the purpose of migration to the new regime, i.e. no new regulated activities. They will, however, still be obliged to pay the annual fees as prescribed in the Securities and Futures (Fees) Rules.

The SFC has adopted the "no worse-off" principle -

- Throughout the entire transitional period, exempt dealers and exempt investment advisers will not incur extra registration fees over and above the amounts they are currently required to pay. The annual fee will be charged on the basis of the number of former exemptions obtained and the current annual fee for these exemptions.
- For a deemed RI which immediately before the commencement of the SFO is a licensed bank engaging in investment advisory activities but not an exempt dealer or an exempt investment adviser, no annual fee is payable for the entire transitional period.
- To encourage deemed RIs to submit their application for migration early, if such applications are submitted within the first year of the transitional period (i.e. 1 April 2003 to 31 March 2004), a 5% discount on the annual fee for the previously deemed regulated activities (payable from the date of application submission till the end of the transitional period) will be offered.

You may refer to the Guidelines on Waivers of Certain Licensing Fees to be issued by the SFC for details of fees applicable to deemed RIs in relation to their conduct of regulated activities.

Should you have any questions relating to this letter, please contact Miss Polly Cheung at 2878-8229 or Mr Eric Fok at 2878-1538.

Yours faithfully,

1. Refer to our circular "Register of relevant individuals to be maintained by the HKMA under the Banking (Amendment) Ordinance 2002" of 12 September 2002 for details of deemed registered institutions.
2. Regulated activity, in relation to an AI, means dealing in securities, dealing in futures contracts, advising on securities, advising on futures contracts, advising on corporate finance, providing automated trading services, or asset management. AIs do not require registration with the SFC to engage in leveraged foreign exchange trading and securities margin financing.
3. This refers to a person who provides automated trading services but does not engage in traditional dealing activities.
4. This is however on the basis that the deemed RI only applies for registration in relation to its deemed regulated activities. The SFC considers it desirable that a deemed RI should transit to the new regime before applying for a new regulated activity. In other words the first application for registration from a deemed RI is expected to cover its deemed regulated activities only. Any intended engagement in a new regulated activity should be considered at a later stage, when the institution has become a RI.
5. For other AIs (i.e. not being deemed RIs) it is also desirable that they notify the HKMA of their intended application in advance.
6. The major subsidiary legislation under the SFO that will be applicable to RIs' conduct of regulated activities are the Securities and Futures (Client Securities) Rules, the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules and the Securities and Futures (Keeping of Records) Rules. Refer to Annex 2 of our circular "Subsidiary legislation under the Securities and Futures Ordinance" of 18 November 2002 for a list of all applicable rules for RIs.
7. The major SFC codes and guidelines that will be taken into account for this purpose are the Fit and Proper Guidelines and the Guidelines on Competence. In respect of an application for registration in Type 7 regulated activity (providing automated trading services), the HKMA will also take into account the SFC Guidelines for the Regulation of Automated Trading Services. A list of SFC codes, guidelines and circulars applicable to RIs in respect of their regulated activities is provided in the Annex of our circular "Commencement of the Banking (Amendment) Ordinance 2002 and the Securities and Futures Ordinance" of 20 December 2002.
8. The meaning of relevant individuals is set out in our circular "Register of relevant individuals to be maintained by the HKMA under the Banking (Amendment) Ordinance 2002" of 12 September 2002. The term includes deemed relevant individuals, i.e. those registered under transitional arrangements.

9. The SFC adopts a pragmatic approach and only requires RIs to notify any intended change in the principal place for carrying on regulated activities (i.e. the main location for receiving orders from clients or meeting with clients).

10. For details of the required information, refer to module SB-1 "Supervision of Regulated Activities of SFC-Registered Authorized Institutions" of the HKMA Supervisory Policy Manual, which will be issued shortly.

11. No fee is imposed on Type 7 regulated activity (providing automated trading services).

c.c.: The Chairman, HKAB
 The Chairman, DTCA
 SFC (Attn: Mrs Alexa Lam)

Last revision date : 01 August 2011