立法會 Legislative Council

LC Paper No. CB(1) 2056/99-00 (These minutes have been seen by the Administration and cleared by the Chairman)

Ref: CB1/BC/2/99/2

Bills Committee on Exchanges and Clearing Houses (Merger) Bill

Minutes of meeting held on Tuesday, 11 January 2000, at 8:30 am in Conference Room B of the Legislative Council Building

Members present: Hon Ronald ARCULLI, JP (Chairman)

Hon LEE Kai-ming, SBS, JP

Hon CHAN Kam-lam Hon SIN Chung-kai

Dr Hon Philip WONG Yu-hong Hon Jasper TSANG Yok-sing, JP

Hon FUNG Chi-kin

Member absent : Hon NG Leung-sing

Public officers attending

Mr Bryan P K CHAN

Principal Assistant Secretary for Financial Services

Ms Gloria LO

Assistant Secretary for Financial Services

Mr G A FOX

Senior Assistant Law Draftsman

Department of Justice

Ms Mabel CHEUNG Government Counsel Department of Justice Action - 2 -

Attendance by invitation

Mr David STANNARD
Executive Director, Corporate Finance

Securities and Futures Commission

Mr Gerald D GREINER

Senior Director of Supervision of Markets

Securities and Futures Commission

Clerk in attendance : Ms LEUNG Siu-kum

Chief Assistant Secretary (1)4

Staff in attendance: Mr KAU Kin-wah

Assistant Legal Adviser 6

Ms Connie SEZTO

Senior Assistant Secretary (1)1

I Meeting with the Administration

Outstanding issues raised at previous meetings

Board of directors of the Hong Kong Exchanges and Clearing Limited (HKEC)

Members expressed concern at previous meetings about the strong government influence over the board of directors of HKEC (HKEC board) as clause 20 of the Bill provided that the Financial Secretary (FS) could appoint up to eight directors out of the maximum of 15 members of the board. They noted the Administration's explanation that the appointment of directors by FS was necessary to ensure adequate representation of public and market interests on the decision making body of HKEC. They also noted the Administration's assurance that the composition of the board would be reviewed by 2002/03 taking into account the diversification of shareholding and operational needs of HKEC.

2. <u>Some members</u> suggested that the Bill should spell out the composition of the future boards of HKEC in order to demonstrate the Administration's commitment to increase the representation of shareholders' interest in the board. The <u>Principal Assistant Secretary for Financial Services</u> (PAS/FS) stressed that the composition of the board as set out in the Bill was only transitional and would be subject to review. In order to address members' concern, he undertook to consider incorporating in the Bill the provision that the number of directors appointed by FS would not exceed that of directors that

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could be elected by shareholders in the composition of future boards of HKEC after the annual general meeting in 2003.

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- 3. On the removal of directors appointed by FS, <u>members</u> noted that clause 20(1)(b) of the Bill and the Memorandum of Association (MOA) of HKEC provided that these directors could only be removed from their office by FS revoking the appointment. The <u>Administration</u> had accepted members' suggestion of stipulating in the Bill that an appointed director, who had committed an offence for disqualification under the law, could be removed from the office without the need for FS revoking the appointment.
- 4. <u>Dr Philip WONG</u> opined that the term "Public Interest Director" used in MOA to refer to a director appointed by FS was inappropriate. He suggested replacing the word by "appointed director". The <u>Chairman</u> added that the term might imply that directors appointed by FS would only take care of public interest. <u>PAS/FS</u> clarified that all directors of HKEC board would have the same duties, rights, privileges, and liabilities, and were obliged to perform the public duty as stipulated in clause 8(1). He took note of members' concern and undertook to convey their suggestion to HKEC for consideration.
- 5. As regards the appointment of the chief executive officer (CEO) of HKEC, <u>Dr Philip WONG</u> remarked that as CEO was the top management of HKEC and was accountable to HKEC board, it would be unreasonable for his appointment and removal from office to be subject to the approval of the Securities and Futures Commission (SFC) in accordance with clause 12 of the Bill. In response, <u>PAS/FS</u> clarified that HKEC had the full authority to appoint its CEO. The Bill only provided that the appointment shall not have effect prior to the written approval of SFC. On the removal of CEO from the office, <u>PAS/FS</u> explained that at present SFC already had the same power for the removal of CEO of the exchanges. He advised that MOA of HKEC also provided that HKEC board could remove CEO from his office.

Establishment and functions of the Risk Management Committee (RMC)

- 6. <u>PAS/FS</u> said that the Administration had considered members' concern over clause 9(5) which stipulated that the decision of RMC would prevail unless overruled by a two-third majority of the members of HKEC board. The Administration was considering whether to make amendment to reduce the requirement to a simple majority of all members of the board.
- 7. <u>Members</u> remained concerned over the stringent requirement of a two-third majority or a simple majority of the members of the HKEC board for overuling a decision of RMC. In the event that the board was required to consider urgent proposals by RMC, the stringent requirement might delay the decision making process. Hence, <u>members</u> suggested imposing a requirement

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of a simple majority of the total number of directors attending a meeting. After discussion, the <u>Administration</u> undertook to re-consider clause 9(5) taking into account members' suggestion.

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8. On the composition of RMC, <u>members</u> suggested that the Bill should stipulate that of the two members appointed by HKEC board, at least one member shall be a board director elected by shareholders in order to ensure representation of shareholders' views on RMC. The <u>Administration</u> agreed to consider members' suggestion.

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- 9. Regarding RMC members appointed by FS, the <u>Chairman</u> was of the view that representatives from SFC should not be appointed as members of RMC to avoid possible conflict with its role as the regulator of the market. The concern was noted by the Administration.
- 10. As regards liability of RMC members, the <u>Chairman</u> opined that the exemption from liabilities as provided to directors of HKEC board under clause 8(3) of the Bill should also be extended to members of RMC.

Scope of business of HKEC

11. The <u>Chairman</u> re-iterated his view that it would be desirable to restrict the scope of business of HKEC so as to prevent possible conflict in the role of the company as the operator of the market and a listed company on the exchange. <u>PAS/FS</u> stressed that as HKEC was a profit-driven commercial entity, the Administration considered it inappropriate to restrict its scope of business as long as its public functions were performed. Moreover, clauses 13 and 14 of the Bill would provide adequate checks on HKEC in case of conflict of business interests. <u>Mr Gerald GREINER</u>, Executive Director of Market Supervision, <u>SFC</u> supplemented that with the rapid development in the financial market, the boundaries between different businesses had become less distinct. It was necessary to provide a wide scope for HKEC to operate in response to the increasingly competitive business environment.

Clause-by-clause examination on the Bill

(LC Papers No. CB(3) 175/99-00 -- The Bill, and CB(1) 424/99-00(02) -- Marked-up copy of the consequential amendments to the Bill)

Schedule 1

12. <u>Members</u> noted that Schedule 1 would apply to a person who had contravened a notice served on him under clauses 3(6), 4(1) or 6(5) of the Bill requiring him to cease to be a controller or a minority controller of an exchange company or a clearing house. The provisions would empower SFC to issue notices to restrict the transfer of shares, the exercise of voting right, etc., as well as to apply to the court for an order to sell the excessive shares.

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- 13. The <u>Chairman</u> considered that in addition to SFC giving notices for the disposal of shares, it was necessary to provide the concerned person with a chance to make proposal for the transfer or disposal of excessive shares for the purpose of discontinuing the contravention. The <u>Administration</u> undertook to consider the Chairman's suggestion.
- 14. On section 1(8) of Schedule 1, <u>members</u> noted that where shares were sold pursuant to an order, the proceeds of the sale less the costs of the sale, shall be paid into the court for the benefit of the persons beneficially interested in them. To avoid the need for such persons to go through the cumbersome procedures to apply to the court for the return of the proceeds, the <u>Administration</u> agreed to consider the Chairman's suggestion of adding to the section that the proceeds of the sale of shares shall be paid into the court unless otherwise specified by it.

Schedule 2 -- Section 71(c)

15. <u>Members</u> noted that the Legislative Council Ordinance 1999 (No. 48 of 1999) would be amended to re-delineate the financial services functional constituency (FSFC) with respect to the two exchanges on the basis of exchange participants. The revision would provide that any amendment in the exchange rules which caused a person to become or cease to be an exchange participant shall be approved in writing by the Secretary for Constitutional Affairs. The <u>Administration</u> explained that the amendment was necessary in order to prevent the possible control over the voter base of FSFC by exchange rules.

Schedule 2 -- sections 82 and 85

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16. <u>Members</u> pointed out that the term "participantship" used in sections 82 and 85 was not found in standard English. The <u>Administration</u> undertook to re-consider the term.

II Any other business

- 17. <u>Members</u> were reminded that the next meeting of the Bills Committee had been scheduled for 14 January 2000, at 8:30 am.
- 18. There being no other business, the meeting ended at 10:35 am.

Legislative Council Secretariat 18 September 2000