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20 May 2004

Mr. Danny Leung
Financial Services Branch,
Financial Services and the Treasury Bureau,
18/F., Admiralty Centre Tower 1,
18 Harcourt Road, Hong Kong.

Dear Danny,

Clearing and Settlement Systems Bill

Thank you for your letter dated 22 April 2004 and the amended draft Bill circulated on 19 May 2004. We appreciate the various amendments that have been made to take account of the Society's previous comments. We also note the Administration's explanations where it is not considered appropriate to make any amendment.

As we have previously commented, we do not believe that the words at the beginning of clause 25 (i.e., "Except to the extent that it expressly provides...") are helpful. We suggest that they can and should be deleted. As we read Part 3, to which clause 25 relates, it does not purport to limit, restrict or otherwise affect underlying transactions. (At the very least, it is not clear where any provisions of that Part expressly limit, restrict or otherwise affect underlying transactions.) However, if the Administration believes there is a need to qualify clause 25(1), then it would be preferable to refer to the specific provisions which are expressed to affect underlying transactions. The inclusion of the present general wording qualifies clause 25(1) in a way which is unclear. The Society believes that deletion of these words would not undermine the finality that the Bill seeks to achieve, because clause 25(2) makes it sufficiently clear that clause 25(1) is not intended to override in any way the finality provisions found elsewhere in the Bill.

There is one further point on which we would like to seek some clarification. We should be grateful to know the purpose of the exemption provisions under clauses 26(4) and 27(4), which deal with, respectively, transactions at an undervalue and unfair preferences, and which provide for a system operator or settlement institution to be able to request an exemption from the effect of the relevant clauses. Under what circumstances is it envisaged that the Monetary Authority would grant such an exemption?

Yours sincerely,

PETER TISMAN

TECHNICAL DIRECTOR

(BUSINESS MEMBERS & SPECIALIST PRACTICES)

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