



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

Guidelines on Waivers of Certain Licensing Fees

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Hong Kong
March 2003

2003 3

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Introduction

1. The Securities and Futures Commission ("SFC") publishes these Guidelines pursuant to section 399(1) of the Securities and Futures Ordinance (Cap 571) ("SFO").
2. These Guidelines supplement the Securities and Futures (Fees) Rules (L.N. 228 of 2002) ("Fees Rules") in relation to the following licensing fees payable to the SFC:-

Part A General Fee Waivers

6. **Applic 4 7s**

116(1) of the SFO, and the related application for licence is still being processed (i.e. neither approved nor refused by the SFC) at the time the application for approval to become or continue to be a substantial shareholder is lodged.

7.5 In relation to the application fee prescribed under

Part B Fee Waivers during Transitional Period

Background

8. As provided in Schedule 10 to the SFO, during the transitional period, existing intermediaries will be deemed to be licensed or registered (as the case may be) under the SFO for those regulated activities for which they are currently registered or exempted from registration under the Securities Ordinance, the Commodities Trading Ordinance and the Leveraged Foreign Exchange Trading Ordinance.
9. The fee waivers provided in this Part aim to ensure that during the transitional period, existing intermediaries will not incur extra licensing costs over and above the amounts they are required to pay under the current regime. The fee waivers provided in this Part are therefore applicable mainly to existing intermediaries during the transitional period. In particular, these fee waivers concern the following categories of intermediary:-
 - a. licensed persons or registered institutions who are deemed to have been licensed or registered under the SFO;
 - b. corporations succeeding the businesses which constitute regulated activities of sole proprietors, partnerships or other corporations which are deemed to have been licensed or registered under the SFO;
 - c. new responsible officers accredited to a sole proprietor (who is deemed to be a licensed corporation) or a corporation which has succeeded the businesses which constitute regulated activities of a sole proprietor;
 - d. the second responsible officer accredited to a licensed corporation which has only one supervisory director registered or licensed with the SFC before the commencement of the SFO;
 - e. new responsible officers accredited to an existing securities margin financier or an existing leveraged foreign exchange trader;
 - f. individuals who are engaged by an exempt person to perform regulated activities where such exempt person is not an authorized financial institution; and
 - g. licensed banks providing investment advisory services to customers.

Waivers of application fees

10. **Application for migration by deemed licensed persons and deemed registered institutions**
- 10.1 The application fee payable for a licence/registration/approval as a responsible officer under section 116, 119, 120, or 126 of the SFO as the case may be (prescribed under) shall be waived if that application is lodged by a person who is deemed to have been licensed/registered/approved pursuant to Schedule 10 to

the SFO and the regulated activity or regulated activities in that application is or are not other than those regulated activities for which that person is so deemed to have been licensed/registered/approved.

in respect of the regulated activities for which the latter corporation is so deemed to have been licensed shall be waived.

- 11.4 Company A and Company B are currently registered as a securities dealer and a commodity dealer respectively. They are wholly owned by the same ultimate shareholder. Upon commencement of the SFO, Company A will be deemed to have been licensed for Type 1, Type 4, Type 6 and Type 9 regulated activities whilst Company B will be deemed to have been licensed for Type 2, Type 5 and Type 9 regulated activities.
- 11.5 If during the transitional period, Company A applies to add any of Type 2, Type 5 and Type 9 regulated activities to its licence in order to take over the business of Company B (which will then cease to operate), the related application fee prescribed under
payable by Company A shall be waived.

the application fee prescribed under in
respect of the regulated activity for which the individual applies shall be waived
provided that the corporation was deemed to have been licensed for such
regulated activity.

- 15.3 The annual fee payable by an **investment adviser** who is deemed to have been licensed for Type 4, Type 6 and Type 9 regulated activities under section 22(b), 23(b), 27(b), 28(b) or 30(b)(ii) and (iii) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under _____ for such regulated activities exceeds \$4,740.
- 15.4 The annual fee payable by a corporation which was an **exempt investment adviser** and is deemed to have been licensed for Type 4, Type 6 and Type 9 regulated activities under section 25(b)(ii) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under _____ for such regulated activities exceeds \$7,000.
- 15.5 The annual fee payable by a **commodity dealer** who is deemed to have been licensed for Type 2, Type 5 and Type 9 regulated activities under section 22(d), 23(d), 27(c), 28(c) or 30(c)(ii) and (iii) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under _____ for such regulated activities exceeds \$4,740.
- 15.6 The annual fee payable by a **commodity trading adviser** who is deemed to have been licensed for Type 5 and Type 9 regulated activities under section 22(e), 23(e), 27(d), 28(d) or 30(d)(ii) and (iii) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under _____ for such regulated activities exceeds \$4,740.
- 15.7 The annual fee prescribed under _____ in respect of the regulated activities for which a **sole proprietor** is deemed to be a licensed corporation under section 30(a)(i), (b)(i), (c)(i) or d(i) of Schedule 10 to the SFO shall be waived. However, the annual fee for a responsible officer prescribed under _____ remains payable by the sole proprietor as described in paragraph 15.1 above.
16. **Corporations succeeding the business of existing intermediaries**
- 16.1 The waivers of annual fees provided to deemed licensed corporations (which are existing intermediaries) in paragraphs 15.1 to 15.7 also apply to corporations succeeding entirely the business of regulated activities of such existing intermediaries.
- 16.2 These successor corporations are referred to in paragraphs 11.1 to 11.3 (being the applicant corporations concerned).
17. **Other responsible officers**
- 17.1 The annual fee payable by a responsible officer in respect of Type 8 regulated activity shall be waived to the extent that the annual fee in respect of Type 8 regulated activity prescribed under _____ exceeds \$1,790 if that responsible officer is accredited to a corporation deemed to have been licensed for Type 8 regulated activity under section 22(c) of Schedule 10 to the SFO (i.e. an existing securities margin financier).

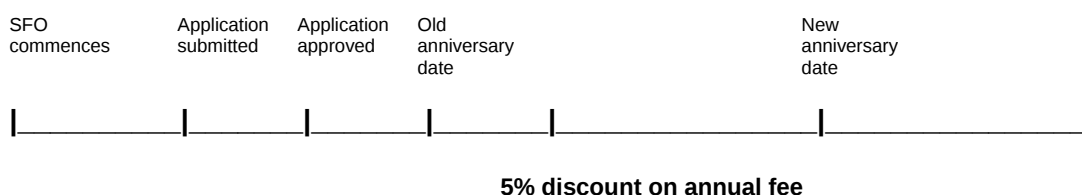
- 17.2 The annual fee payable by a responsible officer in respect of Type 3 regulated activity shall be waived to the extent that the annual fee in respect of Type 3 regulated activity prescribed under
exceeds \$2,420 if that responsible officer is accredited to a corporation deemed to have been licensed for Type 3 regulated activity under section 22(f) of Schedule 10 to the SFO (i.e. an existing leveraged foreign exchange trader).
- 17.3 The annual fee payable by the second responsible officer accredited to a deemed licensed corporation (referred to in paragraph 13.1) shall be waived to the extent that the annual fee prescribed in
exceeds \$1,790 in respect of each of the regulated activities for which the corporation is deemed to have been licensed.
- 17.4 The annual fee payable by an additional responsible officer accredited to a sole proprietor or a licensed corporation succeeding the business of a sole proprietor (referred to in paragraph 12.1) shall be waived to the extent that the annual fee prescribed in
exceeds \$1,790 in respect of each of the regulated activities for which the sole proprietor is deemed to have been licensed.
- 17.5 During the transitional period, an individual joined a licensed corporation which has succeeded the business of a sole proprietor previously registered as a securities dealer and he has been approved as a responsible officer in respect of Type 1 and Type 6 regulated activities. The annual fee payable by that new responsible officer during the transitional period will be \$3,580 per year (i.e. \$1,790 x 2 regulated activities) instead of \$9,480 (i.e. \$4,740 x 2 regulated activities).
18. **Deemed licensed persons – representatives**
- 18.1 The annual fee payable by a **securities dealer's representative** who is deemed to have been licensed for Type 1, Type 4, Type 6 and Type 9 regulated activities under section 24(a), 29(a) or 31(a) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under
for all such regulated activities exceeds \$1,790.
- 18.2 The annual fee payable by an **investment representative** who is deemed to have been licensed for Type 4, Type 6 and Type 9 regulated activities under section 24(b), 29(b) or 31(b) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under
for all such regulated activities exceeds \$1,790.
- 18.3 The annual fee payable by a **commodity dealer's representative** who is deemed to have been licensed for Type 2, Type 5 and Type 9 regulated activities under section 24(d), 29(c) or 31(c) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under
for all such regulated activities exceeds \$1,790.
- 18.4 The annual fee payable by a **commodity trading adviser's representative** who is deemed to have been licensed for Type 5 and Type 9 regulated activities under section 24(e), 29(d) or 31(d) of Schedule 10 to the SFO shall

be waived to the extent that the annual fee prescribed under
for all such regulated activities exceeds \$1,790.

- 18.5 The annual fee payable by an **individual who was previously engaged by an exempt person** and is deemed to have been licensed as a representative under section 26(ii) of Schedule 10 to the SFO shall be waived to the extent that the annual fee prescribed under
relates to any of those regulated activities for which he is so deemed to have been licensed.

19. **Deemed registered institutions**19.

The following diagram represents the scenario described above.



20.3 At the time when the SFO commences, this securities dealer has already paid an annual fee up to 30 September 2003. No fee is payable in respect of his application for migration submitted on 1 June 2003.

20.4 Upon approval of its application on 1 July 2003, the SFC will issue to this securities dealer a debit note requesting the payment of annual fee for the period from **1 October 2003 to 30 June 2004** in order to align the annual fee payment with the dealer's new anniversary date. The annual fee for this 9-month period is calculated pro rata based on the new fee level of \$4,740 (which is about 3% reduced from the old fee level of \$4,900). Since the securities dealer submits the application during the first year of the transitional period, a 5% early bird discount on annual fee for the period from 1 June 2003 (i.e. the application submission date) to 30 June 2004 calculated based on the old fee level (see **Appendix 2**) is applicable. Therefore, the annual fee demanded for in this debit note will be:-

$$(\$4,740 \times 9/12) - (\$4,900 \times 5\% \times 13/12) = \mathbf{\$3,290}$$

20.5 Approaching 1 July 2004 (i.e. the new anniversary date), the SFC will issue a debit note to request the annual fee from **1 July 2004 to 30 June 2005**, with a 5% early bird discount applicable for the period from 1 July 2004 to 31 March 2005 (i.e. end of the transitional period). The amount of annual fee of that debit note will be:-

$$\$4,740 - (\$4,900 \times 5\% \times 9/12) = \mathbf{\$4,556}$$

20.6 For another example, assume that:-
the SFO commences on 1 April 2003;
an existing investment adviser firm has its Common Anniversary Date ("CAD") falling on 1 January every year (being the anniversary date applicable to the firm and all licensed individuals of the firm);
the firm, together with its supervisory directors and representatives, submits the application for migration in respect of Type 6 regulated activity on 1 November 2003;
the application is approved on 1 December 2003; and
the firm requests to maintain its CAD as 1 January.

The following diagram represents the scenario described above.



- 20.7 As the licensees in this example apply for migration within the first year of the transitional period, they are entitled to the 5% early bird discount on the annual fees provided in paragraph 20.1 above for the period from their application submission date till the end of the transitional period.
- 20.8 After approving the application on 1 December 2003, the SFC will request this investment adviser firm to pay the annual fees for its CAD group covering the period from **1 January 2004 to 31 December 2004**. The following formula will apply in calculating the annual fees payable:

Accordingly, the annual fees payable will be:-

$$\$4,740 - (\$4,900 \times 5\% \times 14/12) = \$4,454$$

$$\$4,740 - (\$4,900 \times 5\% \times 14/12) = \$4,454$$

$$\$1,790 - (\$1,850 \times 5\% \times 14/12) = \$1,682$$

- 20.9 On 1 January 2005 (i.e. the next CAD), the SFC will issue a debit note to request the annual fee from **1 January 2005 to 31 December 2005**, with a 5% early bird discount applicable for the period from 1 January 2005 to 31 March 2005 (i.e. end of the transitional period). The amounts of annual fees requested in that debit note will be:-

$$\$4,740 - (\$4,900 \times 5\% \times 3/12) = \$4,679$$

$$\$4,740 - (\$4,900 \times 5\% \times 3/12) = \$4,679$$

$$\$1,790 - (\$1,850 \times 5\% \times 3/12) = \$1,767$$

21. **Validity of annual fee waivers during the transitional period**

- 21.1 All waivers of annual fees provided under items 15 to 20 above remain available to the intermediary concerned during the transitional period regardless of whether or not that intermediary has applied for a licence or registration (as the case may be) for the purpose of migration.

Extract of Schedule 3 to the Securities and Futures (Fees) Rules

Item	Description	Amount
3.	Prescribed fee payable under section 116(1) of the Ordinance on an application for the grant of a licence for a licensed corporation	(A) \$4,740 for each regulated activity other than Type 3 regulated activity; and (B) \$129,730 for Type 3 regulated activity
5.	Prescribed fee payable under section 119(1) of the Ordinance on an application for registration as a registered institution	\$23,500 for each regulated activity
6.	Prescribed fee payable under section 120(1) of the Ordinance on an application for the grant of a licence for a licensed representative	(A) \$1,790 for each regulated activity other than Type 3 regulated activity; and (B) \$2,420 for Type 3 regulated activity
12.	Prescribed fee payable under section 126(1) of the Ordinance on an application for approval of a person as a responsible officer	\$2,950 for each regulated activity
13.	Prescribed fee payable under section 127(1) of the Ordinance on an application for variation of any regulated activity – (a) in the case of a licensed corporation – (i) for adding any regulated activity	(A) \$4,740 for each regulated activity other than Type 3 regulated activity; and (B) 129,730 for Type 3 regulated activity
	(c) in the case of a registered institution – (i) for adding any regulated activity	\$23,500 for each regulated activity
14.	Prescribed fee payable under section 130(1) of the Ordinance on an application for approval of premises	\$1,000
15.	Prescribed fee payable under section 132(1) of the Ordinance on an application for approval to become or continue to be a substantial shareholder	\$3,000
18.	Prescribed annual fee payable under section 138(1) of the Ordinance – (a) in the case of a corporation licensed under section 116 of the Ordinance	(A) \$4,740 for each regulated activity other than Type 3 regulated activity; and (B) \$129,730 for Type 3 regulated activity
	(b) in the case of an individual licensed under section 120(1) of the Ordinance – (i) to the extent of any regulated activity for which the individual is not approved as a responsible officer under section 126(1) of the Ordinance	(A) \$1,790 for each regulated activity other than Type 3 regulated activity; and (B) \$2,420 for Type 3 regulated activity
	(ii) to the extent of any regulated activity for which the individual is approved as a responsible officer under section 126(1) of the Ordinance	(A) \$4,740 for each regulated activity other than Type 3 regulated activity; and (B) \$5,370 for Type 3 regulated activity
	(c) in the case of a registered institution	\$35,000 for each regulated activity

**Schedule of Annual Fees under the Existing Licensing Regime
(prior to commencement of the Securities and Futures Ordinance)**

Item	Description	Amount
1.	The following person within the meaning of the Securities Ordinance – (a) exempt dealer	

1. () (571
) () 399(1)

A

6.

6.1

116(2)(c)

130(1)

116(1)

117(2)(g)

6.2

130(1)

6.3

3 14

6.4

116(1)

117(1)

(

)

6.5

3 14

(

)

7.

7.1

131(1)

132(1)(a)

116

7.2

132(1)

(a)

(b)

(

)

116

7.3 $3 \quad 15$

7.4 $116(1)$

()

7.5 $3 \quad 15$

()

B

8. 10

) (

9.

a.

b.

c. ()

d. 1 2

e.

f.

g.

10.

10.1

11.2

10

3 3

14. 3 8

14.1 10 22(c) (f) (3 8
3 12
3 8

15. -

15.1 10 22(a) 23(a) 27(a) 28(a) 30(a)(ii)
(iii) 1 4 6

15.6				10	22(e)	23(e)	27(d)	28(d)	30(d)(ii)
(iii)	5	9							
		3	18(a)(A)	18(b)(ii)(A)	(				)
							\$4,740		
15.7			10	30(a)(i)	(b)(i)	(c)(i)	(d)(i)		
									3
	18(a)(A)								
	3	18(b)(ii)(A)			(		15.1		)
16.									
16.1	15.1	15.7			(				)
16.2			11.1	11.3		(			)
17.									
17.1			10	22(c)		8			
	(		)						
		3	18(b)(ii)(A)				8		
			\$1,790						
17.2			10	22(f)		3			
	(		)						
		3	18(b)(ii)(B)				3		
			\$2,420						
17.3			(	13.1		)			2

18.5

10 26(ii)

3 18(b)(i)(A)

19.

19.1

10 25(a)(i)

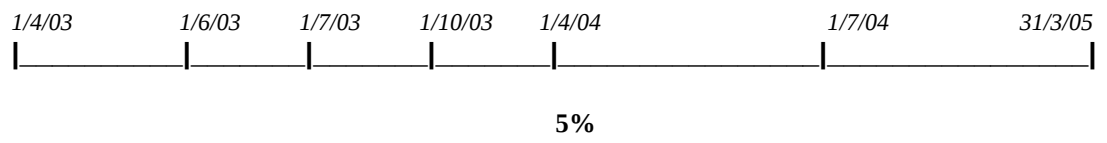
1 4 6 9

3 18(c)
\$14,000

- 2003 6 1 1

10 1

- 2003 7 1



20.3

2003 6 1 2003 9 30

20.4

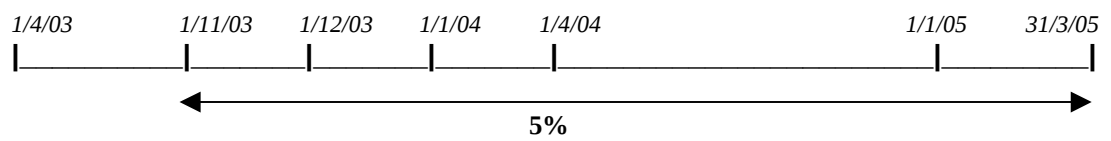
2003 7 1

2003 10 1 2004 6 30

9

\$4,740 (\$4,900 3%)

- 1 1 ()
- 2003 11 1 6
- 2003 12 1
- 1 1



20.7

20.1 5%

20.8

2003 12 1

2004 1 1

2004 12 31

– 5% (2003 11 1 2004 12 31)

$$\$4,740 - (\$4,900 \times 5\% \times 14/12) = \$4,454$$

$$\$4,740 - (\$4,900 \times 5\% \times 14/12) = \$4,454$$

$$\$1,790 - (\$1,850 \times 5\% \times 14/12) = \$1,682$$

20.9

2005 1 1 ()

2005 1 1 2005 12 31

2005 1 1

2005 3 31 () 5%

$$\$4,740 - (\$4,900 \times 5\% \times 3/12) = \$4,679$$

$$\$4,740 - (\$4,900 \times 5\% \times 3/12) = \$4,679$$

$$\$1,790 - (\$1,850 \times 5\% \times 3/12) = \$1,767$$

21.

21.1 15 20 ()

() 3

3.	116(1)		(A)	(3	
				) \$4,740	
			(B)	3	\$129,730
5.	119(1)				\$23,500
6.	120(1)		(A)	(3	
				) \$1,790	
			(B)	3	\$2,420
12.	126(1)				\$2,950
13.	127(1)				
	—				
(a)	—		(A)	(3	
				) \$4,740	
(i)			(B)	3	\$129,730
(c)	—				
(i)			(B)	3	\$129,730
14.	130(1)				\$1,000 ¹¹³⁰
15.	132(1)				\$3,000
18.	138(1)	—			
(a)	116		(A)	(3	
				) \$4,740	
			(B)	3	\$129,730
(b)	120(1)				

()

1.	—	
(a)		\$14,000
(b)		\$7,000
(c)		\$4,900
(d)		\$4,900
(e)		\$4,900
(f)		\$1,850
(g)		\$1,850
(h)		\$1,850
2.	—	
(a)		\$4,900
(b)		\$4,900
(c)		\$1,850
(d)		\$1,850
3.	—	
(a)		\$133,750
(b)		\$2,500