

(English translation prepared by
the Legislative Council Secretariat for Members' reference only)

(Letterhead of the Hong Kong Stockbrokers Association Ltd.)

21 December 1999

To: Ms LEUNG Siu-kum
Clerk to Bills Committee
Legislative Council

Dear Madam,

First of all, I would like to thank the Bills Committee of the Legislative Council for writing to invite our views on the Exchanges and Clearing Houses (Merger) Bill. We have all along been concerned with the merger deal. We have actively liaised with our members and formed the "Securities and Futures Market Reform Members' Concerns Co-ordinating Group" to discuss and co-ordinate all the related issues. Apart from giving support in principle for the merger deal in September, we have called for our members to attend the general meeting for voting. The final version of the Exchanges and Clearing Houses (Merger) Bill (the Bill) has been discussed by the committee in detail, and our comments are as follows:

Clause 9 : Establishment and functions of Risk Management Committee

According to the scheme document, the composition of the Risk Management Committee shall be as follows:

- (a) 3 HKEC directors (including 1 as chairman);
- (b) 3 to 5 external members including cross-market government experts and public interest representatives (to be appointed by the HKEC board).

However, according to the Bill, the Committee shall consist of:

- (a) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and
- (b) not less than 3 or more than 7 other members, and among them, not less than 3 or more than 5 shall be appointed by the Financial Secretary and not more than 2 shall be appointed by the recognized exchange controller.

We are concerned about the striking difference in the two methods of composition and wish to be advised on the reasons for such change. We also demand that the original arrangements set out in the scheme document should be followed and that the promise made to members should be fulfilled.

Moreover, under clause 9(5), where a policy is submitted by the Risk Management Committee to the board of directors of the recognized exchange

controller with the recommendation of the Committee that the board adopt the policy, then the board shall adopt and implement the policy unless not less than two-thirds of the total membership of the board decline to adopt the policy. We would like to seek clarification as to whether the number of members present at the meeting or the whole board of directors should be taken as the basis for calculating “two-thirds of the total membership”. In any case, the Risk Management Committee will have even greater authority than the board of directors of the HKEC under such circumstances. Therefore we do not agree to such arrangement.

Clause 14 : Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.

Under this clause, no defence is available to HKEC when it fails to comply with the notice issued by the Securities and Futures Commission (the Commission). However, it is mentioned in clauses 3 and 6 that “it shall be a defence...that the person exercised all due diligence to comply with the condition concerned”. Therefore, we consider that, to be fair, this provision should equally apply to situations or circumstances which go beyond the control of the Commission.

We are also concerned about the definition of “individual” in clause 14(3)(a) and (b) and would like to seek clarification in this regard.

Clause 20 : Financial Secretary may appoint not more than 8 persons to board of directors of HKEC

It is not mentioned in this clause the eligibility of persons to be appointed by the Financial Secretary to the board of directors of the HKEC except that the appointment would be in the interest of the investing public or in the public interest. Therefore, it is hoped that, in making the appointment, the Financial Secretary will do the selection in an extensive and comprehensive manner and identify the appropriate sectors to which appointments are offered. We also request that the board should include representatives such as market participants and shareholders who are experienced in the securities trade in order to ensure adequate balance and representation in the board.

Item 71, Schedule 2: Composition of the financial services functional constituency

As the new status of “holders of trading rights or market participants” will be different from that of the existing Members of the Exchange, resulting in a change of eligibility criteria for registration as an elector, we are concerned that some electors of the financial services functional constituency will hence be disqualified.

Transfer of trading rights

It is stated in the paragraph on “opening up of trading rights” in the scheme document that a moratorium will be established on the issue of new trading rights

for a period of two years from the coming into operation of the HKEC (save for such rights as may be issued in respect of alliance with other stock or futures exchanges). We hope that it could be spelled out clearly in the Bill the scope of “other stock or futures exchanges”, the percentage of trading rights to be issued and the fees etc., in order to give proper justification and protection to holders of these rights and be consistent with the spirit of the agreement.

Transitional period

There is no provision in the Bill dealing with issues such as risk management or compensation in the transitional period. We hope that the relevant procedures could be drawn up as soon as possible to enable members of the securities trade to make appropriate arrangements on their own.

We sincerely urge Members of the Legislative Council to give thorough consideration to our views in the course of discussion and examination of the Bill.

Should you have any queries, we will be happy to further explain and discuss the matter.

Paul FAN
Chairman

c.c.: Hon Ronald ARCULLI (Chairman)
Hon FUNG Chi-kin
Mr Charles LEE, Chairman of HKEC