

26th May 2000
Our Ref. : LRRM / L004 / 2000

BY EMAIL & BY HAND

Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

Attn.: Ms. Leung Siu-kum

Clerk to Bills Committee

Dear Sirs,

**Re : Securities and Futures Legislation
(Provision of False Information) Bill 2000 (the "Bill")**

We refer to your letter dated 22nd May 2000 in respect of the above matter. We have reviewed the Bill and set out below our comments on the Bill for your consideration.

HKEx is under a statutory duty to ensure an orderly and fair market in securities or futures contracts traded on or through each exchange company and to ensure that risks are managed prudently. It is believed that the Bill will strengthen HKEx's regulation of exchange participants and listed issuers.

It is noted that the Bill envisages a statutory reporting offence, which relates to information provided to the SFC, HKEx or its subsidiaries pursuant to the relevant ordinances. In addition, HKEx will also be able to rely on the general reporting offence - subject to, among other things, the prosecution proving reliance on the part of the relevant regulators or certain mental element on the part of the defendants - to catch those parties (including exchange participants and listed issuers) who:

- (i) provide information to HKEx or its subsidiaries - pursuant to the different rules of HKEx or to the performance of their regulatory functions - which is false, misleading or incomplete in a material particular, and
- (ii) know that such information provided is false, misleading or incomplete in a material particular, or do not believe that such information provided to be true, accurate and complete in every material particular.

Our Comments

It appears that the "information" provided to HKEx, the stock and futures exchanges or the

clearing house would include all information provided to the aforementioned bodies in the ordinary course of discharging their public duties. Such information should ideally include all written submissions and letters to HKEx, the exchanges or clearing house (including any document in draft form unless it is clear that the information is tentative only, i.e. in square brackets), statements disclosed in prospectuses, submissions made for the purposes of disciplinary proceedings, announcements and circulars, and any oral representations made to HKEx, the exchanges or clearing house, pursuant to their respective rules or the performance of their duties.

It is noted that the Bill does not expressly provide for cases of omission or failure to provide information as required under the rules or directions of the exchanges or the clearing house, which we recognise may be very difficult to prove. It appears rather that the Bill encompasses those situations where the omission to provide certain information would render a statement or information which has already been provided to the Exchange, taken as a whole, to be incomplete or misleading in a material particular. However, it is unclear whether the omission to disclose or provide any information at all is addressed in the Bill.

Further, we note that the Bill only applies to information provided to the SFC and the front-line market operators; the Bill does not seem to cover information provided/divulged directly to the public (not to the relevant regulators) by those parties, e.g. listed issuers. In case of any misstatements in such announcements or disclosures, we believe that aggrieved individuals would have to consider bringing, among other things, civil actions for compensation against the responsible persons under clause 200 of the Securities and Futures Bill.

Conclusion

We are in general agreement with the legislative intent of the Bill. In particular, we understand that the Government has decided not to provide statutory backing to the Listing Rules and the Takeovers Code in order to avoid changing their status from rules and codes to law.

We believe that the introduction of the Bill will enable HKEx to carry out its public duties more efficiently. The proposed statutory provisions will enhance the status and credibility of the various rules of HKEx and will act as an effective deterrent against the provision of false information. The quality of disclosures as required by those rules will also be strengthened in the long term.

Yours faithfully,
For and on behalf of
Hong Kong Exchanges and Clearing Limited

Lawrence Fok

Lawrence Fok
Head of Listing, Regulation & Risk Management

LF/CH/gc