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SUB48/2 (2000)

By Fax 2869 6794
(Total 5 pages)

3 June 2000

Ms Leung Siu Kum
Clerk to the Bills Committee
Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Dear Ms Leung,

**Securities and Futures Regulation
(Provision of False Information) Bill 2000**

Having considered the comments of Legislative Council Members and submissions from the industry and professional groups, the substance of the CSAs that the Administration proposes be made to the Bill are as follows -

1. owing to the concerns expressed over the mental element of the proposed offences, to change the mental element for all the offences to:
 - (a) the person knows the information to be false or misleading in a material particular; or
 - (b) the person is reckless as to whether the information may be false or misleading in a material particular.
2. owing to the concerns expressed over the use of the terms “complete” and “incomplete”, to use the words “false or misleading” to describe

information that is intended to be caught by the proposed offences. Information that is false or misleading by omission will be caught by implication.

3. owing to concerns over information being provided in informal situations to restrict, the subsection (2) offences which deal with information provided other than under a statutory requirement will be restricted to only apply to documents. The term “record or other document” will be used, which is defined in the Securities and Futures Commission Ordinance (SFCO) to include electronic documents. The term will be defined in the Bill solely for the purposes of the proposed offences. To address the concerns of some Legislative Council Members, the definition of “record or other document” will not include recordings of verbal information made by a regulator without the consent of the person being recorded.
4. again, owing to concerns over information being provided in informal situations, a requirement will be added to the subsection (2) offences to require that a prior written warning be given that false or misleading information might attract liability under the proposed offences.
5. in the subsection (2) offences, the limb of the offences requiring reliance by the regulator (subsection (3)(a)) will now require reasonable reliance.
6. in the subsection (2) offences, the limb of the offences that is an alternative to reasonable reliance by the regulator (subsection (3)(b)) will become that the person intended that the regulator rely on the information.
7. in the subsection (1) offences, words will be added to make it even clearer that the requirement under a relevant ordinance must be a requirement to provide information imposed by or under the relevant ordinance.
8. in the subsection (2) offences, the limb of the offences that the record or other document is relevant to the performance of a function under an

ordinance will be removed, and the offences will only apply to information that is provided in connection with the performance of such a function.

— A copy of the revised draft section 56A is enclosed incorporating the above proposed amendments for reference by the Bills Committee. These amendments will apply mutatis mutandis to other parts of the Bill in respect of exchange companies, clearing houses and recognised exchange controllers. I would be grateful if you would circulate this letter to the Chairman and members of the Bills Committee for reference and consideration.

Yours sincerely,

(Bryan P K Chan)
for Secretary for Financial Services

c.c. LD (Attn.: Miss Monica Law)
LO(CL) (Attn.: Ms Beverly Yan)
SFC (Attn.: Mark Dickens, Mrs Alexa Lam and Eugene Goyne)
Linklaters (Attn.: Marc Harvey)
HKEx (Attn.: Lawrence Fok)

Section 56A

(1) A person commits an offence if he, in purported compliance with a requirement to provide information imposed by or under any of the relevant Ordinances, provides to the Commission any information that is false or misleading in a material particular and he -

- (a) knows it to be false or misleading in a material particular; or
- (b) is reckless as to whether it may be false or misleading in a material particular.

(2) Subsection (1) shall not apply if, in relation to a provision of any of the relevant Ordinances by or under which a requirement to provide any information is imposed, there is a provision in that Ordinance making it an offence for a person to provide any false or misleading information in purported compliance with the requirement or a provision to similar effect.

(3) Subject to subsection (4), a person commits an offence if he, in circumstances other than those mentioned in subsection (1), provides to the Commission a record or other document that is false or misleading in a material particular and -

- (a) either -
 - (i) he knows it to be false or misleading in a material particular; or
 - (ii) he is reckless as to whether it may be false or misleading in a material particular; and

- (b) the record or other document is provided in connection with the performance of a function of the Commission under this Ordinance; and
- (c) he has, in relation to the provision of the record or other document, received prior written warning from the Commission to the effect that provision of false or misleading information shall render him liable for prosecution for an offence under this subsection.

(4) In the prosecution of an offence under subsection (3), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that -

- (a) the Commission has reasonably relied on the record or other document to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or
- (b) the defendant intended that the Commission rely on the record or other document.

(5) A document, disc, tape, sound track or other device in which verbal information given by a person is recorded by the Commission with the consent of the person (but not otherwise) shall be regarded as a record or other document provided by the person to the Commission under subsection (3).