

**Letterhead of Hong Kong Special Administrative Region of the People's Republic of
China LEGISLATIVE COUNCIL Hon. Henry K. C. Wu**

CB(1)612/00-01(01)

(By Fax and by post)

15th February 2001

Ref: LC-01/018

Hon. Sin Chung Kai
Chairman
Securities and Futures Bills Committee
3/F, Citibank Tower
3 Garden Road
Central, Hong Kong

Dear Mr. Sin,

Re: Bills Committee Meeting on 16 February 2001

With reference to Part V (Licensing and Exemption) of the Securities and Futures Bill (the "Bill") to be discussed in the captioned meeting, I would like to draw your attention to the views and concerns of a working group (the "Group") comprising representatives from various Associations of the industry.

The Administration repeatedly emphasized that the Bills is aimed to consolidate the various present Ordinances governing regulated activity and thus simplify its enforcement. However, the Group queries whether there is any overwhelming reason(s) for providing two separate sets of rules to govern regulated activity performed by the market intermediaries and the exempt Authorized Institutes ("exempt AIs") respectively. The Group is very concerned if the Bill, at its current form, can actually provide a totally compatible level playing field for the market intermediaries and the exempt AIs.

The Group aware that the Bill contains several clauses inconsistent with the totally compatible level playing field principle, namely:

1. An applicant must satisfy the Securities and Futures Commission ("Commission") of the "fit and proper" test under section 119(3) in order to be granted a license. However, no license requirement is imposed on an exempt person under section 101 (Part IV).
2. A licensed corporation shall obtain prior approval from the Commission of premises to be used for keeping records or documents required under section 115(2)(c) of the Bill. Any failure to do so will be in breach of section 129(3). Again, no approval of premises requirement is placed upon an exempt person.
3. Under section 118(4), the Commission has no veto power over an exempt status granted by the Hong Kong Monetary Authority ("HKMA").
4. The Commission shall first consult HKMA before amending or revoking or imposing conditions upon an exempt person under section 118(9). However, the situation of a licensed corporation is different under section 119(5) as they shall be subject to any conditions as the Commission may impose.
5. Every executive director of a licensed corporation has to be approved by the Commission as a responsible officer of the corporation under section 124(1)(a) subject to the "fit and proper" test under section 125. However, a bank can **nominate** (by itself) any two executive officers as responsible officer **without approval** from the Commission.

Apart from the underlying spirit and principle of the Bill, the proposed regulatory mechanism under the Bills is under two wholly independent institutions, that is, the Commission and HKMA. The Group also concerns that the regulatory mechanism should not be putting extra burden on public expenditure by duplicating performance of the same duties.

In addition, the presence of two supervision institutions inevitably leads to the possible result of different supervision standards and indeed the probable unfairness to the parties concerned. Although the Administration repeatedly argued that there would be a Memorandum of Understanding (MOU) to be signed by both supervision institutions, it is clear that such MOU is not legally binding and could be amended without Legislative Council vetting or market consultation.

胡經昌辦公室
Office of Henry K.C. Wu

I sincerely hope that you can forward this letter to the Administration and secure their reply at the earliest convenience. Thank you very much for your kind attention and assistance.

Yours sincerely,

Henry K. C. Wu

Co: Clerk to Bills Committee

HW/ct