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財經事務及庫務局
財經事務科
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來函檔號 YOUR REF.:

19 May 2004

Ms Alice Y L Chan
Department of Professional Legal Education
Faculty of Law
The University of Hong Kong
4/F KK Leung Building
Pokfulam Road
Hong Kong

Dear Alice,

Companies (Amendment) Bill 2003
Schedule 1 – Amendments relating to prospectuses

Thank you for your letter of 10 May 2004, setting out your comments on the drafting of section 7(a) in Part 1 of the Seventeenth Schedule in Schedule 1 to the Companies (Amendment) Bill 2003. These are most useful for improving the drafting of the relevant provisions.

We are grateful to you for pointing out that “holder of shares” is defined in paragraph 5 of Part 4 of the Seventeenth Schedule. In light of this, we have reconsidered that drafting of proposed section 7(a)(ii), and have concluded that the word “issued” is obsolete and can be deleted.

As for your comment that whether a company is entitled or allowed to offer an alternative scrip dividend to only some of the shareholders in a class should be prescribed elsewhere, you may wish to note that we have included the “class” concept in section 7(a)(i) for the sake of providing certainty that there should be equal treatment among shareholders of a particular class. From the Securities and Futures

Commission's point of view, the retention of the "class" concept in this particular section could guard against any possible adverse consequences that may arise from making offers to holders on different terms. In fact, it is our intention to couch the safe harbours in the proposed Seventeenth Schedule in more specific terms to prevent abuse and to protect investor interest.

We have also carefully considered your suggestions on how the drafting of section 7(a) could be improved. We appreciate that your proposed formula has the merit of using plain English. In considering how the drafting of this section could be improved, we are also mindful of the need to ensure consistency in the drafting approach adopted in this Bill and the rest of the existing Companies Ordinance, as well as the need to preserve the policy objectives embedded in the original drafting. This is particularly important to the market practitioners using this Ordinance. In view of the above considerations, we believe that our proposed committee stage amendments attached to my letter of 28 April are more suitable. However, we will consider the possibility of more comprehensive drafting improvement when we conduct our Phase III review of the regulatory regime governing offers of investment.

Thank you once again for your comments on the Bill. We look forward to your continuous support for its early enactment before this Legislative Council session ends.

Yours sincerely,



(Mrs Dorothy Ma)
for Secretary for Financial Services and the Treasury

c.c. Assistant Legal Adviser (Attn: Miss Monna Lai)
Clerk to the Bills Committee (Attn: Ms Anita Sit)
Securities and Futures Commission (Attn: Mr Ashley Alder)