

**Meeting of the Panel on Financial Affairs on
13 March 2000**

**Information Note on the
Initial Public Offering of Tom.com Limited**

INTRODUCTION

This note sets out the issues arising from the initial public offering ("IPO") of Tom.com Limited ("the issuer") in February 2000 on the Growth Enterprise Market ("GEM") of the Stock Exchange of Hong Kong ("SEHK"). It focuses particularly on two aspects that have attracted most public attention, namely the granting of waivers in relation to the application for listing on GEM and the subsequent subscription process between 18 and 23 February.

DETAILS

Background

Granting of Waivers

2. The GEM Listing Committee ("the Committee") approved the application by the issuer for listing on GEM in early February 2000. In granting the approval, the GEM Listing Committee also granted waivers to the issuer from certain requirements under the GEM Listing Rules. The decisions of the Committee in relation to waivers were widely reported in the media and attracted concerns from both the market and the public at large in the way that the waivers had been granted, in particular as to whether preferential treatment had been given to the issuer. In response, the SEHK issued a press release on 24 February 2000 to clarify the matter, particularly on the waivers relating to management shareholder moratorium and the limit on staff stock option.

3. In the light of the public and market concerns, the Securities and Futures Commission ("SFC") conducted an enquiry into the matter. The report on this enquiry is now at **Enclosure 1** for the Panel's information.

4. The report evaluates what the issues are and recommends on what needs to be done to address the public concerns. The report focuses on four aspects of the approval process for the tom.com IPO, namely –

- "fast track" processing of the listing application
- non-compliance with the requirements of the Companies Ordinance
- allocation of a specific stock code; and
- grant of waivers.

The SFC notes in the conclusion of the report that it is well aware of the public concerns regarding the balance between the need for GEM to attract high quality companies in competition with other market, and an appropriate regulatory framework that will protect investor interests. The SFC is undertaking a study of these competitive regulatory issues and will work with the Hong Kong Exchanges ("HKEx")/SEHK in developing a suitable framework that addresses these concerns.

Subscription Process

5. The subscription process for the IPO of the issuer commenced on Friday, 18 February and closed at noon on Wednesday, 23 February. More than 200,000 forms were received in the morning of 23 February. Due to the large number of subscribers handing in their forms during that morning, there were disorderly scenes at some of the branches of the receiving bank (namely, the HSBC). The press widely reported long queues and chaotic scenes at some of the receiving bank branches and varying degrees of disruption of normal business at bank branches and neighbouring establishments.

6. The issue has caused general concerns about the arrangements put in place between the IPO sponsor (namely, BNP Prime Peregrine or "BNPPP") and the receiving bank, the public order and safety at the receiving bank branches and at a more general level, the reputation of Hong Kong as an international financial centre. Subsequently, the SFC and the HKMA have separately requested a report from the sponsor and the receiving bank respectively and on the basis of those reports,

compiled their own reports on the matter. The reports by the SFC and the HKMA are now attached at **Enclosure 2** and **3**.

7. Both reports contain a brief account of what happened during the IPO subscription process and try to identify actions, or their absence or omission, which could have contributed to the disorderly and chaotic situations in the last morning of the subscription period. One key issue that was discussed in both reports is the assessment of the likely reception of the IPO. HKMA notes in its report that BNPPP, the sponsor of the IPO, would be expected to make an estimate of the likely demand and to establish the necessary arrangements to handle this and it is therefore important to get the initial estimate as accurate as possible.

8. The report from the SFC also notes that the sponsor should advise the issuer on, inter alia, gauging the likely reception of the IPO by the investing public. On the basis of the information available, the SFC believes that with its prior experience with heavily subscribed IPOs, the sponsor was in a position to forecast, and should have forecast, the size of the demand by the investing public. The sponsor was in a position to foresee, and should have foreseen, that there would be a very large turnout of prospective investors on the last day of the subscription period for handing in forms. Immediate steps should have been taken to put in place additional arrangements to cope with this turnout, so that the process for the submission of forms could be conducted in an orderly manner. But it appears to the SFC that no such steps appeared to have been taken. The SFC believes that the responsibility to put in place a satisfactory subscription arrangement rests principally with the sponsor. The SFC concludes by reiterating its disappointment that BNPPP did not take all reasonable steps to ensure that the necessary receiving arrangements were put in place to cope with the very large number of applications.

9. The HKMA also points out in its report another problem which is the absence of a pre-agreed contingency plan for dealing with the situation in the last morning of the subscription process. HKMA believes that the adverse effects might have been mitigated if the sponsor and the receiving bank had between them had in place a formal contingency plan for dealing with the unexpected.

10. Both the SFC and HKMA reports have made suggestions for improvement in future. For instance, the HKMA points out that it is important to better understand the respective roles and responsibilities of the sponsor and the receiving bank in an IPO process. There also needs to be very close co-operation, good communication and a climate of trust between them during the process. There needs to be as accurate an assessment as possible of the likely popularity of the IPO, and this needs to be kept in view throughout the process and revised accordingly. The two parties should also agree in advance a formal contingency plan for coping with unexpected level of interest in the IPO. The SFC report proposes in particular that the Code of Practice on Corporate Finance should clearly spell out the responsibilities of the sponsor in the subscription process and that the ability of the sponsor to discharge this responsibility in a satisfactory manner would be taken into account in assessing its fitness and properness for continued registration. The HKMA report also suggests that receiving banks should ensure that sufficient resources, including management resources, are devoted to the process.

11. Some of the measures proposed in the reports have already been put in place in the GEM IPOs that followed Tom.com and it is noted that these IPOs while heavily oversubscribed remained orderly. The two regulators will work closely with the HKEx/SEHK, Hong Kong Association of Banks and relevant parties to review the IPO procedures and set down appropriate guidelines for smooth operation in the IPO process. In the longer term, both regulators suggest that public subscription by electronic means should be considered and promoted. In this regard, the SFC has undertaken to continue to work with the market to speed up the improvements to the financial infrastructure to further facilitate the increasing use of electronic subscription.

SECURITIES AND FUTURES COMMISSION

REPORT ON WAIVER ISSUES ON TOM.COM LIMITED

Introduction

1. This report examines the public concerns that were expressed on various waivers that were granted to tom.com prior to its recent IPO. It addresses these issues based on a review of the information provided by the Stock Exchange of Hong Kong (SEHK). The report evaluates what the issues are and recommends on what needs to be done to address the public concerns.
2. Issues relating to the public disorder in the share application process are discussed in a separate report.
3. Public concerns have focused on four aspects of the approval process for the IPO:-
 - "Fast track" processing of the listing application
 - Non-compliance with the requirements of the Companies Ordinance
 - Allocation of a specific Stock Code; and
 - Grant of waivers
4. These issues are discussed below.

Background

5. In May 1998, the SEHK issued a Consultation Paper seeking comments on the need for establishing a second board for Hong Kong. It stated that:

"The Second Market will be established as an alternative market to the Main Board. Its main objective is to provide capital formation for emerging companies to facilitate their business development and/or expansion...";

"... the Second Market should adopt a growth theme to target emerging companies (i.e. those companies which can demonstrate that with additional funding, they have a reasonable prospect of significantly developing or expanding their businesses) in need of additional capital to finance clear expansion or development plans to all industries and sectors."
6. The GEM Listing Rules were approved and adopted by the SEHK and the SFC in July 1999. These were closely modelled on the Main Board

Listing Rules with particular provisions added to reflect the GEM features.

7. The GEM was launched on 25 November, 1999 and since then has attracted 14 listings, with a market capitalization of \$79 billion as at 9 March 2000. Prior to the issue of tom.com, daily turnover averaged around \$100 million. Since then, daily turnover has increased to an average of \$2 billion for March 2000.
8. Shortly after the Commission's approval of the GEM Listing Rules in July 1999, concern was expressed by the SEHK that some relaxation was necessary in light of the special nature of high growth/technology companies and the need to compete with other markets such as NASDAQ which have different listing conditions.
9. In view of these concerns, the Commission agreed with the SEHK to have a formal review of the GEM Listing Rules within six months from the launch of the market to take into account experience gained to date. In the interim, the SEHK was empowered by reference to the circumstances of specific cases to waive strict compliance with the GEM Listing Rules. Accordingly, the SEHK announced the conditions under which it would exercise its waiver power in relation to the 2-year moratorium requirement in its press release dated 26 November 1999 [Appendix A].
10. When the tom.com IPO attracted considerable public attention, public concerns were expressed relating to the following:-
 - (a) Whether the granting of waivers were arbitrary and not rule-based, thus favouring some and not others;
 - (b) Whether these waivers would weaken the rights of minority shareholders, without corresponding protection.

Fast-track processing of the listing application

11. The GEM Listing Rules provide that applications should be submitted at least 25 clear business days before the provisional GEM Listing Committee hearing date. These are designed to allow sufficient time for proper consideration by the GEM Listing Division and the Listing Committee. This timetable was followed in all listings prior to the tom.com listing application, with one exception where the 25 clear business day period was reduced to 12 clear business days.
12. This period was shortened to 8 clear business days in the case of tom.com, from 21 January to 3 February. Time pressure partly arose because of the 4-day Chinese New Year break from 4-7 February. The SEHK has explained that this "fast track" approach was used by the Exchange as a marketing tool to attract the company's listing on GEM

in the light of the slower inflow of IPO applications to GEM in January. The SFC accepts that there was a genuine effort to promote listings in the GEM, which resulted in a number of listings subsequently.

13. Whilst the effort to achieve greater efficiency in processing applications is commendable, it should not be at the expense of the quality of vetting, which could compromise investor protection needs. The shortening of the review period should be allowed only on the basis that all relevant documents have been properly prepared by the issuer and its advisers and vetted by the Exchange with the same care and diligence as any other case. As the next section shows, some errors, even though non-material relative to the whole IPO process, were made.

Non-compliance with the requirements of the Companies Ordinance

14. On review of the documentation by the Commission, it was discovered that there were two errors of non-compliance of the prospectus with certain provisions of the Companies Ordinance. These may have resulted from the speed of preparation of the documentation by the company's advisers and processing by the Exchange. The first related to omission of the residential addresses of directors in the prospectus, which was subsequently provided in a separate announcement. The second related to the non-inclusion in the prospectus of certain information in relation to options already granted. These should have been picked up at the vetting stage. The Commission is still examining the circumstances of these omissions but considers that such non-compliance was not of such materiality to the overall IPO that a Court would impose liability on the persons concerned. Nonetheless, the Commission would not hesitate to recommend disciplinary action against persons involved if they are found to be breaching the Companies Ordinance.
15. However, the fact that such errors occurred is a matter for concern. The SFC has suggested to the Exchange ways to improve the documentation process and the checking requirements to be carried out by a listing applicant's advisers with a view to avoiding a recurrence of this. The SFC also recommends that there should be stricter adherence to the normal timetable for processing listing applications in the future. The SEHK has indicated that it would improve its procedures to enhance compliance with the requirements.

Allocation of a specific Stock Code

16. There are no formal procedures for the allocation of specific stock codes, although the practice in the Main Board was to ballot all stock codes. On 12 November 1999, the Exchange issued a press release (**Appendix B**) which invited new GEM listings to ballot for stock codes. Certain stock codes would be assigned as "charity codes" to be included in the ballot. A successful applicant may keep the code if it

pays a fee specified by the Exchange (fixed at \$300,000) to be donated to the Community Chest. It was stated in the announcement that all companies seeking listing on GEM would be required to ballot for stock codes. The Stock Exchange did indicate that certain codes would be retained for marketing purposes, but this was not made clear in the Press Release.

17. The Commission understands that the Stock Code 8001 was considered for several other prospective issuers as a marketing attraction, but it was not taken up. It is clear that the Exchange used the allocation of a specific stock code as a marketing tool to attract tom.com's listing on the GEM. Nevertheless, the SFC is concerned that the existing process of allocation was not transparent to all parties, so that other parties may have the opportunity to bid for a specific stock code.
18. The SFC has since written to the SEHK to the effect that all stock codes should be subject to ballot in future as specified in their November 1999 announcement and that procedures for balloting should be published.

Grant of waivers

19. The Exchange has granted certain waivers to tom.com, in particular relating to a reduction of the moratorium requirement for management shareholders and a reduction of the restrictions on share option schemes.
20. The Exchange views the grant of the waiver in respect of the moratorium as in line with the policy of flexibility that it announced on 26th November. In the grant of the waiver of the restrictions in respect of share options, the Exchange based the waiver on the proposals for revision of the relevant rules on share options on the Main Board, in anticipation of Commission approval. These rules were discussed at the Commission meeting held on 21 February, but were not approved, despite the recommendation of the SFC Corporate Finance Division. The Commission as a whole believed that they should be subject to general public consultation.
21. In the SFC's assessment, the Exchange's approach to the grant of waivers was motivated by its desire to promote GEM and to boost its competitiveness against hi-tech boards in other major markets, such as NASDAQ, rather than driven by an intention to favour any particular issuer. The Commission has noted that similar waivers were granted to 4 other issuers, 3 of which at that time were not publicly announced. Therefore, these waivers were not exclusive to tom.com.
22. The SFC understands the desire of the Exchange to promote GEM relative to other markets. The SFC has noted that there is public support for GEM to be competitive relative to other markets.

23. The SFC is concerned, however, that the market should be aware that selective comparison of individual features of one market with another may lead to regulatory arbitrage without a full appreciation of important regulatory differences in different markets. For example, it is well known that the regulatory regime in the US is significantly different from that in Hong Kong. One of the principal checks and balances in the US is the shareholder class action or liability suit against listed companies and their directors and advisers (coupled with the availability of a contingency legal fee system), a feature which is unavailable in Hong Kong. Such a structure is one of the principal tools for the enforcement of corporate governance and investor protection in the US. In the absence of such a structure in Hong Kong, the Commission felt that it may be necessary for the Listing Rules and other regulations to impose greater requirements in order to seek to achieve the same ends.
24. The SFC is aware also of the market's concern that considerable uncertainty and room for abuse will be created if the GEM Listing Rules provide for one set of criteria, whilst a different set of criteria is allowed to be built up by a separate body of waivers. The SFC and the Exchange have discussed these issues at length and have agreed that there should be a review of the GEM Listing Rules, with public consultation. A consultation paper is to be prepared shortly for this purpose. The SFC and the Exchange have also agreed a set of criteria for waivers to be granted by the Exchange in the interim period pending completion of the review of the GEM Listing Rules and implementation of any changes to the Rules. These were announced on 11 March, 2000.

Conclusion

The Commission is well aware of the public concerns regarding the balance between the need for GEM to attract high quality companies in competition with other markets, and an appropriate regulatory framework that will protect investor interests. The Commission is undertaking a study of these competitive regulatory issues and will work with the Exchange in developing a suitable framework that addresses these concerns.

Securities and Futures Commission
13 March 2000

Appendix A

SEHK Info: News & Library: News Releases

NEWS & LIBRARY

NEWS RELEASE

November 26, 1999

**The Exchange clarifies position on early
disposal of management shares in GEM companies**

Under the GEM Listing Rules, the Stock Exchange of Hong Kong has the discretion to waive the restrictions on initial management shareholders disposing of their shares in GEM companies.

The GEM Listing Rules provide that initial management shareholders may not dispose of their interest in a GEM company for two years after listing.

However, under Rule 13.17 (5) of the GEM Listing Rules, the Exchange may reduce the moratorium period to six months or other period that it considers desirable, if it is satisfied that the initial management shareholders are able to justify their level of commitment to the development of the company's business. The flexibility to exercise this power lies with the GEM Listing Committee which is a widely representative body comprising market participants including investors, brokers, financial advisors, professionals and issuers.

Since GEM is still a new market, there will be a period of adjustment of the regulatory framework before the full rules are finalised.

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Corporate Communications Department

Letterhead of The Stock Exchange of Hong Kong

Appendix B

NEWS RELEASE

November 12, 1999

GEM will ballot stock codes for charity

The Growth Enterprise Market, GEM, of the Stock Exchange of Hong Kong Limited has invited the first batch of companies which have obtained preliminary listing approval to ballot for stock codes on Saturday, November 13. All proceeds of the ballot of charity codes will be donated to the Community Chest.

The GEM stock codes are in sequential order from 8003. The following stock codes have been assigned as charity codes for the ballot to be held this Saturday. A company that has drawn one of the charity codes may keep the code by paying the fees as follow:

<u>Code</u>	<u>Fee</u>
8003:	HKD 300, 000
8008:	HKD 300, 000
8018:	HKD 300, 000
8028:	HKD 300, 000

The company may draw and keep another code without paying any fees if it does not wish to retain the charity code, provided that the new code is not one of the charity codes. All charity codes drawn but not kept by the drawer will be put back for drawing by the next company. All companies seeking listing on GEM will be required to ballot for stock codes, which need not be charity codes.

The Community Chest will send officials to witness the ballot.

The Exchange will maintain a fair and transparent balloting system and future codes may be assigned to charity as GEM develops.

* * *

For enquiries, please contact Lorraine Chan, Senior Manager, Corporate Communications Department, on 2840 3842.

Corporate Communications Department

Securities and Futures Commission
Report on the subscription arrangements of Tom.com Limited

Introduction

1. This report addresses the public order issues in relation to the subscription arrangements of the initial public offering (IPO) of Tom.com Limited (the issuer). The Commission is principally concerned about the chaotic receiving arrangements during the closing day of the IPO (23 February 2000). In this report, the Commission will examine what is the responsibility and role of the sponsor in relation to an IPO, what went wrong with the receiving arrangements in the case of Tom.com, and what should be done to ensure that there is no recurrence. A chronology of key events relating to the subscription process and receiving arrangements is at Annex A.
2. In preparing this report, the Commission has taken into consideration letters to the Commission dated 28 February and 11 March 2000 from BNP Prime Peregrine Capital Limited (BNPPP), the sponsor of the Tom.com issue (at Annex B). In addition, the Commission has also received a report from the Stock Exchange of Hong Kong (SEHK) (at Annex C), consulted with the Hong Kong Monetary Authority (HKMA) and reviewed correspondence between HKMA and the Hongkong and Shanghai Banking Corporation (HSBC), the receiving bank of the issue.

Role of the Sponsor

3. It is the expectation of the market and the regulator that the sponsor should —
 - Act as the overall manager of an IPO;
 - Advise the issuer on pricing and gauging the likely reception of the IPO by the investing public;
 - Be responsible for managing and organising the whole issue process to ensure that it is conducted smoothly and in a fair and orderly manner;
 - Be ultimately responsible for advising the issuer to ensure that its agents and services providers are competent and have the capacity to perform any outsourced or delegated functions in connection with the IPO. One such agent or service provider is the receiving bank

which distributes prospectuses and application forms, and receives and processes completed application forms.

BNPPP's Role

4. BNPPP is the sponsor of the Tom.com IPO. It registered with the SEHK as a GEM sponsor in 1999. The Commission noted that in BNPPP's application for admission as a GEM sponsor, it had relied on some of its principal supervisors' experience in handling major and heavily oversubscribed IPOs, including the Beijing Enterprises IPO.
5. It is particularly noted that on 18 February 2000, the press widely reported the public remarks made by Mr. Francis Leung, Chairman of BNPPP on 17 February 2000 regarding the likely public response to the Tom.com IPO. According to these reports, Mr. Leung believed that the response to the Tom.com IPO would be better than the IPO of Beijing Enterprises. A comparison between the IPOs of Tom.com and Beijing Enterprises is at Annex D.
6. In an IPO where public investors' interest was expected to be as great as that in the IPO of Beijing Enterprises (where 324,754 applications were received), the sponsor's duties must have included that of ensuring that public investors were able to submit their forms in a smooth and orderly manner.

Inadequate Receiving Arrangements

7. From the chronology of events at Annex A, the following events are of significance —
 - HSBC's receiving arrangements were based on a unit charge per 10,000 applications (according to BNPPP), or an IPO with about 10,000 applications (according to HSBC). This figure was subsequently revised upwards (the number of actual applications was some 450,000);
 - Mr. Francis Leung, remarked on 17 February 2000 in public that the Tom.com IPO would have a better response than the Beijing Enterprises IPO;
 - After the above remarks were widely reported, the receiving bank was not instructed to have in place a receiving arrangement comparable to the Beijing Enterprises IPO (there were 28 receiving bank branches for Beijing Enterprises, but only 10 branches for Tom.com);

- After some 1,700,000 application forms were distributed by 22 February 2000, the day before the closing of the IPO, there appeared to have been no effective contingency plan or the activation of any contingency plan to cope with the likely situation of large numbers of applicants handing in their applications forms before the close of application.
8. The Commission believes that BNPPP, with its prior experience with heavily subscribed IPOs, was in a position to forecast, and should have forecast, particularly given Mr. Leung's public remarks on 17 February 2000, the size of the demand by the investing public. In any event, by the close of business on 22 February 2000, when some 1,700,000 application forms were distributed, and only 150,000 to 200,000 of them had been submitted, BNPPP was in a position to foresee, and should have foreseen, that there would be a very large turnout of prospective investors the next day, the last day for handing in forms.
 9. If the Beijing Enterprises IPO was any guide, 25% of 1,700,000 of the Tom.com application forms distributed would be submitted in total. That means some 275,000 to 225,000 forms would be handed in during that half-day period on 23 February 2000. Our review of the Tom.com issue and the Beijing Enterprises IPO showed that the response rates between forms taken and forms received were broadly comparable (25% to 30%). The issue price of Tom.com was \$1.78, significantly lower than that for Beijing Enterprises (\$12.48). Since the average dollar value per application for 2000 shares in Tom.com was only \$4,480, as compared with \$26,440 for 2000 shares in Beijing Enterprises, it would not be unreasonable to deduce that there would be greater small investors demand for Tom.com shares. Immediate steps should have been taken to put in place additional arrangements to cope with this turnout, so that the process for the submission of forms could be conducted in an orderly manner. No such steps appeared to have been taken.
 10. Based on the submissions from BNPPP and HSBC, which conflicted with one another in terms of allocation of responsibilities, the Commission is not in a position to ascertain whether it was the sponsor or the receiving bank who ultimately decided not to pursue the proposal of adding a receiving bank and/or increasing the number of receiving bank branches. The scope of responsibility and work is a contractual matter among the sponsor, the issuer, and their advisers and agents. However, the Commission believes that the responsibility for putting in place a satisfactory subscription arrangement rests principally with the sponsor.

Conclusions

11. The Commission reiterates its disappointment that BNPPP did not take all reasonable steps to ensure that the necessary receiving arrangements were put in place to cope with the very large number of applications. In particular, by 22 February 2000 when it should have been obvious to BNPPP that there would be huge numbers of investors handing in forms the next day, it still did not take any action to put in place satisfactory arrangements to ensure that good order was maintained.
12. The Commission does not accept BNPPP's arguments that —
 - BNPPP could not have appreciated the nature of the problem being the unforeseeable response by small investors and the extent to which this exceeded all historical records.
 - BNPPP had taken all reasonable steps and that it was entitled to rely on HSBC's experience.
 - BNPPP had taken all reasonable steps to accommodate the unforeseeable nature of demand as it became apparent.

The Way Forward

13. The Commission notes that insofar as regulatory action by the Commission is concerned, there is no specific provision in the current legislation or the Code of Conduct for Persons Registered with the Securities and Futures Commission for the Commission to impose sanction on any parties in this case. The Commission however has already recorded its disappointment to the sponsor concerned. However, it is important to understand the lessons to be learned from this incident, and to take immediate remedial steps to ensure that the problems will not occur again.
14. The way forward is therefore to, first, consider specifically incorporating the relevant requirements of sponsors in the proposed Corporate Finance Practitioners Code of Conduct so that -
 - the responsibility of the sponsor in the subscription process is clearly spelt out; and
 - it is made very clear that a sponsor's ability to discharge this responsibility in a satisfactory manner will be taken into account in assessing its fitness and probeness for continued registration.

15. In addition, it is important that market participants also understand the issues, and co-operate in improving the existing practice in an IPO. To this end, the Commission will work closely with the HKMA, SEHK, Hong Kong Association of Banks and relevant parties to review the IPO procedures and set down appropriate guidelines for smooth operations in the IPO process. Specifically,
- In the forthcoming GEM Listing Rules review, it is recommended that consideration should be given to including relevant provisions on a sponsor's responsibilities in handling public offers.
 - The same will also be considered for the Main Board Listing Rules review to be conducted later this year.
 - The Commission will work with the SEHK towards a better understanding among sponsors of the expectation of the regulators and the sponsors' responsibility to have in place a fair and orderly subscription process. In fact, this process has already commenced and, in this connection, the Commission noted that the IPOs in the past week, while heavily oversubscribed remained largely orderly.
16. Last, but not least, the Commission will also work with the market to promote the use of electronic subscription and speed up the improvements to the financial infrastructure to further facilitate and encourage the use of electronic subscription.

**Chronology of Key Events relating to the Subscription Arrangements
for the Tom.com IPO**

Mid to end January 2000	BNPPP approached HSBC for HSBC to act as the receiving bank for the Tom.com IPO. HSBC proposed the use of electronic subscription but it was not pursued. According to HSBC, the indications they were given by the sponsor were an IPO with an expectation of around 10,000 applications. According to BNPPP, 10,000 applications was a unit charge for HSBC and was never suggested as the likely amount of applications.
On or before 11 February	According to BNPPP, it indicated to HSBC that the application level would be similar to other GEM issues, i.e. 35,000 applications.
18 February 2000	<p>Mr. Francis Leung, Chairman of BNPPP, was quoted in the press as saying that "the response for Tom.com will be even better than for Beijing Enterprises." A copy of a press clipping is at the Appendix. (Beijing Enterprises was listed in 1997 and the Hong Kong public offer was 1,276 times subscribed before claw back and 364 times subscribed after claw back from the placing tranche to the public offer tranche, with a total of 324,754 applications. Peregrine Capital Ltd. And Morgan Stanley were the joint lead-managers of the Beijing Enterprises IPO. The IPO process was smoothly handled with 28 receiving bank branches.)</p> <p>Subscription for Tom.com shares opened. According to BNPPP, it had distributed 178,000 application forms through branches of the receiving bank and 195,000 forms through the SEHK and offices of the underwriters. Additional forms were immediately printed and distributed in the next few days.</p> <p>SFC telephoned BNPPP to ensure sufficient prospectuses and application forms would be made available.</p>
19 February 2000	According to BNPPP, it initiated discussion with HSBC on capacity in the handling of about 300,000 application forms and also discussed the need for increasing the number of receiving bank and/or receiving branches. (This is not consistent with HSBC's account of events.) The proposal

	was not followed through.
21 February 2000	BNPPP informed SEHK that confirmation had been received from HSBC and the registrar of their respective ability to handle 300,000 application forms.
22 February 2000	According to BNPPP, it had by then delivered some 1,700,000 application forms to the receiving bank, SEHK, Hong Kong Clearing and the underwriters. BNPPP estimated that between 1,400,000 and 1,500,000 application forms were taken by prospective investors.
	BNPPP understood that by then between 150,000 and 200,000 completed application forms had been collected.
23 February 2000	Application closed at 12:00 noon. Incidents of disorderly conduct were reported in several receiving bank branches. BNPPP contacted the Police through the issuer to ensure sufficient cover at each collection point at around 10:30 a.m.

28th February, 2000

The Stock Exchange of Hong Kong Limited
1/F One and Two Exchange Square
Central
Hong Kong

Attn: Mr. Lawrence Fok

Securities and Futures Commission
12/F Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

Attn: Mr. David Stannard

Dear Sirs

Re: tom.com limited (the "Company" or "tom.com")

We refer to your respective letters of 25th February, 2000 requesting, inter alia, a report from BNP Prime Peregrine Capital Limited ("BNPPP") on the public offer of securities in the Company. In particular, you have asked us to address the procedures adopted in relation to the submission of completed application forms at branches of HSBC. We note that in making this request you are not seeking to exercise any statutory powers, but nonetheless we are happy to give you our full cooperation.

Background

During the late morning of 23rd February, 2000 substantial numbers of prospective investors descended on the 10 designated branches of HSBC throughout Hong Kong. While order was maintained at most of these branches despite the large numbers of applicants, including at the main office of HSBC in Central, isolated incidents of disorderly conduct in the crowd were reported in Mongkok, North Point and Kwun Tong. Eyewitness accounts at the Mongkok branch suggest that these incidents arose by reason of difficulties experienced by the police in maintaining an orderly queue. The fundamental issue, however, was ultimately the unprecedented and entirely unforeseeable nature of the retail response to the public offer of shares in the Company.

After final counting, it has now been established that the number of applications received for shares in tom.com exceeded 450,000 (which exceeds by some 30% Hong Kong's historical record of approximately 350,000 applications set in the case of Beijing Enterprises). Never before has an issue in Hong Kong been the subject of such heavy demand from **small investors**. To put the highly unusual and unforeseeable nature of this demand in context, the Company's IPO is not actually the most popular IPO of all time in Hong Kong by number of times oversubscribed, in this regard it ranks only fourth or fifth. Where this issue is extraordinary is that it attracted some 415,000 applications for less than 50,000 shares (representing an amount payable on application of less than HK\$90,000 based on the issue price of HK\$1.78 per share). Many of these small applicants lodged their applications in person rather than through their brokers. The number of applicants represents approximately 8% of the eligible adult population of Hong Kong. In addition, we believe the return rate for application forms was unusually high. While difficult to judge, we calculate that approximately 1,500,000 forms were collected by investors with a return rate of approximately 30%. Even in the exceptional case of Beijing Enterprises the return rate was estimated at only 25% and for SIIC Medical Science and Technology ("SIIC") it was estimated at approximately 17%.

We do not believe that this level of response from retail investors or the nature of the applications could possibly have been predicted. Consequently, we consider that any process of apportioning blame would be misconceived and likely to reflect badly on those involved. At the end of the day it is arguable the system of applying for shares in Hong Kong is outdated and until it is reviewed Hong Kong will continue to run the risk that unforeseeable events will disrupt the overall process.

Chronology of events

We have set out below an outline chronology of events leading up to 23rd February, 2000. In the interests of providing this report to you in a timely manner the chronology is succinct and consequently may omit details which you may subsequently wish to consider. We are happy to provide you with a more detailed chronology in due course if you feel it is appropriate.

2000

Mid January

BNPPP contacted the receiving bank in confidence and received a quotation for their services (including standard draft receiving banker's agreement). It should be noted that the receiving banker's agreement was a standard form agreement previously used by HSBC in major issues, including some of those mentioned above. This agreement indicated that HSBC would process forms and charge by reference to multiples of 10,000. This did not mean this would be the final anticipated level of demand but was only a calibration for cost purposes as there was no upper limit on HSBC's fees. The absence of an upper limit was known and understood by all parties. (See attachment I)

BNP PRIME PEREGRIE

- End January** BNPPP consulted with Central Registration in relation to the possible use of the electronic application system (a system only available to CCASS participants) for tom.com. BNPPP had previous experience of electronic applications having used the system for the Shenyang Public Utility IPO. Central Registration indicated that given the tight timetable for tom.com, it would not be possible to utilise electronic means for applications.
- On or before
11th February** BNPPP indicated to HSBC that BNPPP anticipated the application level for tom.com to be at a similar level to the previous most heavily subscribed issue on GEM, SIIC, with some 35,000 applications. This indication was given in the context of relatively quiet trading activity on GEM at the time.
- 11th February** BNPPP received the receiving bank's proposal on the quantities of application forms and prospectuses for distribution to the branches (see attachment II). HSBC indicated 50,000 application forms would be required.
- 12th February**
1. BNPPP informed the receiving bank by fax that BNPPP was anticipating huge demand and they should notify BNPPP as soon as possible if they required additional prospectuses and application forms (see attachment III) based on the investor response after the opening of the offer.
 2. HSBC sent a revised quotation to BNPPP indicating the minimum charge for processing 35,000 forms (the historical record number of applications for a GEM listing).
- 17th February**
1. Following a conversation with HSBC, BNPPP received a revised proposal for prospectuses and application forms from HSBC requesting 160,000 forms and 21,000 prospectuses (see attachment IV). In addition to prospectuses, BNPPP had earlier instructed the printer on 14th February, 2000 to produce 200,000 application forms and an additional 300,000 forms were ordered during the morning of 17th February, 2000.
 2. After consultation between HSBC, BNPPP and the printer, it was agreed that the order from HSBC for application forms and prospectuses would be delivered at 8:30 a.m. on 18th February as staff of HSBC were not available to take delivery after 6:30 p.m. on 17th February.
 3. BNPPP was also quoted by the press as being of the view that interest in tom.com might exceed that for Beijing Enterprises. Such a statement was made before the opening of the public offer and was made by reference to the initial response to the international placing tranche which commenced on 17th February. It subsequently proved to be the case with the

BNP PRIME PEREGRIE

international placing achieving a record oversubscription rate exceeding 100x. It should also be noted that the most recent previous Cheung Kong supported IPO (Cheung Kong Infrastructure) received satisfactory but not exceptional support (the Hong Kong public offer being 23x oversubscribed with 15,000 forms).

4. About 160,000 application forms were distributed to the Stock Exchange, the underwriters and Hong Kong Clearing.
- 18th February**
1. 178,000 application forms were distributed to the branches of the receiving bank together with copies of the prospectus, and 195,000 additional application forms and additional prospectuses were distributed to the Stock Exchange and offices of the underwriters.
 2. Based on the level of demand seen during the morning, BNPPP received requests from the receiving bank and the Stock Exchange for more prospectuses and application forms (see attachment V for requests from the receiving bank).
 3. The SFC also telephoned BNPPP to ensure sufficient prospectuses and application forms would be made available.
 4. Printing of further prospectuses and application forms commenced with the aim of providing up to 500,000 additional forms on the next full business day. At this point, the printer actually printed an additional 1 million forms.
 5. Internal discussions took place within BNPPP at senior level in light of the demand for forms and prospectuses about whether the receiving bank and registrar arrangements were adequate in the circumstances.
- 19th February**
1. 215,000 additional application forms and additional prospectuses were delivered to the receiving bank branches.
 2. BNPPP agreed with the receiving bank the number of prospectuses and application forms to be delivered on 21st and 22nd February, 2000. Prior to this HSBC had ordered a total of 620,000 forms. It was agreed to increase this to 879,000 forms (see attachment VI) reflecting the anticipated level of demand (subsequently, it was agreed with the receiving bank that a further 434,000 forms will be provided (see attachment VII)).
 3. Telephone conversations were held with the receiving bank and registrar to discuss their respective capacity in the handling of application forms. In light of BNPPP's experience with Beijing Enterprises, processing capacity for about 300,000 applications

was requested. In addition, the principle of a contingency plan was briefly discussed should the number of applications exceed 300,000.

4. The instructions to have processing capacity of 300,000 together with a contingency plan to meet demand above that level was to be reflected in a supplemental receiving banker's agreement and a memorandum, respectively. A draft of this supplemental agreement was provided to BNPPP by HSBC on Monday 21st February.
5. Discussions also took place with the receiving bank on the need to add additional branches to distribute prospectuses and application forms and collect application forms (specific reference was made during these discussions to the heavy demand seen for prospectuses and forms at the Mongkok branch on 18th and 19th February).
6. The receiving bank was duly authorised to add such branches as it considered appropriate to distribute prospectuses and application forms (see attachment VIII). Reports in the press to the contrary are wrong in fact and clearly false.
7. Following further internal discussions at senior level, BNPPP took the step of suggesting to the receiving bank that the Bank of China be added as a second receiving bank to support HSBC in handling applications. BNPPP recognised that this would require further documentation including public announcements and BNPPP was ready and prepared to undertake this work. However, HSBC was of the view that this may involve complicated legal issues and HSBC considered it preferable to subcontract part of its responsibilities to another bank. BNPPP was subsequently informed by the receiving bank that it would draw on the resources of Hang Seng Bank. BNPPP relied on HSBC's decision in this regard. Had HSBC agreed to the appointment of an additional receiving bank this would automatically and necessarily have added additional receiving branches.
8. According to newspaper reports (the veracity of which we do not know), HSBC reached the conclusion, following internal consultation that it may cause confusion to add additional branches for the collection of forms and dropped the issue.

21st February

1. 415,000 additional application forms and additional prospectuses were delivered to the appropriate receiving bank branches.
2. BNPPP enquired whether the receiving bank had added any

branches following the authorisation granted to HSBC on 19th February, 2000 and was told and advised that no additional branches were required (specific reference was made to the fact that orderly distribution of prospectuses and application forms at the Mongkok branch had been restored). Accordingly, on expert advice, BNPPP reasonably believed the issue of disorder at the Mongkok branch had been resolved.

3. In the morning a meeting was held between BNPPP, the receiving bank, the registrar, and staff of tom.com and Richards Butler to discuss the processing of the application forms. During this meeting, BNPPP discussed the handling capacity for 300,000 forms and asked for a contingency plan should the response exceed 300,000.
4. A meeting was held between HKMA, the receiving bank and BNPPP to discuss and agree the likely processing mechanism.
5. The receiving bank and registrar formally confirmed processing capacity for 300,000 applications and agreed a processing contingency plan should the number of applications significantly exceed 300,000. At no point during these discussions did HSBC raise any concerns regarding their ability to physically collect application forms at this level.
6. The Stock Exchange telephoned BNPPP in relation to the processing of application forms and questioned whether the processing arrangements were adequate. It was also discussed whether it was necessary to appoint an additional receiving bank to process the application forms. BNPPP informed the Stock Exchange that confirmation had been received from HSBC and the registrar of their respective ability to handle 300,000 application forms. In particular, BNPPP informed the Stock Exchange that HSBC was drawing on the resources of Hang Seng Bank. This issue was not taken any further by the Stock Exchange.
7. The Stock Exchange was also informed by BNPPP of the contingency plan should the number of applications exceed 300,000.
8. Despite having received a request from HSBC in the afternoon the delivery of 1,120,000 forms and 262,000 prospectuses on 22nd February, BNPPP was subsequently informed by the receiving bank that there were surplus prospectuses and application forms at close of business at certain branches of HSBC.

22nd February

1. BNPPP delivered further prospectuses and 268,000 application

forms to HSBC. This took the total number of forms delivered to HSBC to 1,272,000.

2. At this stage a total of approximately 1,700,000 application forms had been delivered to the receiving bank, the Stock Exchange, Hong Kong Clearing and the underwriters. We believe some 1,400,000 to 1,500,000 forms were taken by prospective investors.
3. BNPPP made a submission on the processing of application forms to the Stock Exchange (see attachment IX) and agreed the approach in principle. This submission anticipated that the level of applications was likely to exceed 300,000 and referred to the proposed contingency plan.
4. BNPPP was requested by the receiving bank to stop delivering additional prospectuses and application forms and was asked to remove excess prospectuses and application forms from the banks.
5. BNPPP discussed on the telephone with the receiving bank the arrangements for the cut off in the collection of application forms at the branches. During this telephone conversation HSBC appeared confident that they would be able to deal with the final day of the offer.
6. BNPPP was informed by the receiving bank that between 150,000 to 200,000 application forms had been received in an orderly fashion by close of business. At no point did HSBC express a concern that they might have a collection problem on 23rd February.

23rd February

1. BNPPP monitored the application collection procedures at individual branches. Central branch was orderly but with reasonably heavy traffic. Mongkok, North Point and Kwun Tong experienced some difficulties with isolated incidents of disorderly conduct in the crowd.
2. BNPPP contacted the police through the Company at around 10:30 a.m. to ensure sufficient police cover at each collection point.
3. BNPPP liaised with HSBC and the police to ensure investors were provided with every opportunity to lodge their applications. It was agreed with the SFC and the Stock Exchange that the end of the queue would be determined at 12:00 noon and all applications with prospective investors in the queue at that point would be accepted. HSBC was informed accordingly.

Adequacy of the collection procedures

It is clear with the benefit of hindsight that difficulties were encountered with the collection procedures adopted for this IPO. This raises issues as to the adequacy of the procedures to deal smoothly with 450,000 applications. It is questionable whether the issue here was one of crowd control rather than the adequacy of collection branches or staffing. We understand, for example, that the police informed the public on 23rd February that branches would continue to receive forms up to 5:00 p.m. (see attachment X). This is believed to have resulted in another wave of prospective applicants turning up at the receiving bank branches. We respectfully submit that BNPPP was reasonably entitled to rely on HSBC's ability to handle a heavily oversubscribed issue.

In making this submission, we rely on the fact that HSBC was involved in other oversubscribed issues as receiving bank. Indeed, HSBC/Hang Seng Bank have been involved in four of the top ten most oversubscribed issues in Hong Kong. HSBC acted as the receiving bank for the IPO's of Arnhold Holdings Limited, Sinocan Holdings Limited and Sa Sa Holdings Limited. These issues were respectively 583x, 553x and 530x oversubscribed. tom.com's IPO has been some 650x oversubscribed. In each of the cases in which HSBC acted in the capacity of receiving bank it did so as sole receiving bank and in its discretion made available either 10 or 11 branches for the purposes of distributing and collecting application forms. In relation to GEM listings, HSBC acted in the capacity of sole receiving bank for the listing of SIIC Medtech (a company sponsored by BNPPP). In this case the IPO was 495x oversubscribed and HSBC again in its discretion provided 10 branches.

Based on the above, we can reasonably conclude that HSBC is both qualified for and experienced in the handling of hugely popular Hong Kong IPO's. Consequently, relying on HSBC qualifications and experience, neither BNPPP nor the Company should have had any reason to be unduly concerned over the procedures to be adopted to receive forms (for example, the number of branches being made available for the collection of forms). In fact, one might reasonably have anticipated that if HSBC thought they would have problems collecting forms they would have formally requested additional branches or the support of another receiving bank (as suggested by BNPPP).

Going back to the chronology of events, it is clear that the parties to the transaction could not have foreseen the nature of the retail demand. However, upon realising that the level of applications was likely to be high (based on the demand for prospectuses and forms on the first day of the public offer), BNPPP took all appropriate steps and consulted immediately with the receiving bank and registrar to ensure that adequate resources were made available to handle this level of demand. A number of aspects of the conversations with HSBC and the registrar at this time are particularly worthy of note:

- (i) Promptly upon gauging the level of demand, BNPPP requested on 19th February that sufficient resources be put in place by the receiving bank and registrar to process 300,000 forms and the principle of a contingency plan was discussed

BNP PRIME PEREGRIE

should the level of applications exceed 300,000. This was subsequently reflected in an amendment to the receiving banker's agreement and a memorandum between the parties.

- (ii) BNPPP suggested on 19th February, 2000 that HSBC be joined by a second receiving bank and put forward the Bank of China as an option. HSBC declined and suggested they would draw on the resources of Hang Seng Bank.
- (iii) BNPPP and the Company authorised HSBC on 19th February, 2000 to use additional branches for the distribution of application forms and prospectuses. At no time following this authorisation did HSBC advise BNPPP that they would need additional branches to collect forms and we were advised by HSBC that the authority to add branches had not been used.
- (iv) HSBC and the registrar both assured BNPPP on 21st February, 2000 that they had adequate resources available to deal with the increase in the level of applications.
- (v) HSBC, as an experienced and professional receiving bank, upon whom BNPPP and the Company reasonably relied, never expressed concern to BNPPP or the Company about their ability to handle the collection of applications in an orderly manner on 23rd February. Indeed, they appeared confident in their ability to handle the offer.

It is clear from the above that the parties reasonably believed that the resources available to them on the 23rd February, 2000 would be sufficient to handle the collection of application forms. The consensus view that the final day of the offer should not cause undue concern was further reinforced by the fact that some 150,000 to 200,000 application forms had already been submitted in an orderly manner on 22nd February, 2000. This may have led one to conclude that the example of the Tracker Fund (with its early applications) might have been heeded by investors in this case.

Conclusion

The response to the retail offer of tom.com was both unprecedented and unforeseeable. All reasonable steps were taken following the first day of the offer to put in place sufficient resources to handle a heavily oversubscribed offer. The professionals involved including the sponsor and the receiving bank reasonably believed that adequate arrangements had been made to handle an enthusiastic retail response. In particular, despite press coverage to the contrary, BNPPP did not decline to add further branches to the receiving bank branches already listed in the prospectus. Discussions took place with HSBC on additional branches and the Company and BNPPP authorised HSBC to add branches as required. Indeed, BNPPP went as far as to suggest the appointment of a second receiving bank. HSBC clearly concluded that this was not necessary based on the take-up of forms as they declined the appointment of a second receiving bank and no additional branches were added.

It is regrettable that isolated incidents of crowd trouble have marred an otherwise highly successful offering. However it is plain that the crowd problems were isolated

BNP PRIME PEREGRINE

and did not occur at each and every collection point. Had the arrangements put in place by HSBC been fundamentally flawed, surely problems would have been encountered on a widespread basis at each branch. The fact that the majority of branches did not encounter such problems clearly demonstrates the problem was not caused by the mechanism deployed. Therefore, we do not believe it is appropriate or constructive to go in search of scapegoats for what was, with the best will in the world, an unforeseeable set of circumstances. We firmly believe that there are lessons to be learned but it is primarily the system of applying for shares in Hong Kong which needs an urgent review.

If you have any further queries please do not hesitate to contact me.

Yours faithfully

For and on behalf of

BNP Prime Peregrine Capital Limited

Frank J. Slevin

Managing Director

cc: tom.com limited — Frank Sixt/Carl Chang

Letterhead of The Hongkong and Shanghai Banking Corporation Limited

Attachment I

Ref:
Banking Support Services

BNP Prime Peregrine Capital Limited
23/F New World Tower
16-18 Queen's Road Central
Hong Kong

Fax No. (852) 2845 5300

Attn: Mr Dexter Tao

Send by Fax on 17 January 2000

Dear Mr Tao

GROWTH ENTERPRISE MARKET SHARE ISSUE - PROJECT 'SPIDER'

Further to your recent telephone conversation with our Mrs Brenda Ng on the forthcoming share issue, we have pleasure to append below our Receiving Banker Fees structure for your reference.

(A) Unit Charge

<u>No. of Forms Processed</u>	<u>Unit Charge (HKD)</u>
1st 10,000	19
2nd 10,000	23
over 20,000	27

(B) Minimum Charge

<u>No. of Forms to be Undertaken</u>	<u>Minimum Charge (HKD)</u>
10,000	150,000
20,000	200,000
30,000	250,000

(C) Additional Charge for Electronic Initial Public Offer (EIPO)

<u>No. of Forms to be Undertaken</u>	<u>Minimum Charge (HKD)</u>
5,000	20,000
over 5,000	4 per application

We shall designate 10 of our main offices (a list is enclosed) for distributing and collecting the application forms. For each additional office required, a fee of HKD5,000 will be charged.

The fees for our Nominees Service are as follows:-

(1)	For single Receiving Banker	HKD50,000
(2)	For joint Receiving Banker	HKD70,000
(3)	If funds are to be placed off-shore for interest	
	Additional charge	HKD20,000

A copy of our standard draft Receiving Banker Agreement is also attached for your perusal.

With regard to the interest rate, we are prepared to pay your client interest at 6/8 of one per cent below the Hong Kong Market One Week Bid Rate (Interbank Bid) - the rate fixed at 11:00 am one working day before the closing of the issue, on 100% of the balances in the account designated to receive the application monies from the date of offer closes to the date refunds are debited in favour of unsuccessful applicants. A formal interest rate quotation would be issued by our Treasury Department upon receipt of your verbal confirmation.

This letter contains indicative terms only and the above proposal is subject to contract. In particular (but without limiting the foregoing), if the details of the share issue (such as the timing) as now notified to us change, we may not be able to provide the above-mentioned services or provide the same on the above terms.

Should you have any queries, please do not hesitate to contact Mrs Brenda Ng at Tel. No. 2822 4743.

Yours sincerely

Elina M N Li (Miss)
Senior Banking Support Services Manager

BN/pm

Encl

cc Mr Lau, Corporate Action Manager, HSBC Nominees (Hong Kong) Limited (w/o encl) (Fax No. 2869 4900)

11-FEB-2000 10:47

HSBC CMD DEPT
+ 352 2899 3302

- 352 2899 8802 P. 31



Attachment II

The Hongkong and Shanghai Banking Corporation Limited
*Liaison Services Department: 311, No. 1 Queen's Road Central, Hong Kong
Incorporated in the Hong Kong SAR with limited liability*

To: Mr Kenneth Kwok

BNP Prime Peregrine Capital Limited

Fax No: 2845 5300

From: Mrs Brenda Ng

Liaison Services Officer

Fax No: 2899 8802

Telephone/Telex: 2822 4743

Subject: tom.com limited - New Issue

Date: 11 February 2000

File Ref:

Total no. of pages = cover = Nil

If you do not receive all pages, please telephone or telex immediately.

Urgent: Yes No

Confidential: Yes No

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Message

We append below the quantities of application forms and prospectus, for distribution by our branches designated as Collection Centre.

Branches	No. of Application Form	Prospectus	Attention
Hong Kong Office	10,000	1,700	Mr Alex Cheung
Central Branch	10,000	1,500	Miss Onsa Tam
City Landmark Branch	2,000	400	Mr Ng Kwok Fai
Des Voeux Road West Branch	2,000	600	Miss Ada Chan
Des Voeux Road Central Branch	6,000	1,200	Miss Karen Lee
Kwun Tong Branch	3,000	500	Mrs Winana Law
Mongkok Branch	6,000	500	Mr Dennis Yeung
North Point Branch	3,000	600	Miss Claudia Chan
Peninsula Centre Branch	3,000	400	Mrs Lisa Tse
Tsim Sha Tsui Branch	5,000	600	Mrs Sara To
	<u>50,000</u>	<u>8,000</u>	

Please confirm whether the proposal is acceptable to you.

for Brenda Ng

Letterhead of BNP PRIME PEREGRINE CAPITAL LIMITED

Attachment III

To : HSBC **Attn.** : Mrs. Brenda Ng
Fax No. : 2899-8802 **Date** : 12 February, 2000
c.c. :
From : Ken Kwok
From Fax No. : (852) 2845 5300 **Direct line** : (852) 2825 1211
Total no. of page(s) : 1+0 (including this page)

IMPORTANT NOTE: This fax is confidential and may be covered by legal professional privilege. It must not be read, copied, disclosed or used by any person other than the addressee. Unauthorised use, disclosure or copying is strictly prohibited and may be unlawful. If you have received this fax in error, please contact us immediately.

If you do not receive all the page(s) clearly, please contact us immediately.

Re: tom.com. limited

We refer to your fax dated 11/2/00 in relation to the distribution list for the prospectus. The distribution list is acceptable to us. Since we are anticipating a huge demand in both the prospectus and application form, please notify us as soon as possible if you should require any additional forms after the opening of the Public Offer.

Regards,

Ken Kwok

Letterhead of The Hongkong and Shanghai Banking Corporation Limited

Attachment IV

Ref:

Liaison Services Department

BNP Prime Peregrine Capital Limited
23/F New World Tower
16-18 Queen's Road Central
Hong Kong

Fax No. (852) 2845 5300

Attn: Mr Kenneth Kwok

17 February 2000

tom.com limited - Share Issue

We append below the quantities of application forms and prospectus, which you agreed, for distribution by our branches designated as Collection Centre.

Kindly arrange to deliver them to the following branches before 4:30 p.m. on 17 February 2000.

<u>Branches</u>	<u>No. of</u>		<u>Attention</u>
	<u>Application Form</u>	<u>Prospectus</u>	
Hong Kong Office	50,000	5,000	Mr Alex Cheung
Central Branch	50,000	5,000	Miss Onsa Tam
City Landmark Branch	4,000	1,000	Mr Ng Kwok Fai
Des Voeux Road Central Branch	12,000	2,000	Miss Karen Lee
Des Voeux Road West Branch	4,000	1,000	Miss Ada Chan
Kwun Tong Branch	6,000	1,000	Mrs Winana Law
Mongkok Branch	12,000	2,000	Mr Dennis Yeung
North Point Branch	6,000	1,500	Miss Claudia Chan
Peninsula Centre Branch	6,000	1,000	Mrs Lisa Tse
Tsim Sha Tsui Branch	10,000	1,500	Mrs Sara To
	<u>160,000</u>	<u>21,000</u>	

Our branches will destroy the remaining prospectus on 28 February 2000.

Yours sincerely

Brenda Ng (Mrs)
Liaison Services Officer
/mt



1877-2000 12-18

HSBC LTD DEPT

+ 852 2899 3302

Attachment V

HSBC URGENT

FACSIMILE COVER SHEET

URGENT

The Hongkong and Shanghai Banking Corporation Limited

Liaison Services Department: 311, No. 1 Queen's Road Central, Hong Kong
Incorporated in the Hong Kong SAR with limited liability

To: Mr Kenneth Kwok

BNP Prime Peregrine Capital Limited

Fax No: 2845 5300

From: Mrs Brenda Ng

Liaison Services Officer

Fax No: 2899 8802

Telephone/Telex: 2822 4743

Subject: tom.com limited - New Issue

Date: 18 February 2000

File Ref:

Total no. of pages = cover - Nil

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Urgent: Yes No


Confidential: Yes No

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Message ▼

We append below the quantities of application forms and prospectus, for distribution by our branches designated as Collection Centre.

Branches	No. of		Attention
	Application Form	Prospectus	
Hong Kong Office	50,000	5,000	Mr Alex Cheung
Central Branch	15,000	2,000	Miss Onsa Tam
City Landmark Branch	50,000	1,000	Mr Ng Kwok Fai
Des Voeux Road Central Branch	6,000	1,200	Miss Betty Chan
Des Voeux Road West Branch	4,000	0	Miss Ada Chan
Kwun Tong Branch	5,000	500	Mrs Winana Law
Mongkok Branch	10,000	2,000	Mr Dennis Yeung
North Point Branch	6,000	600	Miss Claudia Chan
Peninsula Centre Branch	10,000	2,000	Mrs Lisa Tse
Tsim Sha Tsui Branch	50,000	3,000	Mrs Sara To
	<u>206,000</u>	<u>17,300</u>	


Signature



18 FEB 2000 20:19

HSBC LTD H.K.
+ 852 2899 3332

332 2337 8802 P.H.K.

Attachment V

FACSIMILE COVER SHEET

HSBC

The Hongkong and Shanghai Banking Corporation Limited
Liaison Services Department 311, No. 1 Queen's Road Central, Hong Kong
Incorporated in the Hong Kong SAR with limited liability

To: Mr Kenneth Kwok
BNP Prime Peregrine Capital Limited
Fax No: 2845 5300

From: Mrs Brenda Ng
Liaison Services Officer
Fax No: 2899 8802

Telephone/Telex: 2822 4743

Subject: tom.com limited - New Issue

Date: 18 February 2000

File Ref:

Total no. of pages = cover = Nil

If you do not receive all pages, please telephone or telex immediately.

Urgent: Yes No

Confidential: Yes No

This facsimile is intended for the named recipient only and may contain privileged and confidential information. If you have received this facsimile in error, please notify us immediately. Please do not disclose the contents to anyone or copy it to outside parties. Thank you.

Subsequent to our telephone conversation, we confirm the replenishment order as follows:-

Branches	Application Form	Prospectus	Attention
☒ Hong Kong Office	50,000	5,000	Mr Alex Cheung
☒ Central Branch	15,000	2,000	Miss Onsa Tam
☒ City Landmark Branch	50,000	1,000	Mr Ng Kwok Fai
☒ Des Voeux Road Central Branch	6,000	1,200	Mr Betty Chan
☒ Des Voeux Road West Branch	8,000	600	Miss Ada Chan
☒ Kwun Tong Branch	5,000	600	Mrs Winana Law
☒ Mongkok Branch	10,000	2,000	Mr Dennis Yeung
☒ North Point Branch	6,000	600	Miss Claudia Chan
☒ Peninsula Centre Branch	10,000	2,000	Mrs Lisa Tse
☒ Tsim Sha Tsui Branch	50,000	3,000	Mrs Sara To
	<u>210,000</u>	<u>18,000</u>	

Please arrange to distribute forms and prospectuses to our 10 designated Collection Centres by latest at noon on 21 February 2000.

LD 30 copies

For Prospectus:

	Monday				Tuesday			
	Before 8:30	Before 14:30	Before 16:30	Total on Monday	Before 8:30	Before 14:30	Before 16:30	Total on Tuesday
Hong Kong Office	5,100 (1)	2,500 (2)	2,500 (2)	10,100	5,100 (1)	2,700 (2)	-	7,800
Central Branch	2,000 (1)	1,100 (2)	1,100 (2)	4,200	2,000 (1)	1,100 (2)	-	3,100
City Landmark	1,200 (1)	550 (2)	550 (2)	2,300	1,200 (1)	550 (2)	-	1,750
Des Voeux Road West	1,200 (1)	400 (2)	400 (2)	2,000	600 (1)	400 (2)	-	1,000
Des Voeux Road Central	600 (1)	650 (2)	650 (2)	1,900	1,200 (1)	650 (2)	-	1,850
Kwun Tong	600 (1)	1,500 (3)	-	2,100	600 (1)	1,500 (2)	-	2,100
Mongkok	3,700 (1)	3,900 (3)	-	7,600	3,700 (1)	2,200 (2)	-	5,900
North Point	600 (1)	700 (3)	-	1,300	600 (1)	700 (2)	-	1,300
Penninsula Centre	2,000 (1)	1,500 (3)	-	3,500	2,000 (1)	2,000 (2)	-	4,000
Tsim Sha Tsui	3,000 (1)	2,000 (3)	-	5,000	3,000 (1)	3,200 (2)	-	6,200
	<u>20,000</u>	<u>14,800</u>	<u>5,200</u>	<u>40,000</u>	<u>20,000</u>	<u>15,000</u>	<u>-</u>	<u>35,000</u>

For application forms

	Monday				Tuesday			
	Before 8:30	Before 13:00	Before 16:30	Total on Monday	Before 8:30	Before 14:30	Before 16:30	Total on Tuesday
Hong Kong Office	70,000 (1)	17,000 (2)	17,000 (2)	104,000	40,000 (1)	-	-	40,000
Central Branch	50,000 (1)	12,000 (2)	12,000 (2)	74,000	20,000 (1)	-	-	20,000
City Landmark	70,000 (1)	17,000 (2)	17,000 (2)	104,000	40,000 (1)	-	-	40,000
Des Voeux Road West	20,000 (1)	5,000 (2)	5,000 (2)	30,000	10,000 (1)	-	-	10,000
Des Voeux Road Central	20,000 (1)	5,000 (2)	5,000 (2)	30,000	12,000 (1)	-	-	12,000
Kwung Tong	30,000 (1)	10,000 (2)	10,000 (2)	50,000	30,000 (1)	-	-	30,000
Mongkok	50,000 (1)	13,000 (2)	13,000 (2)	76,000	50,000 (1)	-	-	50,000
North Point	15,000 (1)	4,000 (2)	4,000 (2)	23,000	10,000 (1)	-	-	10,000
Penninsula Centre	20,000 (1)	5,000 (2)	5,000 (2)	30,000	16,000 (1)	-	-	16,000
Tsim Sha Tsui	60,000 (1)	15,000 (2)	15,000 (2)	90,000	40,000 (1)	-	-	40,000
	<u>405,000</u>	<u>103,000</u>	<u>103,000</u>	<u>611,000</u>	<u>268,000</u>	<u>-</u>	<u>-</u>	<u>268,000</u>

- (1) Ms. Fanny Chiu (2973-4877)
(2) Ms. Monica Law (2283-2221)
(3) Mr. Larry Ng (2526-2328)

Contact Persons

Latest Updated version: 21/2 (6:30pm)

For Prospectus:

	Tuesday				Wednesday			
	Before 8:30	Before 14:30	Before 16:30	Total on Tuesday	Before 8:30	Before 14:30	Before 16:30	Total on Wednesday
Hong Kong Office	5,100 (1)	2,700 (2)	-	7,800	2,700 (1)	-	-	2,700
Central Branch	2,000 (1)	1,100 (2)	-	3,100	1,100 (1)	-	-	1,100
City Landmark	1,200 (1)	550 (2)	-	1,750	550 (1)	-	-	550
Des Voeux Road West	600 (1)	400 (2)	-	1,000	400 (1)	-	-	400
Des Voeux Road Central	1,200 (1)	650 (2)	-	1,850	650 (1)	-	-	650
Kwung Tong	600 (1)	1,500 (2)	-	2,100	1,500 (1)	-	-	1,500
Mongkok	3,700 (1)	2,200 (2)	-	5,900	2,200 (1)	-	-	2,200
North Point	600 (1)	700 (2)	-	1,300	700 (1)	-	-	700
Penninsula Centre	2,000 (1)	2,000 (2)	-	4,000	2,000 (1)	-	-	2,000
Tsim Sha Tsui	3,000 (1)	3,200 (2)	-	6,200	3,200 (1)	-	-	3,200
	<u>20,000</u>	<u>15,000</u>	<u>-</u>	<u>35,000</u>	<u>15,000</u>	<u>-</u>	<u>-</u>	<u>15,000</u>

For application forms

	Tuesday				Wednesday			
	Before 8:30	Before 14:30	Before 16:30	Total on Tuesday	Before 8:30	Before 14:30	Before 16:30	Total on Wednesday
Hong Kong Office	40,000 (1)	20,000 (1)	-	60,000	45,000 (1)	-	-	45,000
Central Branch	20,000 (1)	10,000 (1)	-	30,000	22,000 (1)	-	-	22,000
City Landmark	40,000 (1)	20,000 (1)	-	60,000	45,000 (1)	-	-	45,000
Des Voeux Road West	10,000 (1)	5,000 (1)	-	15,000	11,000 (1)	-	-	11,000
Des Voeux Road Central	12,000 (1)	6,000 (1)	-	18,000	13,000 (1)	-	-	13,000
Kwung Tong	30,000 (1)	15,000 (1)	-	45,000	34,000 (1)	-	-	34,000
Mongkok	50,000 (1)	25,000 (1)	-	75,000	56,000 (1)	-	-	56,000
North Point	10,000 (1)	5,000 (1)	-	15,000	12,000 (1)	-	-	12,000
Penninsula Centre	16,000 (1)	8,000 (1)	-	24,000	18,000 (1)	-	-	18,000
Tsim Sha Tsui	40,000 (1)	20,000 (1)	-	60,000	44,000 (1)	-	-	44,000
	<u>268,000</u>	<u>134,000</u>	<u>-</u>	<u>402,000</u>	<u>300,000</u>	<u>-</u>	<u>-</u>	<u>300,000</u>

Contact Persons

- (1) Ms Fanny Chiu (2973-1877)
- (2) Ms Monica Law (2283-2221)
- (3) Mr Larry Ng (2526-23)

4. Central will, based on a basis of allocation determined by Tom and BNP Peregrine and agreed with The Stock Exchange of Hong Kong Limited, conduct a computer programmed ballot of the Lesser Applications to determine the successful Applications therefrom. The process of the computer programmed ballot of the Lesser Applications is as follows:
 - (a) for each category of Shares applied for, input the batch numbers into the computer;
 - (b) the computer selects a number of batches pursuant to a ballot programme;
 - (c) all Applications under those selected batches will be numbered and input into the computer; and
 - (d) the computer selects the successful Applications pursuant to a ballot programme.
5. The successful Lesser Applications will then be processed by HSBC and Central and the relevant cheques presented for payment.
6. The unsuccessful Lesser Applications will not be processed further (the relevant cheques will not be presented for payment) and will be returned to the applicants.

Set out below is a brief time schedule relating to the clearance of the basis of allocation and the results announcement:

2000

12:00 noon on 23rd February	Latest time for submission of Applications
late evening of 24th February	<ol style="list-style-type: none"> 1. Present basis of allocation to the Stock Exchange 2. Confirm ballot basis for Lesser Applications 3. Balloting for Lesser Applications
morning of 25th February	<ol style="list-style-type: none"> 1. Obtain clearance from the Stock Exchange re basis of allocation 2. Submit draft results announcement to the Stock Exchange
Morning of 26th February	Obtain clearance from the Stock Exchange re results announcement (please note that the number of applications and total number of applied Shares will be finalised in the evening of 26th February, 2000 and that the ID numbers of the successful applicants will be inserted in the evening of 27th February, 2000, but these should be factual information and their insertion should not affect the structure of the results announcement)
28th February	Results announcement appears in press and GEM website
29th February	Despatch of refund cheques

Please feel free to contact the undersigned (28251715) or Mr. Kenneth Kwok (28251211) should you have any queries on the above.

Regards,

Stacey Wong

Letterhead of BNP Prime Peregrine Capital Limited

Attachment VIII

To : HSBC **Attn.** : Ms. Elina Li / Mrs. Brenda
Ng
Fax No. : 2899-8802 **Date** : 19th February, 2000
c.c. :
From : Stacey Wong
From Fax No. : (852) 2845 5300 **Direct line** : (852) 2825 1215
Total no. of page(s) : (including this page)

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If you do not receive all the page(s) clearly, please contact us immediately.

Re: tom.com limited ("Tom") - prospectuses and application forms

We refer to the telephone conversation between your Ms. Elina Li and Mr. Stacey Wong of BNP Prime Peregrine Capital Limited relating to the distribution of Tom's prospectuses and application forms.

We hereby authorise the distribution of the prospectuses and application forms of Tom at selected branches of The Hongkong and Shanghai Banking Corporation Limited other than the branches and Head Office (the "Initial Locations") as listed in the prospectus of Tom. Please ensure that proper notice about the availability of Tom's prospectuses and application forms at the additional selected branches are given to the public at the Initial Locations.

For and on behalf of tom.com limited

For and on behalf of
BNP Prime Peregrine Capital Limited

Carl Chang
*Chief Executive Officer
and Executive Director*

Stacey M. Wong
Director

Letterhead of BNP PRIME PEREGRINE CAPITAL LIMITED

Attachment IX

To : The Stock Exchange of Hong Kong Ltd. Attn. : Ms. Heidi Cheng /
Ms. - Growth Enterprise Market Susan Yu /

Fax No. : 2295-0198 Date : 22nd February, 2000

c.c. :

From : Stacey Wong

From Fax No. : (852) 2845-5300 Direct line : (852) 2825-1715

Total no. of page(s) : 1+1 (including this page)

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If you do not receive all the page(s) clearly, please contact us immediately.

Re: Listing of tom.com limited ("Tom") on the Growth Enterprise Market ("GEM") of The Stock Exchange of Hong Kong Limited (the "Stock Exchange")

We refer to the telephone conversation between your Ms. Heidi Cheng and Ms. Susan Yu, and Mr. Stacey Wong and Mr. Kenneth Kwok of BNP Prime Peregrine Capital Limited ("BNP Peregrine") in connection with the processing of the application forms for shares ("Shares") of Tom ("Applications").

We write to advise that we are in the process of arranging with the receiving banker, The Hongkong and Shanghai Banking Corporation Limited ("HSBC"), and the registrar, Central Registration Hong Kong Limited ("Central"), for the provision of sufficient capacity to process up to 300,000 Applications to enable the results announcement to appear in the press on 28th February, 2000. Please note that processing of up to 300,000 Applications is the maximum capacity that can be handled by HSBC and Central.

Given the current market sentiment, we envisage that the number of Applications may, however, exceed 300,000. In such event, which we expect to be informed by HSBC by around 6:00 p.m. on 23rd February, 2000, it is proposed that the Applications will be handled in the following manner:

1. Based on the number of Applications, Tom, BNP Peregrine, HSBC and Central will determine the number of Applications (the "Critical Amount") to be fully processed (such number will be less than 300,000 as part of the resources of HSBC and Central will be employed to handle the Lesser Applications (as defined below)).
2. Based on the Critical Amount, Tom, BNP Peregrine, HSBC and Central will determine a "cut-off" point whereby (i) Applications for Shares equal to or above this "cut-off" point will be fully processed by HSBC and Central and the relevant cheques presented for payment, and (ii) Applications for Shares below this "cut-off" point (the "Lesser Applications") will not be fully processed by HSBC and Central but will be handled in accordance with paragraphs (3) to (6) below. The relevant cheques of the Lesser Applications will not be presented for payment until the successful Lesser Applications are determined (see paragraph (4) below).
3. The Lesser Applications for each category of Shares applied for will be organised in batches of 50 Applications each by HSBC. The batches will be numbered and forwarded to Central.

BNP PRIME PEREGRINE

For immediate release

Press Release

BNP Prime Peregrine submits report to SFC and Stock Exchange

(Hong Kong, 28th February, 2000) - BNP Prime Peregrine ("BNPPP") today submitted a detailed report to the Securities and Futures Commission ("SFC") and the Stock Exchange of Hong Kong Limited ("Stock Exchange") in relation to the public offer of shares in tom.com limited ("tom.com"). After extensive internal investigation and review, the report concludes that BNP Prime Peregrine took all reasonable steps to ensure that adequate arrangements were put in place to handle the public offer of shares in tom.com.

BNP Prime Peregrine also expressed concern over the level of misinformation and misrepresentation in the Press.

In particular, BNP Prime Peregrine would like to clarify the following points:

- The level and nature of the response to the public offer of tom.com was unprecedented and entirely unforeseeable. Statements in the press inferring that BNPPP in some way manipulated the offering process are totally misguided and without foundation.
- After final counting, it has now been established that the number of applications for shares in tom.com exceeded 450,000 (which also exceeds by some 30% the previous record of approximately 350,000 applications set in the case of Beijing Enterprises).
- Of the applications received some 415,000 were received for less than 50,000 shares (representing less than HK\$89,000 based on an issue price of HK\$1.78 per share). Most of those applicants lodged their applications in person rather than through their brokers.
- None of the parties involved in the IPO could have foreseen the nature of the retail demand.
- HSBC, the receiving bank, was initially engaged on its standard terms and conditions which were previously used in major IPOs.

- The agreement with HSBC provided that HSBC would process forms and charge by reference to the number of applications calculated in multiples of 10,000. However there was no upper limit on HSBC's fees. The suggestion that resources made available to receive applications were restricted on the grounds of cost is entirely false.
- At the end of January 2000, BNPPP consulted with Central Registration in relation to the possible use of the electronic application system (a system only available to CCASS Participants) for tom.com. Central Registration indicated that given the tight timetable for tom.com, it would not be possible to utilise electronic means for applications.
- As early as 12th February, 2000, BNPPP informed HSBC that huge demand was anticipated and that they should notify BNPPP as soon as possible if additional prospectuses and application forms were required.
- HSBC is both qualified and experienced in the handling of hugely popular Hong Kong IPO's. HSBC/Hang Seng Bank has been involved as receiving bank in four of the top ten most oversubscribed issues in Hong Kong. In each of these cases HSBC acted in the capacity of sole receiving bank and made available either 10 or 11 branches for the purposes of distributing and collecting application forms. 10 branches were likewise made available in the present case.
- Upon realising that the level of applications was likely to be extremely high, all reasonable steps were taken with HSBC and the registrar to ensure that adequate resources were made available to handle the level of demand.
- BNPPP requested that sufficient resources be put in place by the receiving bank and registrar to process 300,000 forms and the principle of a contingency plan was discussed should the level of applications exceed 300,000. This was subsequently reflected in an amendment to the receiving banker's agreement and a memorandum between the parties.
- BNPPP suggested on 19th February, 2000 that HSBC be joined by a second receiving bank. HSBC suggested as an alternative that they would draw on the resources of Hang Seng Bank.
- BNPPP and the Company authorised HSBC in writing on 19th February, 2000 to use additional branches for the distribution of application forms and prospectuses. Press reports to the contrary are wrong. At no time following this authorisation did HSBC advise BNPPP that they would need additional branches to collect forms and BNPPP was advised by HSBC on 21st February, 2000 that the authority to add branches had not been used.
- HSBC and the registrar both assured BNPPP on 21st February, 2000 that they had adequate resources available to deal with the increase in the level of applications.

- On 22nd February, 2000, BNPPP was told that HSBC received in an orderly fashion between 150,000 and 200,000 application forms. Consequently, none of BNPPP, tom.com or HSBC should have had any reason to be unduly concerned over the procedures to be adopted to receive forms on 23rd February, 2000.
- HSBC, as an experienced and professional receiving bank, upon whom BNPPP and tom.com reasonably relied, expressed no concern to BNPPP or tom.com about their ability to handle the collection of applications in an orderly manner on 23rd February. Indeed they appeared confident in their ability to handle the offer.

The response to the retail offer was both unprecedented and unforeseeable. However, BNPPP believes that all reasonable steps were taken to put in place sufficient resources to handle a heavily oversubscribed offer. BNPPP regrets any inconvenience that may have been caused to the public as a consequence of the response to the offer.

Contrary to media speculation, there is no cold shoulder in effect against BNPPP, BNPPP has not been advised of any formal proceedings that could have such a result and BNPPP has received legal advice that there is no jurisdiction or authority for the granting of any such order in these circumstances.

BNPPP has given full assistance to the regulators to-date and has pledged to give full assistance in any investigation the regulators may conduct.

- end -

PRIME PEREGRINE

11th March, 2000

BY FAX (2293-5676) & BY HAND

Mr. Andrew Sheng
Chairman
Securities & Futures Commission,
12th Floor, Edinburgh Tower,
15 Queen's Road Central,
Hong Kong

Dear Sirs,

Tom.com Limited

We refer to your report to the Legislative Council dated March 2000 which you have been kind enough to provide to us in draft for comment ("the Draft Report"). We are grateful for the opportunity given to us to set out our comments which we do in the attached schedule. We trust you will find these comments of assistance.

Firstly, we wish to express once again our regret at the events of 23rd February, 2000 which has adversely affected a successful listing which has otherwise assisted the development of Hong Kong's financial markets. We further regret any inconvenience that may have been caused to the public.

However, we wish to express our disappointment with the analysis the Commission has undertaken of the events and our concern that there has been a misunderstanding of key points in our submission of 28th February, 2000 such that we fear that the Commission's conclusions as expressed in the Draft Report do not adequately take into account the circumstances. In this regard and for the specific reasons set out on the schedule, we would earnestly request the Commission to reconsider the draft report in the interests of fairness and objectivity.

PRIME PEREGRINE

We would like to stress that we did not originally anticipate such a high level of public interest in a GEM market listing. This was caused in part by the fact that prior to the Tom.com listing, the GEM market was viewed primarily as a high risk market for sophisticated institutional investors rather than a market for retail investors. The comments made by me on 17th February, 2000 were made in that context and not in response to the opening of the public offer, which commenced on 18th February, 2000. They did not refer to the public response in Hong Kong to the public offer.

All reasonable steps were taken to accommodate the unforeseeable nature of demand as it became apparent. In particular, proposals were made on 19th February, 2000 to HSBC for the inclusion of a second Receiving Bank and a contingency plan was discussed for the processing of more than 300,000 applications. Further, on 22nd February, 2000, the matter was proceeding smoothly, the indicators at that stage were that at least a significant proportion of the demand had already been received. This was consistent with the belief that the final day would be manageable at the existing levels.

We would hope that these important points are taken into account in the final report.

We wish to express our support for the recommendations that appear in **paragraphs 13, 14 and 15** of the Draft Report (indeed the recommendation in **paragraph 15** is a suggestion appearing in our own submission dated 28th February, 2000) and the continued development of Hong Kong's financial markets.

Finally, we wish to confirm our consent to our submission of 28th February, 2000, together with this letter, being appended to your Final Report for consideration by the Financial Services Branch and the Legislative Council. Indeed we consider it highly appropriate that our submissions are included to give the Legislative Council a full appreciation of the position. We are ready to assist the Legislative Council by attending any hearing and answering any questions they may have.

Yours faithfully,

For and on behalf of

BNP Prime Peregrine Capital Limited

Francis P.T. Leung

Chairman

SCHEDULE OF DETAILED SUBMISSIONS

Findings of Facts

1. The Draft Report does not explain the Commission's methodology in determining facts. It is plain that the Commission appreciates that it cannot determine disputes of fact on paper (for example, see **Appendix A** entry 19th February). However there are other matters of fact which the Commission appears to accept without comment in the Draft Report which are certainly in dispute. Accordingly, we would suggest a consistent approach by the Commission such that all disputed facts are treated as such.

Paragraph 1

2. This paragraph of the Draft Report betrays a lack of objectivity. It appears that the Commission is commencing its analysis with the preconceived conclusion that there were "*chaotic receiving arrangements*". Surely the object of the analysis should be to determine whether this is the case, not start with this as a conclusion.

Paragraphs 5 and 6

3. Mr. Leung's statements to the press of 17th February, 2000 reported on 18th February, 2000 (not 16th February, 2000 as you have suggested) are taken out of context in **paragraph 5**. It is plain from the article annexed to the Draft Report that Mr. Leung's comments, which were made before the opening of the public offer, related to the response of international investors to Tom.com and were not referring to the public response in Hong Kong to the public offer. These comments cannot be taken to reflect the **nature** of retail demand in Hong Kong.

4. The matter which was unforeseeable and which we believe caused the problems on 23rd February, 2000 was the **nature** of the retail response. This misunderstanding of our submission is also apparent from **Annex (B)** and the comparison with Beijing Enterprises IPO:-

- (a) **Annex B** fails to make it plain that the Beijing Enterprises IPO represents the historical record levels achieved in an IPO in Hong Kong and as such is not useable as a measure of any average or expected level.

PRIME PEREGRINE

- (b) 50,000 shares in Beijing Enterprises cost 6-7 times more than 50,000 shares in Tom.com Limited. The average dollar value per application was only \$112,000 for Tom.com compared with \$661,000 for Beijing Enterprises. The number of retail applications at \$112,000 in value in Beijing Enterprises is not calculated. Undoubtedly the response **at this level** for Tom.com was multiples of the same response for Beijing. This crucial fact does not come through.

5. Specifically, the response at "grass roots level" was unforeseeable and it cannot be correct that it ought to have been anticipated. It should also be borne in mind that until the Tom.com listing the GEM market was seen more as a high risk market for sophisticated institutional investors.

Paragraph 7

6. This paragraph contains matters of disputed fact:-

- Point 1 - 10,000 applications was a unit charge for HSBC and was never suggested as the likely amount of applications. The figure of 35,000 applications arose at very early stage, around 11th February, 2000, and was radically revised as the matter proceeded. On the second day of the offer, an estimated level of 300,000 applications was discussed and a contingency plan discussed.
- Point 2 - As noted above, Mr. Leung's comments are taken out of context.
- Point 3 - Fails to take account of the earnest proposal we put to HSBC re the engagement of a second Receiving Bank. This paragraph is anomalous given the disputed finding of fact in the chronology. Further there was express authorisation granted to HSBC to add further branches. This authorisation was never used.
- Point 4 - Presumes the foreseeability of the **nature** of the retail response, which cannot be correct.

PRIME PEREGRINE

Paragraph 8

7. This paragraph again betrays a misunderstanding of the real problem, namely the unforeseeable nature of the response at grass root level.

Paragraph 9

8. We respect your approach that disputed issues of fact cannot readily be determined on paper, however this approach should be consistent and we would nonetheless re-emphasize that there was absolutely no question in our minds that an earnest and timely proposal to engage a second Receiving Bank with the inevitable conclusion that further branches would have been available to receive applications was put by us to HSBC in good faith on 19th February, 2000.

Paragraph 10

9. It is correct you have expressed your disappointment to us, however we must emphasize that we firmly believe we did everything reasonable to accommodate the response to the Tom.com offering. The GEM market was not viewed at the time as a retail market, and the level of public interest in a GEM listing could not be foreseen, however we timely took all reasonable steps to deal with their unexpected level of demand as it became apparent. Further, on 22nd February, 2000, the matter was proceeding smoothly, the indicators at that stage were that at least a significant proportion of the demand may already have been recorded. This was consistent with the belief that the final day would be manageable at the existing levels.

Paragraph 11

10. We disagree with the conclusion that in respect of the operational or logistical arrangements of the Receiving Bank we were not entitled to rely on HSBC's experience. HSBC is a highly professional and reputable bank with significant experience in matters of this nature. The Commission's conclusion cannot be correct, as the implication is that a sponsor's obligation, if they cannot so rely on a receiving bank, would be to exercise control over outlets of the Receiving Bank or otherwise open their own retail outlets.

PRIME PEREGRINE

Conclusion

11. In reaching its conclusions we believe the Commission has failed to put adequate weight on our submission dated 28th February, 2000 in particular:-
- a failure to appreciate the nature of the problem being the unforeseeable response by small investors and the extent to which this exceeded all historical records;
 - a failure to recognise that all reasonable steps were taken by us and that earnest proposals were made to HSBC for the inclusion of a second Receiving Bank.
 - All reasonable steps were taken to accommodate the unforeseeable nature of demand as it became apparent.

Report on the public subscription of tom.com limited

Background information

tom.com limited (the "Company") is principally engaged in the provision of content and services through the Internet portal, www.tom.com. Its shares were listed on the Growth Enterprise Market by way of offer for subscription ("Public Offer") and placing ("Placing") on 1 March 2000 with an initial market capitalisation of approximately HK\$5 billion.

The total funds raised by the Company was HK\$762 million comprising a total of 428,000,000 shares ("Offer Shares") initially offered by the Company at an offer price of HK\$1.78. Up to 42,800,000 Offer Shares, representing 10% of the total Offer Shares initially available were offered under the Public Offer. Up to 385,200,000 Offer Shares, representing 90% of the total Offer Shares initially available, were offered under the Placing to (1) professional and institutional and other investors (2) full-time employees (including the executive directors of the Company) and (3) qualifying subscribers of the tom website of the Company. As announced by the board of directors of the Company on 28 February 2000, the public offer tranche and the placing tranche were approximately 669 times and 136 times over-subscribed respectively.

During the public offer period commencing from 18 February 2000, newspapers and media such as radio and television widely reported complaints from prospective investors about the shortage of application forms. In the late morning of 23 February 2000, the date on which the public offer was closed, substantial numbers of prospective investors crowding over the 10 designated branches of HSBC to lodge their applications attracted wide coverage by the media. The business of shops nearby certain HSBC branches, in particular the Mongkok branch, were disrupted. Police were therefore called in to control and maintain the order of queues to minimize further disruption.

^The following report is prepared to set out, in summary, the chronology of events relating to the public subscription of the Company.

Chronology of events

2000

- | | |
|-------------|---|
| 3 February | 1. The GEM Listing Committee approved the listing application of the Company. |
| 12 February | 1. The Exchange cleared the Company's prospectus for bulk-print purpose. |

- 15 February
1. The Exchange verbally reminded BNP Prime Peregrine ("BNP"), the sponsor of the Company, of the importance of having sufficient copies of application forms available for satisfying public demand.
 2. BNP verbally informed the Exchange that 200,000 white forms and 130,000 yellow forms were printed. The Exchange raised the concern that the number of forms printed might not be sufficient.
- 17 February
1. BNP placed an order to print an additional 300,000 forms (including white and yellow forms) in the morning.
- 18 February
1. The public offer period commenced.
 2. The Exchange received calls from the trading hall requesting delivery of additional application forms as they were out of stocks.
 3. The Exchange verbally inquired BNP of the number of forms delivered to the trading hall and requested BNP to arrange delivery of additional forms to the trading hall to satisfy the public demand. The Exchange also requested BNP to report the level of stocks and to start printing additional application forms in view of the strong public demand. (Based on BNP's representation, the total number of forms printed taking into account of all subsequent re-prints was in excess of 1,500,000.)
- 19 February
- Lawrence Fok of the Exchange contacted Francis Leung to ask him to ensure that there will be enough forms for distribution. Francis Leung verbally assured the Exchange that he would make sure that there would be enough forms for people to pick up.
- 21 February
1. In anticipation for the strong demand for the public subscription, the Exchange telephoned BNP in relation to the processing of application forms and questioned whether the processing arrangements were adequate. The Exchange requested BNP to submit a report on the arrangement for the processing of the application forms.
- 22 February
1. BNP's submission regarding the processing arrangement was received. The Exchange commented and sought further clarification on the arrangement.
 2. BNP, taking into account of the comments from the Exchange, finalised the processing arrangement. Copy of the finalised submission was faxed to the SFC.
- 23 February
1. Lawrence Fok of the Exchange while having a meeting with David Stannard of the SFC, received a call from Francis Leung of BNP at about 11.30 a.m. consulting the Exchange's view on the possible extension of the closing time of application list. Both agreed that the time for closing the application list should remain unchanged and this decision was verbally passed to Francis Leung. The Exchange accepted that applications form should be collected from all those who have been in the queue on or before 12:00 noon.
 2. Application list closed at 12:00 noon.

3. The Exchange requested BNP to submit a report on the distribution of yellow forms and a report was subsequently submitted by BNP.
- 24 February
1. The Exchange issued a letter to the sponsor requesting a full written submission in relation to the collection of applications and details of contingency plan for handling the applications.
 2. The Exchange issued a news release expressing grave concern about the subscription arrangements of the Company.
 3. The Company prepared a draft announcement regarding the amended procedures for not clearing cheques for applications for less than 20,000 shares for the Exchange's clearance.
- 25 February
1. A meeting was held between SFC, the Company, Central Registration, the Company's share registrar, BNP and the Exchange in relation to the arrangement regarding the processing of the application forms and the despatch of refund cheques and share certificates. In the meeting, the following conclusions were reached: (1) The Company agreed to publish an announcement (the "Refund Cheques Announcement") regarding the arrangement in relation to the collection and despatch of share certificates and refund cheques. (2) BNP agreed to submit a proposal to the SFC relating to the setting up of hotline system, posting of refund cheques, unsuccessful applications and share certificates, arrangement at Central Registration's office, balloting process and contingency plan.
 2. The Company published an announcement regarding the amended procedures for not clearing cheques for applications of less than 20,000 shares.
 3. The Company prepared two announcements regarding (1) Refund Cheques Announcement and (2) allotment results for the Stock Exchange's clearance.
- 26 February
1. The Exchange issued a letter to BNP reminding it of the importance to despatch the share certificates on the morning of 28 February 2000 and requesting it to keep the Exchange closely informed of the development. Subsequently, Central Registration agreed that the share certificates would be sent out or be ready for collection on 28 February, one day ahead of the original timetable. The early despatch of the share certificates would ensure that substantially all of the successful applicants would be able to have the physical share certificates before trading commenced on 1 March.
 2. The Exchange requested the Company to publish the Refund Cheques Announcement as a full-page advertisement in major Chinese and English newspapers on both 28 and 29 February. The purpose of the advertisement was to ensure the public knew the exact arrangement and to minimize the possibility of a huge crowd lining up outside the office of Central Registration for the refund cheques and/or share certificates.
 3. BNP submitted to the SFC and the Exchange a report addressing the issues raised by the SFC in the meeting held earlier on 25 February.

4. The Exchange commented on the report submitted by BNP.

28 February 1. BNP submitted to the Exchange and the SFC a detail report in relation to the collection of applications and details of contingency plan for handling the applications, as requested by the Exchange in its letter dated 24 February.

Conclusion

Throughout the whole process in relation to the public subscription of the Company, the Exchange has kept close communication with BNP which was the primary party responsible for the whole listing exercise, including the part relating to the public subscription. It is submitted that there was no discussion between the Exchange and the sponsors on the number of branches allocated to collect completed forms; this had not been an issue raised by or to the Exchange in other previous IPOs. In any IPO, the Exchange relies on the sponsor to ensure that the logistics involved are taken care of, rather than prescribing requirement on every single matter.^

Comparison between IPOs of Tom.com and Beijing Enterprises

	Tom.com	Beijing Enterprises
No. of valid application received from public	453,202	324,754
No. of applications for 50,000 shares or less	409,548	313,499
% of applications for 50,000 shares or less	90.3%	96.5%
No. of shares applied	28,649 million	17,222 million
Price	\$1.78	\$12.48
Average no. of shares per application	63,200	53,000
Average \$ value per application	\$112,000	\$661,000
No. of shares available to the public (other than placing)	42,800,000 shares	13,500,000 shares (before claw back) 47,250,000 shares (after claw back)
Times of subscription	669	1276 (before claw back) 364 (after claw back)
Price jump on first day	4.8 times	3.2 times
No. of receiving banks	1	2
No. of total receiving bank branches	10	28

HONG KONG MONETARY AUTHORITY

**REPORT ON HSBC'S INVOLVEMENT
IN THE TOM.COM LIMITED
INITIAL PUBLIC OFFERING**

Introduction

1. This report, which is largely based on information provided to the Monetary Authority by HSBC, addresses the questions of what "went wrong" with the subscription process as far as this relates to the receiving bank, HSBC; whether the problems that emerged might have been foreseen, and whether more action might have been taken to mitigate them; and what needs to be done in future to try to ensure that there is no repetition. A chronology of events in the run-up to the closing date (23 February) is given in the Annex.

Role of the receiving bank

2. HSBC, as the receiving bank, acted effectively as an agent of the sponsor in this issue. There are three functions of a receiving bank which need to be clearly distinguished and managed -the bank distributes, collects and processes forms. In acting as a receiving bank, there were many factors outside of HSBC's control.

- **Initial assessment of demand**

BNPPP, as sponsor of the issue, would be expected to make an estimate of the likely demand and to establish the necessary arrangements to handle this. The receiving bank has no access to information such as the name of the issuer, the offer price, the minimum number of shares to be issued and the PR plans to promote the issue at the time it quotes for the receiving bank business. Therefore, the ability of the receiving bank to make an independent estimate of the likely demand before the launch of the offer period is limited. Once an estimate is reached, the receiving bank will make available the resources and manpower required to handle the issue, having regard to the number of applications indicated in the Receiving Bank Agreement. It is therefore important to get the initial estimate as accurate as possible.

- **Arrangements for receiving banks**

The appointment of receiving bank is at the discretion of the sponsor and underwriter. According to HSBC, at no time was it approached by BNPPP concerning the appointment of a second receiving bank (although agreement was reached on 23 February to outsource some of the processing work to Hang Seng Bank). The number of branches to be used to distribute and collect forms was again determined by the sponsor. It was the sponsor's decision to adopt a sole receiving bank with the minimum number of branches (ten), and this was consistent with the original estimated demand (10,000) of the sponsor.

- **Application forms/prospectus**

Printing the prospectus and application forms is, again, the responsibility of the sponsor. The receiving bank could only ask the sponsor to supply it with more forms to meet the public demand but could not actually place an order by itself. The sponsor decided on the number of forms to be printed having regard to its own estimate of the likely demand.

What went wrong?

3. Basically, two things "went wrong". First, the popularity of the issue far exceeded expectations, which put severe pressure on the distribution of application forms and prospectuses and the collection of the completed application forms. It is noted that it is a responsibility of the sponsor, and not of the receiving bank, to gauge the likely demand. On 17 February a Receiving Banker Agreement was signed in which the sponsor indicated to HSBC a projected figure of 10,000 applications. On 23 February (the closing date) a Supplemental Agreement was signed in which the sponsor indicated to HSBC a projected figure of 300,000 applications. But even this revised figure was significantly lower than the 465,000 applications actually received.

4. Second, the parties involved - the sponsor and the receiving bank - had no pre-agreed contingency plan for dealing with such a situation. As a consequence, while some reactive contingency action took place when it became clear that interest in the issue was far higher than anticipated (e.g. to print more application forms and to enhance security arrangements to try to cope with the pressure on receiving branches), no plan was in place to use additional branches to receive applications if necessary. In other words, last-minute action could be - and was - taken firstly to distribute and secondly to process more application forms. However, while consideration was given by HSBC at various stages during the offer period as to whether additional branches

might be added to receive applications, the conclusion reached was that action in this regard was not feasible, as:

- announcing more collection points in the media towards the end of the period could have led to further confusion, and potentially to applicants turning up at the wrong branches just before the deadline, with no chance of getting to alternative locations, and creating a disturbance with danger to staff and the public;
- even with notification of additional collection points within the first few days, since the official list of ten collection points was shown on the application forms it was considered unlikely that large numbers of applicants would have gone to the additional branches; and
- adding additional branches would not have relieved the pressure on key branches in densely-populated areas such as Mongkok (many applicants are accustomed to using the same local branch, and would not have travelled to other sites).

5. The broad conclusion, therefore, is that when it became clear that the popularity of the issue would far exceed expectations the parties were able to adapt their arrangements for distributing and processing applications, but not for receiving applications. At this point it was determined to be too late to add additional receiving branches, although action was taken in respect of additional staffing and security arrangements.

What do IPO sponsor and receiving banks need to do differently in future?

6. There are a number of steps that can be taken to help avoid a recurrence:
- There needs to be a clear understanding of the respective roles and responsibilities of the sponsor and receiving bank. The receiving bank's role is to act as an agent of the sponsor and to follow the sponsor's instructions. That said, if the receiving bank is not comfortable with its instructions it should endeavour to make this known to the sponsor;
 - There needs to be very close co-operation, good communication and a climate of trust between the sponsor and the receiving bank.
 - The receiving bank needs to be given as much information on the issue as possible as soon as confidentiality restrictions do not preclude this;

- There needs to be as accurate an assessment as possible of the likely popularity of the issue, and this needs to be kept in view throughout the process and revised accordingly. While this is primarily a matter for the sponsor, if the receiving bank is uncomfortable with the estimates it should make this known clearly to the sponsor;
- The sponsor needs to give proper consideration to the number of receiving banks to be appointed and the number of branches to be designated as receiving branches. Being sure that the arrangements will be sufficient to cope with the demand should be the first priority;
- The sponsor and the receiving bank need to agree in advance a formal contingency plan for coping with an unexpected level of interest in the issue. This should include the following areas:
 - The possibility of adding additional branches as receiving branches if necessary, including the related publicity issues;
 - The possibility of extending the closing time for submission of applications, if feasible;
 - Arrangements for drafting in additional staff if necessary; and
 - Arrangements for liaison with the police
- The sponsor and receiving bank need to work closely together should there be any question as to whether contingency measures should be triggered. While this is primarily a matter for the sponsor, the receiving bank should ensure that any concerns it may have are addressed;
- Receiving banks should ensure that sufficient resources, including management resources, are devoted to the process;
- The sponsor and receiving bank should ensure that the security arrangements, including in respect of queue management, are appropriate, and that the minimisation of risks to safety and public order are foremost.

Action steps taken by HSBC

7. HSBC has instituted a number of immediate actions to reduce the risks of similar events in forthcoming IPOs:

- More branches (and a minimum of twenty, rather than ten) will be adopted as the standard for all IPOs;
- Pricing is to be adjusted to remove the disincentive to use more branches (i.e. there will no longer be a charge "per branch" for any additional branches above the normal minimum number);
- Contingency plans are being drawn up with the sponsor in advance;
- Management arrangements for IPOs have been reviewed; and
- Key front-line staff from all branches involved in IPOs have been further briefed on the arrangements to handle IPOs.

Conclusions

8. As mentioned above the HKMA has been in close contact with HSBC, and has made it clear to the bank that a recurrence will not be tolerated. The bank very much regrets what transpired, although it believes that the problems were largely unforeseeable or were not within the bank's immediate control.

9. We believe, however, that the effects might have been mitigated if the bank and the sponsor had between them had in place a formal contingency plan for dealing with the unexpected. For example, we believe that the question of designating additional branches for collection could have been addressed with more urgency earlier in the offer period. However, the arguments made by HSBC as to why this might have been ineffective have some validity, as even if advance publicity had been given to the addition of additional branches experience shows that applicants tend to favour certain key branches, e.g. Mongkok.

10. The bank has been co-operative in providing us with an explanation of events. Moreover, the bank has formulated a detailed remedial action plan, the key elements of which are already in place, and is determined that neither the bank, nor Hong Kong, will be embarrassed by such a turn of events again. We believe that the appropriate lessons have been learned.

11. Looking forward, it is important that the lessons learned are also learned by the banking community as a whole. With this in mind, we have already held discussions with other major banks involved in the IPO process, and plan to issue guidelines to the banking community as a whole through the industry associations. We will also be following up with the major banks involved.

12. It is indicative of the high standards expected and usually achieved in the Hong Kong market that this one case that did not go so well has attracted so much attention. It is our judgement that HSBC has taken this matter very seriously and has taken firm action to try to ensure that there is no repetition.

13. We will continue to liaise closely with the SFC to ensure that everything possible is done to ensure the success of the IPO process in the future. Two issues arising from this case that appear to merit further consideration are:

- The possibility of changing the closing time for the submission of IPO applications from noon to late afternoon, or at least having in place predetermined arrangements for extending the deadline if necessary; and
- In the longer term, the possibility of using electronic means such as the internet for members of the public to submit applications.

Joseph Yam
Monetary Authority
9 March 2000

Chronology of events

Prior to the launch of the offer period	An indication of 10,000 applications was given by BNPPP and HSBC's quotation was sought on this basis.
A week before launch	BNPPP asked HSBC to indicate the requirements for forms using the example of a precedent in which 26,500 forms were received.
12 Feb	BNPPP requested a revised quotation based on 45,000 forms being received and HSBC indicated that this would imply a total of 210,000 forms being printed and distributed. However, despite this, BNPPP still continued to indicate an expected volume of 10,000 applications.
17 Feb	The Receiving Banker Agreement was signed with 10,000 forms as the estimate.
18 Feb (first date for distribution)	<p>Despite HSBC having requested 210,000 forms to be delivered by 17 Feb, only 50,000 forms were received by the time the branches opened and in most branches this supply had been exhausted in the first hour.</p> <p>Only 157,000 forms were received by the end of the day after HSBC complained to BNPPP.</p> <p>Due to the high level of demand for application forms, HSBC asked BNPPP for revised estimates and an indication of 300,000 was given by BNPPP (having the previous day signed an agreement referring to 10,000). A Supplemental Agreement was eventually signed on 23 Feb to reflect the revised estimate. Even this estimate was significantly below the actual figure of 465,000 which were finally received.</p>
19 Feb	HSBC suggested to BNPPP and BNPPP agreed to use more branches for distributing the forms (although ultimately this was not put into practice as the problem appeared to be lack of forms rather than lack of distribution points; also the queues for obtaining forms reduced).

21-23 Feb	Correspondence between BNPPP and HSBC to prepare proposals as required by the Stock Exchange on the arrangements for processing forms after receipt (special arrangements not to fully process forms below a predetermined cut-off point).
23 Feb	<p>Supplemental Agreement signed with 300,000 forms as the estimate, with some processing outsourced to Hang Seng. Additional resourcing was also put in place within HSBC to handle this higher level of processing workload.</p> <p>Contact was made with the Police to assist in the management of queues.</p> <p>A command centre was established to closely monitor the situation at branches. Queues built up rapidly in the final hours. Although unwilling to extend the deadline, after much discussion, BNPPP finally agreed that HSBC could initiate arrangements to close off the queues but to allow those already in them to deposit their forms after the closing time.</p>