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Securities and Futures Commission  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road Central  
Hong Kong

Dear Sirs

**Consultation on the Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules (“the SBL Rules”)**

We write to give our comments on the above draft Rules.


1. The duty of disclosure of interest in shares under the SBL Rules would impose an onerous administrative burden on custodians. The additional cost of compliance may have to be passed on to customers in the form of higher tariff. This does not help in improving HKSAR's cost competitiveness vis-à-vis countries competing for similar business.
2. Whilst Approved Lending Agents (“ALAs”) are exempted under the SBL Rules from having to make multiple disclosures, they are still required to make an initial disclosure when the percentage of shares held cross the 5% threshold. Given that the Lender is already required to make the disclosure in the latter circumstances, it is suggested that when holding shares purely in the capacity of either custodian or bare trustee, the ALA should be totally exempted from the duty of disclosure.
3. It is not clear whether the duty of disclosure also applies to shares held by the ALA's nominee in the custody pool. Clarification is required.

Chairman Bank of China (Hong Kong) Ltd  
Vice Chairmen Standard Chartered Bank  
The Hongkong and Shanghai Banking Corporation Limited  
Secretary Eva Wong Mei Seong

主席 中國銀行（香港）有限公司  
副主席 渣打銀行  
香港上海滙豐銀行有限公司  
秘書 黃美嫦

4. Under the SBL Rules, the exemption from disclosure of interest only applies to those “designated shares” or “qualifying shares” in which “an institutional investor” is interested. Does this exemption also apply to non-institutional investors? Whilst in practice the latter are unlikely to hold more than 5%, it would still be desirable that provisions for this be made in the Rules.
5. Under the SBL Rules, “qualifying shares” refer to those shares which an ALA has authority to lend as agent for an institutional investor. It is increasingly common that ALAs are asked to contract directly as *Principal* with both the Lender and the Borrower, in which case the role of an ALA would appear to have changed to an *Institutional Investor*. The SBL rules should be clarified as to whether under these circumstances, the ALA, as *Principal*, would also be subject to the duty of disclosure.
6. We enclose page 4 of the consultation paper marked up with our suggested changes.

Yours faithfully



Eva Wong  
Secretary

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- (2) In the following circumstances an approved lending agent who -
- (a) complies with the conditions set out in subsection (4); and
  - (b) complies with the requirements of section 7,
- will not be under a duty of disclosure under section 304(1)(d) of the Ordinance -
- (i) where the approved lending agent lends qualifying shares under the terms of a relevant agreement; or
  - (ii) where shares to which paragraph (i) applied are returned in accordance with the terms of the relevant agreement.

- (3) In the following circumstances an institutional investor who -
- (a) complies with the conditions set out in subsection (5); and
  - (b) complies with the requirements of section 8; ~~and,~~
- will not be under a duty of disclosure under section 304(1)(d) of the Ordinance -
- (i) where the institutional investor lends shares under the terms of a relevant agreement; or
  - (ii) where shares to which paragraph ~~(i)~~<sup>(i)</sup> applied are returned in accordance with the terms of the relevant agreement.

- (4) The conditions referred to in subsections (1) and (2) are that when shares in which an institutional investor or approved lending agent (as the case may be) is interested -
- (a) become qualifying shares; or
  - (b) cease to be qualifying shares;
- he treats each of the events mentioned in paragraph (a) and (b), for the purposes of the Ordinance, as if it were a change in the nature of his interest in those shares.

- (5) The conditions referred to in subsection (3) are that when shares in which an institutional investor is interested -
- (a) become designated shares; or
  - (b) cease to be designated shares,

he treats each of the events mentioned in paragraph (a) and (b), for the purposes of the Ordinance, as if it were a change in the nature of his interest in those shares;

- (6) If an approved lending agent fails to comply with the requirements of section 7 he shall be taken, for the purposes for the purposes of Divisions 2 to 5 of the Ordinance, to