Asian Corporate Governance Association

ACGA

May 14, 2004

Charles Lee Yeh Kwong, GBS JP
Chairman
Hong Kong Exchanges and Clearing Ltd
12/F One International Finance Centre
1 Harbour View Street
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By fax and post: 2868 4084

cc: Paul Chow Man Yiu, JP
Chief Executive, Hong Kong Exchanges and Clearing Ltd

Richard Williams
Head, Listing Division, Hong Kong Exchanges and Clearing Ltd

Dear Mr Lee,

General Mandate to Issue New Shares

As an organisation dedicated to promoting improved corporate governance in Asia, we wish to express our concern that the rules governing general mandates for the issuance of new securities were not tightened further as part of the recent amendments to the Listing Rules in Hong Kong.

In addition to the potentially dilutive effect of these general mandates on existing minority shareholders—since listed companies may issue securities representing up to 20% of issued share capital with no pre-emptive rights attached and approval for renewal of such mandates each year requires only "shareholder approval" (ie, controlling shareholders need not abstain)—we are concerned about the continued existence of the following rules:

- There is no restriction on the number of refreshments of the general mandate before a company's next annual general meeting.
- Securities issued under a general mandate may be offered at a discount of up to 20% to the company's share price.
- The total number of securities issued under a general mandate may be significantly increased by the inclusion of shares repurchased by the issuer since the granting of the general mandate—up to "a maximum number equivalent to 10% of the existing issued share capital of the issuer" and "provided that the existing shareholders of the issuer have by a separate

ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate". Rule 13.36.(2)(b)

While we recognise that Hong Kong Exchanges and Clearing Ltd (HKEx) recently amended the Listing Rules to require independent (ie, minority) shareholder approval for any refreshments of the general mandate before the next annual general meeting (AGM) of a company—as opposed to only shareholder approval previously—the practical benefit of such a change may be limited since it would appear that many companies do not refresh their general mandates between AGMs.

On a more positive note, we welcome a recent statement by HKEx saying that:

"...subject to further market consultation, we will consider lowering the maximum number of securities that are allowed to be issued under the general mandate to bring our requirements closer to those of the United Kingdom."[1]

Such a change would, we are sure, be well received by institutional investors in Hong Kong or investing in Hong Kong. Indeed, the timeliness of this issue is reflected in the voting results of HKEx's own annual general meeting on March 31, 2004 when shareholders only narrowly voted for the resolution to approve the general mandate for the issue of additional shares (52.74% voting for and 47.26% against).

We would sincerely appreciate your timely consideration of the concerns raised in this letter. We would also like to inquire when the consultation process mentioned above is likely to begin, so that we may prepare a further submission.

Yours truly,

Jamie Allen
Secretary General

cc:

- Ambassador Linda Tsao Yang, Chair, ACGA
- ACGA Investor Discussion Group
- Tony Miller, Permanent Secretary for Financial Services and the Treasury
- Andrew Sheng, Chairman, Hong Kong Securities and Futures Commission

[1] "Rule Amendments Relating to Corporate Governance Issues" (Jan 30, 2004), page 13, paragraph 37.

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