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By Fax : 2509 9055
8 June 2004

Mrs Percy Ma,
Clerk to Panel on AJLS,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

Dear Mrs Ma,

Panel on Administration of Justice and Legal Services
Special Meeting on 14 June 2004

Thank you for your letter dated 25 May 2004 regarding the above meeting.

Unified Exchange Compensation Fund

Part XII of the Securities and Futures Ordinance (Cap. 571), gazetted on 1 April 2004, provides for the establishment of a compensation fund for retail investors in the Hong Kong securities and futures markets. Under new compensation arrangements to provide a single point of access for claims by investors, the Investor Compensation Fund Limited ("ICF") was established under section 79(1) of Cap. 571 to replace the Unified Exchange Compensation Fund ("UECF") and the Futures Exchange Compensation Fund ("FECF").

Investors may claim compensation from the ICF for pecuniary losses resulting from a default committed by intermediaries related to securities or futures traded on the Hong Kong stock and futures exchanges. Rule 2 of the Securities and Futures (Investor Compensation – Claims) Rules (Cap. 571 sub. leg. T) defines "default" as insolvency, bankruptcy or winding up, breach of trust, defalcation, fraud or misfeasance. The ICF took over the money from the UECF and the FECF (about $1 billion). It also receives a levy of 0.002% on securities transactions payable by buyers and sellers, and, for futures contracts, $0.5 per side of a contract and $0.1 per side of a mini-contract.

Under the UECF, the total amount that could be paid to all claimants for a default by an exchange participant was limited to $8 million. Under the ICF, the amount paid for loss of any size is the claimant's loss or $150,000, whichever is less. The principal objective of the new arrangement is to provide a secure per investor level of compensation for retail investors under simpler and more transparent procedures than before.

Commentary on the Investor Compensation Fund

In the context of securities and futures trading, a compensation scheme based upon a levy on transactions may be appropriate, although we note the maximum amount recoverable for any claim is only $150,000. We do not, however, consider that such an approach is appropriate for claims against solicitors. As our paper indicates, the established approach to such claims in many common law jurisdictions is to require legal practitioners to be insured. For the reasons set out in paragraphs 41 and 42 of our paper, we do not think that solicitors' clients should be required to pay for the cost of that insurance.

Attendance List

Mr Michael Scott 單格全先生	Senior Assistant Solicitor General 高級助理法律政策專員
Ms Kitty Fung 馮淑芬女士	Senior Government Counsel 高級政府律師

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General
(General Legal Policy)

c.c. D of J (Attn: Ms Kitty Fung)

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