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1 June 2004

By Fax: 2865 6603

Mr Peter Tisman
Technical Director (Business Members & Specialist Practices)
Hong Kong Society of Accountants
4/F, Tower Two, Lippo Centre
89 Queensway, Hong Kong

Dear Peter,

Clearing and Settlement Systems Bill (“the Bill”)

I refer to your letter of 28 May 2004.

I am pleased to inform you that the Society’s view on clause 25(1) of the Bill as set out in the letter was accepted by the Bills Committee at its final meeting held on 31 May.

The Administration all along appreciates the Society’s comment, from the insolvency practitioners’ angle, on the expression “[e]xcept to the extent that it expressly provides” at the beginning of clause 25(1). We have had reservation to remove the expression for the reason explained in my last letter to you on 25 May 2004, i.e. the need for absolute certainty of settlement finality as required by clearing and settlement systems designated under the Bill. This was a point strongly advocated by the Continuous Linked Settlement Bank International (“CLS”), a potential designated system and a major stakeholder in this legislative exercise. We also note that such wording is adopted in the relevant Singaporean legislation. However, CLS has now (through its legal advisor) indicated that it does not have strong view on deleting the said expression as suggested by the Society. We have therefore sought agreement of the Bills

Committee to adopt such suggestion, which was duly supported at the meeting held on 31 May. We will issue a revised marked-up version of the Bill, which will be made available on the Legislative Council web-site after 4 June.

Your letter also made further inquiry on the exemptions under clauses 26(4) and 27(4) of the Bill. We would like to assure the Society that the policy intention of the Hong Kong Monetary Authority is to grant such exemptions for transactions entered into by a system operator or settlement institution (as the case may be) as “first participant” (as defined in the clauses) in its respective capacity as system operator or settlement institution only. Such exemptions will not be granted in respect of transactions entered into by such system operator or settlement institution as a participant or user of the designated system.

We look forward to the continued support of the Society for the enactment of the Bill.

Yours sincerely,

(Danny Leung)

for Secretary for Financial Services and the Treasury

c.c.

Hong Kong Monetary Authority (Attn: Mr James Lau
Mr Esmond Lee)

Department of Justice (Attn: Mr Jonothan Abbott
Ms Lonnie Ng
Ms Mayanna To)

Clerk to Bills Committee on Clearing and Settlement Systems Bill,
Legislative Council Secretariat (Attn: Ms Rosalind Ma)