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**Frank Martin, SBS  
President**

July 25, 2003

Mr. Tony Miller, JP  
Permanent Secretary for Financial Services & the Treasury  
Financial Services Branch  
18/F, Tower 1, Admiralty Centre  
18 Harcourt Road  
Hong Kong

Dear Tony,

**Re: Consultation Paper on the Proposal to Empower the Securities and Futures Commission to Initiate a Derivative Action on Behalf of a Company**

We refer to the above Consultation Paper.

We have reviewed the Proposal set out in Part II of the Paper and the arguments set out for and against the Proposal. Our overall view is that the arguments against the Proposal outweigh the arguments in favour; however, we would support the proposition in Paragraph 24 of the Consultation Paper that the Proposal be held in abeyance for the moment and evaluated at a later date.

Our principal reasons for reaching the above conclusion are as follows:

- We are concerned that the Proposal would lead to shareholder apathy and, therefore, do little, in practical terms, to promote better corporate governance standards in Hong Kong.
- We are concerned about the involvement of the SFC in what are essentially private disputes and would prefer to see a framework (including in relation to the costs of litigation), which promotes accountability of directors and controlling shareholders to minority shareholders, and the ability of those shareholders to take action in appropriate circumstances. Much is made of the litigation costs involved in such action but we would have thought that it would be possible to address those as a separate matter – perhaps by providing that a plaintiff would not bear such costs unless the litigation is proven to be vexatious or frivolous.
- Existing company legislation already provides aggrieved shareholders with a means to seek redress; and the Securities and Futures Ordinance (SFO) provides increased powers for the SFC in relation to corporate governance. We think that it is appropriate to wait and see what developments occur as the SFO is implemented and proposals to amend the existing Companies Ordinance are brought forward.
- There is little precedent in other international centers for regulators to have such powers, and no case is made out as to why Hong Kong should seek to be “leading edge” in this regard.

Yours sincerely,