

Your ref: CB2/BC/7/99

25 February 2000

Mrs Constance Li
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
By fax: 2509 9055

Dear Mrs Li

Bills Committee on Securities (Amendment) Bill 1999

Further to our letter of 19.2.2000, we write to give our comments on the Bill as follows:

1. It seems wrong as a matter of principle that heavy criminal penalties are imposed in respect of breach of a highly technical restriction which may arise due to no fault of the person placing the short selling order. The criminal offence should only be committed when a person knowingly places a short selling order in breach of the Ordinance.
2. The requirement to provide an assurance in documentary form when a short selling order is placed will preclude sale orders being placed by telephone and result in delays for investors in being able to sell Hong Kong securities. At the very least, it should be confirmed that the assurance can be given by e-mail and perhaps the need for the assurance to be given in documentary form should be reviewed in light of the possible impact on the market.

3. In Sections 80B(1)(a)(ii) and 80B(3)(a)(ii), the assurance to be given by a person conveying a short selling order is required to state that all of the relevant parties to a stock borrowing or lending agreement or a prescribed arrangement will perform their obligations to provide the securities to which the order relates. This seems unnecessarily harsh because it may well be that the party concerned will not perform its obligations. It seems to us that Section 80B(1)(a)(ii) and 80B(3)(a)(ii) should refer to the person placing the short selling order reasonably believing that the relevant party will provide the securities to which the order relates in accordance with the agreement or arrangement concerned.

Further, we enclose a copy of the note prepared by Mr Bryan Chan of the Financial Services Bureau on the meeting held on 18th January at which a large number of banks and financial institutions were present when the Government agreed that there would be significant amendments to the Bill. It seems there is little point in the Bills Committee looking at a piece of legislation which is to be significantly changed. You may wish therefore to contact Mr Bryan Chan or Mrs Rebecca Lai of the FSB to ascertain the up-to-date position.

Yours sincerely

David May
Secretary

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cc: Deacons (Mr J W C Richardson)