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 財經事務及庫務局
 財經事務科
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30 April 2009

LegCo Panel on Financial Affairs
 Legislative Council Secretariat
 3/F Citibank Tower
 3 Garden Road
 Hong Kong
 (Attn.: Ms Rosalind Ma)

Dear Ms Ma,

Panel on Financial Affairs (FA Panel)
Market Misconduct Activities

Thank you for your letter of 7 April 2009, requesting the Administration to liaise with the Securities and Futures Commission and provide a written response to the request of the FA Panel for information in relation to market misconduct activities.

Enclosed please find the response from the Securities and Futures Commission for the Members' reference.

Yours sincerely,


 (Desmond Wu)

for Secretary for Financial Services and the Treasury

c.c.: CEO/SFC (Attn.: Ms. Christine KUNG)

**Response to the request of the FA Panel
for information in relation to market misconduct activities**

The Securities and Futures Commission (SFC) is bound by its obligation to observe the secrecy provisions in section 378 of the Securities and Futures Ordinance (SFO), and so the Commission is not at liberty to comment on individual cases.

2. Responding to the issues raised by the Hon Jeffrey Lam, on a non case specific basis, it is one of the SFC's functions to monitor the market to detect any misconduct that may harm market integrity and the reputation of Hong Kong as an international financial centre. The Commission will inquire into events which have an adverse impact on the markets of Hong Kong and will take action in appropriate cases.

3. Under the existing regulatory regime, people who engage in naked short sales or market misconduct may commit offences under the SFO (see section 170 and part XIV of the SFO respectively) and be liable to criminal prosecution. Similarly, anyone who makes a fraudulent or reckless misrepresentation inducing others to invest money, may commit an offence under section 107 of the SFO. Intermediaries who engage in these activities may be additionally or alternatively subject to disciplinary action on various bases including failing to act honestly, fairly and in the interest of clients and the integrity of the market. The SFC can reprimand them, revoke or suspend their licences, fine them and/or ban them from re-entering the industry forever or for a certain period of time.

4. In addition, persons who make false or misleading statements to the market or make such statements likely to affect the market for securities commit offences under section 298 and section 384 of the SFO respectively. The offence under section 298 has a parallel in section 277 of the SFO which means this kind of false statement (i.e. a false statement that has the likely consequence of influencing the market price of a share) may also constitute market misconduct and be the subject of civil proceedings before the Market Misconduct Tribunal.

5. This regulatory framework is entirely consistent with leading international jurisdictions, like New York and London with the exception

that in those places the securities regulator could take civil action for market misconduct directly. In Hong Kong, according to the SFO, the SFC, as the securities regulator, may report to the Financial Secretary the occurrence of any event which the Commission reasonably believes or suspects constitutes market misconduct. If it appears to the Financial Secretary, following the report by the SFC, that market misconduct has or may have taken place, he may institute proceedings before the Market Misconduct Tribunal concerning the matter.

6. The SFC's investor education programme also plays a preventive role in encouraging investors to learn more about investing and to find out key facts about investments so as to protect themselves from unscrupulous sales people. The Commission's complaint procedure is well established and all complaints from investors will be considered.

Securities and Futures Commission
April 2009