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本函檔號 OUR REF.: SUB/12/2/2/5
來函檔號 YOUR REF.:

23 February 2012

Ms Anita Sit
Clerk to Bills Committee on
Securities and Futures (Amendment) Bill 2011
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms Sit,

**Securities and Futures (Amendment) Bill 2011
Committee Stage Amendments**

Further to the discussion at the meeting held on 14 February, we attach herewith our proposed Committee Stage Amendments (CSAs) (at Annex). For completeness' sake, those CSAs already tabled at the last meeting are also included (with revisions to Clause 3(a) and (f) incorporated).

The CSAs proposed by the Administration are mainly to address issues discussed at the Bills Committee. For example:

- (a) to revise sections 307Q(2)(a) and (b) and 262(2)(a) and (b) for copies of the report of the Market Misconduct Tribunal to be given to the Securities and Futures Commission and other parties at the same time (Clause 3(k) and (l) and Clause 24);

...../Cont'd

- (b) to clarify that the notes in the ordinance has no legislative effect (Clause 11);
- (c) to revise the Chinese wording of the amendment under section 109 for clarity in presentation (Clause 36); and
- (d) to revise the amendment under sections 134(6) and 309(5) by replacing “on-line medium” with “internet” (Clauses 37(1) and 40A). As “on-line medium” is used in similar provisions in the Companies Ordinance, we propose to replace them with “internet” to ensure consistency (Clauses 44A to 44C under Part 5).

We have also taken the opportunity to finetune the Chinese wordings of sections 307I and 307J (Clauses 3(e), (g), (h) and (i)) and section 252A(2) and (3) (Clause 21).

Separately, as reported at the last meeting, in order to subject the education body to be established in accordance with Part 4 of Bill under the checks and balances of the Independent Commission Against Corruption (ICAC), we have considered the practice of other organisations and propose to amend Schedule 1 to the Prevention of Bribery Ordinance (POBO) to designate the education body as a “public body” under POBO (revised Clause 29 and the Clauses 33A and 33B under Part 4).

Yours sincerely,



(Miss Sara Tse)
for Secretary for Financial Services
and the Treasury

Encl.

Securities and Futures (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) In the proposed section 307C(2), in the Chinese text, by deleting everything after “透過” and substituting “由某認可交易所營運的、用以向公眾散發消息的電子登載系統，散發根據第307B條的規定而須披露的內幕消息，即屬遵守該款。”.</p> <p>(b) In the proposed section 307D(1), in the Chinese text—</p> <p>(i) by deleting “有並只要”;</p> <p>(ii) by adding “在有此情況期間” after “，則”.</p> <p>(c) In the proposed section 307D(2), in the Chinese text, by deleting everything before “無需” and substituting—</p> <p>“(2) 如有以下情況，則任何上市法團在以下情況持續期間”.</p> <p>(d) By deleting the proposed section 307F(3).</p> <p>(e) In the proposed section 307I, in the Chinese text, in the heading, by deleting “有關披露的研訊程序” and substituting “關於披露的研訊程序”.</p> <p>(f) In the proposed section 307I(1), in the Chinese text, by deleting “發生違反披露規定，則可就該事宜提起在審裁處的研訊程序(有關披露的研訊程序)” and</p>

substituting “曾發生違反披露規定，則可就該事宜在審裁處提起研訊程序(關於披露的研訊程序)”。

- (g) In the proposed section 307I(2), in the Chinese text, by deleting “有關披露的研訊程序” and substituting “關於披露的研訊程序”。
- (h) In the proposed section 307J, in the Chinese text, in the heading, by deleting “有關披露的研訊程序” and substituting “關於披露的研訊程序”。
- (i) In the proposed section 307J(1), in the Chinese text, by deleting “有關披露的研訊程序” and substituting “關於披露的研訊程序”。
- (j) In the proposed section 307N(1)(d), in the Chinese text, by deleting “法團違反披露規定” and substituting “法團”。
- (k) By deleting the proposed section 307Q(2)(a) and substituting—
“(a) by giving a copy of the report to the Commission; and”。
- (l) In the proposed section 307Q(2)(b), by deleting “then,”。

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- (a) By renumbering the clause as clause 11(1).
- (b) By adding—
“(2) Schedule 1, Part 1, after section 12—

Add

“13. Notes in Ordinance

A note located in the text of this Ordinance is provided for information only and has no legislative effect.”。

- 13(2) In the Chinese text, by deleting “各方” and substituting “一方”.
- 13(9) In the proposed section 19A, in the Chinese text, by deleting “可能發生” and substituting “可能曾發生”.
- 13 In the Chinese text, by deleting subclause (10) and substituting—
“(10) 附表9，第21條，在“在任何”之後—
加入
“根據本條例第252條提起的”。”.
- 13(11) In the proposed section 21A, in the Chinese text, by deleting “提控官可” and substituting “提控官”.
- 19(3) In the proposed section 251(8), in the Chinese text, by deleting “第254(1)條中法官的定義中(a)段所指的法官，則除主席外)可獲財政司司長支付一筆” and substituting “第245(1)條中法官的定義中(a)段所指的法官，則除主席外)可獲支付一筆財政司”.
- 20(1) In the proposed section 252(1), in the Chinese text, by deleting “除第252A條另有規定外” and substituting “在第252A條的規限下”.
- 21 (a) In the proposed section 252A(2), in the Chinese text, by deleting everything before “同意” and substituting—
“(2) 如有以下情況，則律政司司長只可在以下情

況持續期間，拒絕根據第(1)款對根據第252條提起的、關乎任何行為的研訊程序給予”。

- (b) In the proposed section 252A(2)(a), in the Chinese text, by deleting “研訊” and substituting “法律”.
- (c) In the proposed section 252A(2)(b), in the Chinese text, by deleting “除外)提起研訊” and substituting “除外)提起法律”.
- (d) In the proposed section 252A(3), in the Chinese text, by deleting everything after “同一行為而” and substituting “提起檢控任何罪行(第XIV部所訂的罪行除外)的法律程序。”。
- 23(2) In the Chinese text, by deleting “句號” and substituting “逗號”.
- 24 (a) By deleting subclause (1) and substituting—
“(1) Section 262(2)—
Repeal paragraph (a)
Substitute
“(a) by giving a copy of the report to the Commission; and”.”.
- (b) By adding—
“(1A) Section 262(2)(b)—
Repeal
“then,”.”.
- 28(1) In the proposed definition of *party*, by deleting “各方” and substituting “一方”.

28(7) In the proposed section 32A(a), in the Chinese text, by deleting “各方” and substituting “一方”.

Part 4 By adding before clause 29—

“Division 1

Amendments to Securities and Futures Ordinance”.

29 By deleting “this Part” and substituting “this Division”.

Part 4 By adding—

“Division 2

Amendment to Prevention of Bribery Ordinance

33A. Prevention of Bribery Ordinance amended

The Prevention of Bribery Ordinance (Cap. 201) is amended as set out in this Division.

33B. Schedule 1 amended (Public bodies)

At the end of Schedule 1—

Add

“[122]. The wholly owned subsidiary of the Securities and Futures Commission that is established under section 5(4)(da) of the Securities and Futures Ordinance (Cap. 571).”.

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By deleting the clause and substituting—

“36. Section 109 amended (Offence to issue advertisements relating to carrying on of regulated activities, etc.)

Section 109, Chinese text—

Repeal subsection (1)

Substitute

“(1) 除第(3)至(6)款另有規定外 —

(a) 凡 —

(i) 某人在任何廣告中顯示自己準備進行第4、5、6或9類受規管活動；而

(ii) 該人沒有按本條例規定就該等活動獲發牌或獲註冊，

則明知有第(i)及(ii)節所述情況而發出該廣告或為發出而管有該廣告的人，即屬犯罪；或

(b) 任何人發出其本身知道載有上述廣告的文件，或為發出而管有其本身知道載有上述廣告的文件，即屬犯罪。”。

37(1)

By deleting “an on-line medium” and substituting “the Internet”.

New

By adding—

“40A. Section 309 amended (Exemptions)

Section 309(5)—

Repeal

“an on-line medium”

Substitute

“the Internet”.”.

New By adding—

“42A. Section 407 amended (Savings, transitional, consequential and related provisions, etc.)

(1) Section 407(1) and (2), Chinese text—

Repeal

“即適用或就本條例或本條例任何部分的生效而適用”

Substitute

“適用或關乎該項生效”.

(2) After section 407(3)—

Add

“(4) Part 4 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures (Amendment) Ordinance 2012 (of 2012) or any part of that Ordinance.”.”.

44(2) In the proposed section 76(2), in the Chinese text, by deleting “就發還的申請和” and substituting “要求發還該按金或保證的申請，以及”.

Part 5 By adding—

“Division 1A

Miscellaneous Amendments to Companies Ordinance

44A. Companies Ordinance amended

The Companies Ordinance (Cap. 32) is amended as set out in this Division.

44B. Section 38A amended (Exemption of certain persons and prospectuses from compliance with certain requirements)

Section 38A(6)—

Repeal

“by means of an on-line medium”

Substitute

“by the use of the Internet”.

44C. Section 342A amended (Exemption of certain persons and prospectuses from compliance with certain requirements)

Section 342A(6)—

Repeal

“by means of an on-line medium”

Substitute

“by the use of the Internet”.”.