



香港會計師公會

HONG KONG SOCIETY OF ACCOUNTANTS

(Incorporated by the Professional Accountants Ordinance, Cap. 50)

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**By fax and by post**

(Fax no. 2878 7127)

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14 December 2001

Mr. Arthur Yuen,  
Executive Director (Banking Policy),  
Hong Kong Monetary Authority,  
30<sup>th</sup> Floor,  
3 Garden Road,  
Hong Kong.

Dear Mr. Yuen,

**Banking (Amendment) Bill 2000**

Further to our letter of 16 August 2001, we would like to provide our comments on the proposed Committee Stage Amendments (CSA) to the Banking (Amendment) Bill 2000 as set out below.

The proposed new section 63B of the Banking Ordinance (BO) proposes to require an auditor of an authorized institution to submit a written report to the Hong Kong Monetary Authority (HKMA) where he becomes aware that the authorized institution has failed to comply with any prescribed requirements within the meaning of clause 153 of the Securities and Futures Bill (SFB). "Prescribed requirements" mean any of the requirements under clause 144(3) or 145(3) and requirements of rules made under clauses 144, 145, 147 or 148 of the SFB. These clauses relate to matters concerning client securities, client money, transaction accounts and records, contract notes and receipts, etc.

We note that under the existing Securities (Accounts and Audit) Rules, an auditor of a registered securities dealer is required to report under sections 81, 83 and 84 of the Securities Ordinance (SO) on matters relating to client securities, client money, transaction accounts and records, etc. The auditor is also required under section 89 of the SO to report to the Securities and Futures Commission if, during the performance of his duties as the auditor for that dealer, he discovers evidence of a contravention by the dealer of sections 81, 83 or 84. As an auditor of a dealer is already required to report under the existing section 89 of the SO, clause 153 of the SFB, which covers similar ground, basically does not impose any substantially new duties or obligations on that auditor.

The situation in the case of an exempt dealer within a bank group on the other hand is somewhat different. Firstly, an auditor of a financial institution is not required to report on compliance with sections 81, 83 and 84 of the SO, i.e. apart from performing audit work for the purpose of statutory audit, the auditor is not required to perform audit work specifically on matters covered under clause 153 of the SFB.

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Accordingly, although the proposed CSA may not impose an actual duty upon an auditor appointed under sections 59(2) or 63(3) or (3A) of the Banking Ordinance to verify compliance by an exempt dealer with the relevant sections of the SO, we are concerned that the effect of the proposed CSA will be to create an expectation gap. This will arise because the public may be led to believe by the relevant provisions that an auditor of an exempt dealer will in the normal course of his work be checking for failures to comply with prescribed requirements or, at the very least, will specifically cover those areas during an audit.

In practice, given that currently the level of securities transactions carried out by most retail banks is not significant relative to the entire business of the bank, an auditor of an authorised institution will of necessity give less attention to securities business, while concentrating primarily on core banking business. This being the case, the chances of an auditor of an authorized institution discovering failures in compliance in relation to the areas covered under the proposed section 63B are remote. In contrast, an auditor of a dealer will perform detailed audit work on securities transactions because this is the core business of the dealer and this fact, together with the requirement for specific reporting under section 89 of the SO, means that an auditor of a dealer is much more likely to come across compliance failures. Under the circumstances we have concerns with the proposal to cross-reference provisions in Banking (Amendment) Bill 2000 with those contained in the SFB.

We understand that under the revised regulatory regime envisaged by the SFB Bill, the intention is that a similar level of supervision will apply to exempt dealers as to registered dealers (in this respect we note that a CSA has been proposed to replace the term "exempt person" in the SFB with "registered institution"). However, we do not believe that it is appropriate to impose on auditors of exempt dealers a similar duty to report to the regulator as applies to auditors of registered dealers, without any reference to the difference in the nature and scope of work between the two.

Finally, the full scope of the proposed clause 153 of the SFB is not entirely clear to us, but to the extent that it applies to an exempt dealer that is an associated entity of a licensed corporation, as appears to be the case under section 153(1)(a), then the above comments would also be applicable to this provision.

We would welcome the opportunity to meet you to discuss this matter further .

If you have any questions on the above, please feel free to contact the undersigned at 2287 7084 or Elaine Chan at 2287 7095.

Yours sincerely,



PETER TISMAN  
DEPUTY DIRECTOR  
(BUSINESS AND PRACTICE)  
HONG KONG SOCIETY OF ACCOUNTANTS

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