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24 May 2000

The Hon. Ronald Arculli,
Chairman of Bills Committee on
Securities and Futures Legislation
(Provision of False Information) Bill 2000,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central, Hong Kong.

Dear Mr. Arculli,

**Bills Committee on
Securities and Futures Legislation
(Provision of False Information) Bill 2000**

With reference to the letter of 19 May 2000 from Ms. Leung Siu-kum, I believe that you will already have a copy of a submission that we made to the Securities and Futures Commission in March 1999 on the principles now contained in the Bill.

Generally, the concerns we expressed at that time still remain, although we note, in relation to paragraph (e) of our submission, that under clause 2, proposed section 56A(4), and the corresponding provisions in Parts III to V of the Bill, the new offence of providing false information will not apply in circumstances where the relevant ordinances already contain specific provisions on supplying information and sanctions for supplying information that is defective.

In relation to the detailed drafting of the Bill, we are concerned, in particular, with the references to providing information that is "connected with" the performance of a function of the relevant authority. This is a vague and potentially wide test. The test of "relevant to" should be adequate and it is not clear why information that may not be relevant to the functions of the authority in question should be included

Secondly, the test of materiality needs to be clarified, i.e. is it to be a subjective or an objective test? On the face of it, it appears to be the former. However, this needs to be confirmed as the effect of the provision will be significantly different depending upon whether the prosecution will need to prove e.g. that the defendant knew or believed that a piece of information that was not provided was material information or only that the defendant knew or believed information to be incomplete and that, objectively, the information was in fact material. If the test is objective, then it would be objectionable that a person could be convicted on the basis of providing information which he did not believe to be complete but in relation to which he considered that the facts omitted were not material.

If, on the other hand, the test is a subjective one, then we would question the need for a reference to incompleteness at all. There seems to be little difference between the provision of information that a person knows or believes to be incomplete in a material particular and information that he knows or believes to be misleading.

We note also that there is a difference in the requirements as to the quality of information in the proposed section 56(A)(2)(b)(i) and (ii) (and the corresponding provisions in the other Parts of the Bill). Whereas the term “misleading” is used in paragraph (i), “inaccurate” is used in the negatively-worded provision in paragraph (ii). However, unlike “true/false” and “complete/incomplete”, “misleading” and “accurate” cannot be said to be direct opposites. This apparent discrepancy may create confusion.

We hope that the Bills Committee will take into account our earlier submission and the supplementary points contained in this letter in its consideration of the Bill. We trust that our concerns are self-explanatory and consider that our attendance at the Bills Committee would not add further substance. However, we thank you for the invitation to make a representation at the meeting.

Yours sincerely,

PETER TISMAN
DEPUTY DIRECTOR
(PROFESSIONAL PRACTICES)
HONG KONG SOCIETY OF ACCOUNTANTS

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