

(By Post and by fax)

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1 August 2002

The Honourable TUNG Chee-hwa
The Chief Executive of the
Hong Kong Special Administrative Region
of the People's Republic of China
Chief Executive's Office
Hong Kong

Dear Mr TUNG,

**Request for the setting up of a commission of inquiry
under the Commission of Inquiry Ordinance**

The chaos surrounding the proposals in the Consultation Paper relating to the delisting mechanism announced by the Hong Kong Exchange and Clearing Limited (HKEx) and the plunge in share prices of "penny stocks" last Friday have sparked off wide public concern. The matter was discussed at the meeting of the Panel on Financial Affairs yesterday. Members of the Panel noted from the Financial Secretary (FS)'s letter yesterday that he had decided to appoint an independent panel of inquiry to look into the circumstances leading to the incident and arrangements for preparation and release of the Consultation Paper, and to recommend measures for improvement. We understand that the panel of inquiry will be set up under FS's administrative powers.

The information provided to the Panel yesterday has suggested that the incident involved different parties in the three-tier regulatory framework for the securities and futures industry, including the Government. As FS plays an important role in overseeing the development of the financial market and soundness of the regulatory systems, we consider that it may not be appropriate for the independent inquiry to be commissioned by FS himself. We also consider that unlike other commissions of enquiry with statutory powers, FS's panel of inquiry may not be able to obtain all necessary and relevant evidence for the purpose of its investigation.

In view of the above, the Panel has decided that I should write to you to request that a commission be appointed by the Chief Executive under the Commission of Inquiry Ordinance (Cap. 86) to conduct an inquiry into the incident. The scope of the inquiry should cover, inter alia, the following aspects -

- (a) the respective duties of the relevant parties and persons in relation to the preparation and release of the Consultation Paper, in particular, the proposed continuing listing eligibility criterion that a company will be delisted if the market price of its shares over 30 consecutive days is less than HK\$0.50; such parties and persons should include:
 - the relevant Government officials, which should include the Financial Secretary and the Secretary for the Financial Services and the Treasury;
 - the management and key officials of the Securities and Futures Commission; and
 - the management and key executives of the HKEx;
- (b) whether in the process of the preparation and the announcement of the proposals, any of the parties/persons covered in (a) above has/have failed to perform his/her/their duties;
- (c) whether there is any channel and course of actions for those persons and parties who/which have suffered losses/damages in the incident to seek indemnity or remedy, and whether there is a case for such claims under the existing laws or rules of the HKEx; and
- (d) what improvements should be put in place to strengthen the mechanism in introducing changes to the regulatory system, enhancing the consultation process and assessing the potential risks arising from the introduction of changes.

Members of the Panel have also highlighted the importance for early completion of the inquiry and release of the inquiry report in view of the considerable public concern in the incident.

We look forward to your favourable response to the above request.

Best regards,

Yours sincerely,

(Henry WU)
Deputy Chairman
LegCo Panel on Financial Affairs

c.c. Financial Secretary
Secretary for Financial Services and the Treasury