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(Letterhead of The Institute of Securities Dealers Ltd.)

20 December 1999

To: Hon Ronald ARCULLI  
Chairman of the Bills Committee  
on Exchanges and Clearing Houses (Merger) Bill  
The Legislative Council  
Hong Kong Special Administrative Region Government

Dear Sir,

Thank you for inviting us to comment on the Exchanges and Clearing Houses (Merger) Bill (the Bill).

Having considered the relevant papers on the Bill, we wish to express the following views:

1. Governance structure

1.1 We suggest that a "standing committee" or "advisory committee" which comprises an appointed director (a lay person), a director returned by shareholders and two broker representatives (one from the securities market and the other from the index futures market) should be formed under the board of directors of the Hong Kong Exchanges and Clearing Limited (HKEC), so as to establish an ideal model of democratic and collective leadership, as well as to show the HKEC's respect for members of the industry on administrative matters. Moreover, the committee may assist the chief executive officer in soliciting various alternative views from those inside and outside the industry in the shortest possible time.  
And/or

An additional post of chief operating officer should be created within the governance structure (i.e. altogether a chief executive officer and two chief operating officers). One of the chief operating officers will be responsible for the operation of the securities market and the other will be responsible for the operation of the index futures market and the derivatives market in order to achieve the goal of "specialization"). In case an excessive cost is incurred by the establishment of two posts of chief operating officer, the following alternative structure may be considered:

Two posts of operating manger should be created under the chief executive officer. One of them will be designated for the securities

market and the other will be designated for the index futures market and other derivatives markets. Such arrangement could save the costs for establishing the post of chief operating officer.

- 1.2 Among the 8 directors to be appointed to the board of directors of the HKEC by the Financial Secretary, 2 should be “registered dealers” or “dealing directors”.
- 1.3 The appointments of the chief executive officer and the chief operating officer should not require the approval of the Securities and Futures Commission (SFC) but should be made only upon the recommendation of the selection board of the HKEC.

## 2. Regulation

### 2.1 Constitution and fees and charges

Where the HKEC and the SFC fail to come to an agreement on amendments to the constitution and imposition of fees and charges,, they should refer the matters to an arbitration panel for decision in pursuit of the objectives of “check and balance” as well as “mutual understanding and accommodation”. The arbitration panel should consist of a Judge of the High Court who should be the chairman and 5 members including 2 representatives from the SFC and the HKEC respectively and the other 3 from the legal profession, the accounting profession and the economist circle.

### 2.2 Risk management

Since the Risk Management Committee is vested with an independent policy-making power, we hope that the HKEC board will exercise adequate and reasonable check and balance over the Risk Management Committee. We propose that 51% instead of “two-thirds” of the total membership of the board of directors should be required for overruling the decision of the Risk Management Committee.

## 3. Establishment of a market development committee

In the light of the rapid changes in the international finance markets, we hope that the HKEC will consider establishing a “market development committee” to identify and promote strategic initiatives for future development of the HKEC. Such committee should comprise a chief executive officer, a chief operating officer or operating manager(s), high technology experts, economists and members of the industry. It is desirable to have a collective leadership which is fair, just and open.

4. Eligibility of electors of the financial services functional constituency

It should be one vote for each “trading right” instead of one vote for each “trading unit”.

5. Avoidance of ambiguity in the wording of provisions

Clause 3(4)(b)(i) in Part II of the Bill provides that “on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 6 months (*sic*).”

We wonder if the original intention should be “a maximum fine of \$1,000,000” and “in the case of an individual, to imprisonment up to a term of 6 months”.

We hope that more specific words could be used to avoid ambiguity so as to facilitate judges to unequivocally exercise their discretion to impose heavier or lesser sentences in individual cases.

Similar provisions are:

Clause 4(6)(a)

Clause 6(3)(b)(i), (9)(a) and (9)(b).

We earnestly urge the Bills Committee to consider the above views.

LAM Hon-keung, OBE, JP  
Chairman of  
The Institute of Securities Dealers Ltd.

c.c.: Mr Charles LEE Yeh-kwong