

香港特別行政區政府財經事務局的信頭  
**Letterhead of FINANCIAL SERVICES BUREAU, GOVERNMENT OF THE HONG  
KONG SPECIAL ADMINISTRATIVE REGION**

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本函檔號 OUR REF.: SUB49/99 X

來函檔號 YOUR REF.: CB1/BC/13/98

16 July 1999

Ms. Estella Chan  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Estella,

**Bills Committee on  
Securities (Margin Financing)(Amendment) Bill 1999**

Thank you for your letter of 8 July 1999.

Our responses to the outstanding issues stated in your letter are as follows (in the same order as they are raised) -

- (1) As explained in my letter of 6 July 1999 (Enclosure B therein refers), the Commission has powers under the existing laws to take investigatory actions against suspected unregistered dealing and to seek injunction orders from the Court if circumstances warrant. While it may be desirable for SFC to have wider power in dealing with such scenarios for the sake of better investor protection, we must not lose sight of the importance of proper and sufficient checks and balances to ensure fairness and justice. As stated previously, we believe the proposal to extend the injunction powers of SFC, which is

being considered under the composite Securities and Futures Bill, should not be considered in isolation.

- (2) We agree that section 121S should be amended to specify that SFC may inquire into any matters stated in section 121R(2).
- (3) We agree to amend 121S(4) by repealing “impose a penalty under this section” and substituting “take any action under subsection (3)” and introduce equivalent changes to 121U(4) and 121W(1). We have also requested the Law Draftsman to perform a computer search of the Bill to identify other similar expressions, if any, and make corresponding amendments.
- (4) We agree to amend section 121Y(6) by adding the words “without reasonable excuse” and have also requested the Law Draftsman to perform a computer search to identify other similar expressions, if any, and make corresponding amendments.
- (5) At the last meeting of the Bills Committee, Members queried the need for financiers (and dealers) to keep copies of statement of accounts required under 121Y(2) for up to 2 years, given the fact that they have already been obliged to keep copies of the monthly statements for 6 years (section 121Z(3) refers). Upon further discussion with the SFC, we agree that section 121Z(3)(a) should be amended by repealing “2 years” and substituting “3 months”.
- (6) We have requested the Law Draftsman to start drafting of the agreed Committee Stage Amendments and will provide the draft provisions for Members’ information as soon as they are available.

Separately, Members may wish to note that on reflection, we consider it inappropriate to extend the exemption list to include the provision of financial accommodation to facilitate the acquisition of 5% or more of the issued share capital of a listed company in view of practical difficulties explained below.

It has been pointed out by the Chairman of the Committee that since a prospective purchaser will often require some time to acquire a stake of 5% or more in any listed company (particularly when acquired on market), a financier providing the necessary funding to this purchaser will not be exempted from registration until such time as the accumulated stake reaches 5%. Given that it will not be realistic to require registration of a financier for a short time but not subsequently, we have given further consideration to the possibility of expanding the exemption list to permit acquisition, whether in a single transaction or a series of transactions, as suggested by the Law Society. By this approach, any series of transactions must be completed within some reasonable timeframe in order to safeguard against potential abuses. We believe that it would be inappropriate to set an arbitrary time limit, nor would it be acceptable to leave it as an “acquisition of 5% or more of the issued share capital of a listed company *within a reasonable period of time.*”

Against the above, we believe that such financier should consult the SFC for a ruling on a case-by-case basis upon being approached by the prospective purchaser. In any event, we do not envisage major difficulties for the practitioners as it is unlikely that a person would carry on an exclusive business on providing this type of financial accommodation.

**The attendance list for the next meeting is at Enclosure.**

Yours sincerely,

(Bryan P. K. Chan)  
for Secretary for Financial Services

Encl.

c.c. Mr. Andrew Procter, SFC  
Mr. William Maddaford, LD  
Ms. Vicki Lee, LD