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Urgent By Fax 2869 6794
(5 pages)

25 November 1999

Ms Leung Siu-kum
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Leung,

**Bills Committee
Exchanges and Clearing Houses (Merger) Bill**

Meeting on 23 November 1999

Thank you for your letter of 18 November to the Secretary for Financial Services. I provide below our responses to the comments and questions raised by the Law Society on the Bills as per attachment to your forthmentioned letter.

Interpretation

Financial engineering has created many new kinds of securities such that it is not only a "share" that carries a vote. Some products involve splitting a share into separately traded component parts, including a security that carries rights to dividends, a security that carries rights to capital appreciation, and a security that carries the right to vote. In order to ensure that we do not inadvertently exclude securities that like shares also carry voting power we believe the definition is necessary and appropriate.

Section 4(6)

It is correct that the offence would be committed by a company. The reference to an “individual” committing the offence refers to directors and other officers of the company who are individuals and guilty of the like offence by virtue of section 101E of the Criminal Procedure Ordinance (Cap. 101).

Section 6

Section 6 prohibits a person to be a minority controller of, inter alia, a recognised exchange controller (REC) unless approved by the SFC. As pointed out in the submission by the Law Society, Article 55 of the new Articles of Association of the HKEC (which is to come into effect upon the coming into effect of the scheme of arrangements for the merger) also sets out detail limitations over shareholdings on HKEC. The purpose of the two provisions are alike, namely to prevent HKEC or for that matter any REC from falling into the control of any person or group of persons. The Bill envisages that the constitution of a REC may contain rules on shareholding which impose additional requirements than what are provided for in the Bill (please see subsection 6(14)(a)).

Since each application may differ, it will be difficult to specify a time limit for the SFC to reach its decision. In any event, The SFC in considering an application to become a minority controller must act reasonably which must also include the time it takes to reach a decision, taking into account the complexities of the application.

It is the Administration's policy that no person, either alone or with any associates, will be allowed to control 5% or more of the voting power of a REC, unless there is a special reason to do so, such as in the case of an equity alliance with an overseas exchange. We therefore believe that the approval will only be given sparingly and under strong justification. It should also be noted that a minority controller may reduce its shareholding without prior approval of the SFC.

Section 7

While we do not have any particular situations in mind now that we think would justify an exemption from Section 3, we believe for the completeness of the regulatory regime, it is desirable to provide such an exemption power in the legislation. Such exemption power has a prospective and general application which is different from the transitional provisions

contained in Part VI of the Bill, which applies to existing exchanges and the HKEC only.

Section 12(2) and Section 14

It is incontrovertible that references to “the controller” in the clauses mean the “recognized exchange controller” mentioned earlier in the clauses.

Section 13

The term “listed company” is defined in section 2(1) of Cap. 24. (It was added by s.2 of Ord. No. 73 of 1994). Please see extract enclosed.

Section 14

Please refer to the reply under section 4(6) above.

Section 22

The Law Society's observation is correct. It is our intention to make certain provisions including section 22(1) and (2) come into force first so that the members of the HKSCC may pass special resolution so as to trigger the conversion of HKSCC as provided for under subsection (3).

Schedule 2

CTO/SO

We do not think the different definitions are confusing. If the user of an Ordinance wants to know what a term used in the Ordinance means, then the user turns to the definition of that term in the interpretation section of that Ordinance. (That is, not to the definition of that term in their interpretation section of any other Ordinance). It is common practice for the same terms used in different Ordinances to be given different meanings in the respective Ordinances.

SEUO

We agree that it would be desirable to make further changes to some of the provisions of the SEUO (and for that matter other securities-related ordinances) to remove duplication or inconsistencies. However, given the limited scope of the Bill as well as its urgency, we have in fact consciously

refrained from so doing. We also believe that such rationalisation exercise of the legislation should better be dealt with in a wholesale manner in the context of the composite Securities and Futures Bill, which is currently under preparation.

I hope you would find the above helpful.

Yours sincerely,

(Bryan P K Chan)
for Secretary for Financial Services

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|------------------------------------------|--------------------------------|
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Internal
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"firm" (商號) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap. 250);

"function" (職能) includes power and duty;

"futures contract" (期貨合同) has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap. 250);

"Futures Exchange Company" (期貨交易所) means the Exchange Company within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap. 250);

"group of companies" (公司集團) has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

★ "listed company" (上市公司) means a company which has any of its shares listed on the Unified Exchange; (Added 73 of 1994 s. 2)

"Monetary Authority" (金融管理局) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66); (Added 82 of 1992 s. 6)

"officer" (高級人員), in relation to a company, has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

"Panel" (上訴委員會) means the Securities and Futures Appeals Panel established by section 18;

"property investment arrangements" (財產投資安排) means investment arrangements as defined in relation to property other than securities by section 2 of the Protection of Investors Ordinance (Cap. 335);

"record or other document" (紀錄或其他文件) includes—

- a book, voucher, receipt or data material, or information which is recorded in a non-legible form but is capable of being reproduced in a legible form; and
- any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced;

"registered person" (註冊人) means a person who is registered under the Securities Ordinance (Cap. 333), the Commodities Trading Ordinance (Cap. 250) (or both those Ordinances) as a dealer, dealing partnership, dealer's representative, investment adviser, commodity trading adviser, investment advisers' partnership, investment representative or a commodity trading adviser's representative;

"the relevant Ordinances" (有關條例) means this Ordinance, Part II of the Companies Ordinance (Cap. 32) (insofar as that Part relates, whether directly or indirectly, to the performance of functions by the Commission in relation to prospectuses and purchase by a company of its own shares) and Part XII of that Ordinance (insofar as that part relates, whether

(b) 文件、紀錄簿、紀錄帶、聲軌或其他器材，而它們是載有聲音或其他視覺影像的數據以便不論是否藉著其他設備的幫助能夠重播的，以及任何影片（包括微縮影片）、錄影帶或其他器材，而它們是載有視覺影像以便不論是否藉著其他設備的幫助能夠重播的；

"財政年度" (financial year) 指第 14(1) 條所指明的期間；

"財政資源規則" (financial resources rules) 指根據第 28 條訂立的規則；

"高級人員" (officer)，就公司來說，其含義與《公司條例》(第 32 章) 第 2(1) 條所指相同；

"財產投資安排" (property investment arrangements) 指《保障投資者條例》(第 335 章) 第 2 條就證券以外財產所界定的投資安排；

"執行理事" (executive director) 及 "非執行理事" (non-executive director) 分別指根據第 5 條委任的監察委員會執行理事及非執行理事；

"控制該法團董事局的組成" (controls the composition of the board of directors of a corporation) 指能夠單獨或在其他人同意或贊成下委任或免任過半數董事，而以下情況下，某人即當作是具有委任或免任董事的權力——

- 如該人沒有行使權力予以支持即沒有任何人能獲委任為董事；或
- 如任何人獲委任為董事，其必然原因是他身為該人的董事或其他高級人員； (由 1996 年第 9 號第 2 條增補)

"商品交易所" (Commodity Exchange) 的含義與《商品交易所條例》(第 250 章) 第 2(1) 條所指相同；

"商號" (firm) 的含義與《商品交易所條例》(第 250 章) 第 2(1) 條所指的相同；

"註冊人" (registered person) 指根據《證券條例》(第 333 章)、《商品交易所條例》(第 250 章) 或同時根據這兩條條例註冊為以下身分的人，即交易商、交易合夥商行、易商代表、投資顧問、商品交易顧問、投資顧問合夥商行、投資代表或商品交易所代表；

"期貨交易所" (Futures Exchange Company) 指《商品交易所條例》(第 250 章) 第 2(1) 條所指的交易所；