



BY HAND AND BY EMAIL

Our Ref.: PYI/CS/H1/16/09/L01

15 September 2016

Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

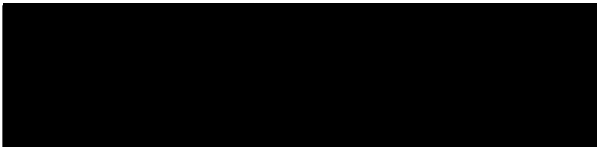
Dear Sirs,

**Re: Consultation Paper on Proposed Enhancements to the Exchange's
Decision-Making and Governance Structure for Listing Regulation**

We refer to the enclosed copy of letter issued by The Chamber of Hong Kong Listed Companies (the "**Chamber**") dated 13 September 2016.

As a member of the Chamber, we strongly support the views set out in the aforesaid letter in its entirety. We trust that the Chamber's views will receive your due consideration.

Yours faithfully,
For and on behalf of
PYI Corporation Limited


Shing On Wai
Company Secretary

Encl.

保华集团有限公司
PYI Corporation Limited



香港上市公司商會
THE CHAMBER OF HONG KONG LISTED COMPANIES

13 September 2016

Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

BY EMAIL AND BY POST

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

CHKLC Submission

The Chamber of Hong Kong Listed Companies is pleased to submit our views on the joint consultation by the Securities and Futures Commission ("SFC") and the Stock Exchange of Hong Kong Limited ("Exchange") on the Proposed Enhancements to the Exchange's Decision-Making and Governing Structure for Listing Regulation ("proposals" or "proposed structures") as contained in the joint consultation paper dated June 2016.

Our submission addresses the fundamental issues of the proposals and does not necessarily follow the suggested headlines listed out on page 30 of the consultation paper and does not cover every single suggested headline.

Proposed Structures Destroy the Proven Three-tier Regulatory System

The proposed structures are a drastic change to the existing listing regulatory regime of Hong Kong and will shake the foundation of our system upon which our market success has relied. It is not a fine-tuning of the existing structure.

The proposed structures destroy the existing three-tier regulatory structure (Government, SFC and Listing Committee) which was first proposed in the Ian Hay Davison Report published in 1988. Under the three-tier structure, front-line regulation is handled by the Exchange. IPO approvals and listing rules amendments are under the remit of the Listing Committee ("LC") which is composed of market participants and professionals and whose role is to offer market perspective to the Listing function. The LC is independent of the Exchange. The back-line regulator is SFC which has veto powers and rule-change powers under the SFC. The SFC is involved in all IPO applications and is consulted on all Listing Rules amendments.



This system has been working well since 1988, and reaffirmed by government in 2003. Hong Kong has become the home market for Chinese enterprises. Hong Kong was No. 1 in the world in 2015 in capital raised and has been top five internationally in term of fund raising for many years. Hong Kong's position as a leading capital formation centre has been well respected. Furthermore, Hong Kong was voted no. 1 for "Minority Investor Protection" by a World Bank report, and also voted "Best Corporate Governance" by Asian Corporate Governance Association.

Contrary to maintaining this advantage by continuing the proven three-tier system, the proposed structures give SFC the front- and back-line regulatory authority without check-and-balance of its all-encompassing power.

Proposed Structures Unjustified for its Stated Objectives

According to the consultation paper, the stated objectives of introducing the proposed structures are to achieve closer coordination and cooperation between the SFC and the Exchange on policy formulation and to provide the SFC with earlier and more direct input on listing policy matters and listing regulation, and to streamline the processes for making important or difficult listing decisions. If so, there already exist various channels and mechanisms under the current three-tier regulatory system for achieving these objectives. For example, as the consultation paper pointed out, the SFC has existing powers and discretion in relation to listing-related matters under the Securities and Futures (Stock Market Listing) Rules, section 6 of which entitles the SFC to object to any listing application within 10 business days of its filing; in addition, under Rule 2.014 of the Listing Rules and paragraphs 6.5 and 6.6 of the Memorandum of Understanding Governing Listing Matters the Listing Department will inform the SFC, as soon as reasonably practical, of any matter of novel or potentially controversial or sensitive nature arising in connection with a listing application. Furthermore, "any policy or other matters, including potential changes to the Listing Rules" can be addressed at the monthly Listing Matters Liaison Meetings. As such, the SFC is being kept fully informed of any listing application, can intervene at an early stage, and has oversight and control of the formulation and administration of the Listing Rules and listing policies.

The objectives of the proposals can be achieved under the current arrangements. If the SFC is still not satisfied with the results, it can undertake a review to identify ways to streamline the existing process and enhance the existing communication with the Exchange. To introduce the proposed structures on top of the existing arrangements would only create a cumbersome regulatory structure which is superfluous and unjustified.

Compositions of the Listing Policy Committee (LPC) and Listing Regulatory Committee (LRC) Tilted to Give SFC Dominant Control

At the core of the proposals is the creation of two new committees: The Listing Policy Committee ("LPC") and Listing Regulatory Committee ("LRC"). On the surface, SFC and HKEx have equal representation in these committees, but in effect SFC has a dominant

control. Of the eight members of LPC, four are from SFC (Chief Executive Officer, Executive Director and one Senior Director of the Corporate Finance Division and Chairperson of the Takeovers Panel – appointed by the Chairman of the SFC) and four from HKEx (Chief Executive and Chairperson and two Deputy Chairpersons of the Listing Committee (“LC”). The LRC is composed of 6 members with three from the SFC (Executive Director and two Senior Directors of Corporate Finance Division) and three from the Exchange (Chairperson and two Deputy Chairpersons of the LC).

While nominally there is equal participation, SFC has great influence on who can become members of these committees. It should be noted that all appointments to the LC are made by the Listing Nominating Committee (“LNC”), composed of three non-executive directors of the Board of the Exchange and the Chairman and two Executive Directors of the SFC. The LNC also nominates the Chairperson and the two Deputy Chairpersons of the LC. As such, the SFC has effective veto power over who can become the LC Chairperson and Deputy Chairpersons. Through this veto power, the SFC can control who will eventually enter the LPC and LRC, thus ensuring it will have a dominant influence in these committees.

Listing Committee being Sidelined

The three-tier system brings in an independent Listing Committee which comprises market experts and practitioners. The Listing Committee has been a pivotal part of Hong Kong’s listing regulatory system, contributing valuable market expertise, experience and perspectives to the IPOs and Listing Rules regime. However, under the proposed structures, the LC is sidelined and relegated to a marginal position to preside over only common routine IPO and Post IPO matters.

The consultation paper states that the LRC will oversee, give guidance and decide matters that involve the suitability for listing of a new applicant and its business under rule 8.04 of the Listing Rules (para.73a of consultation paper), which in turn says “both the issuer and its business must, in the opinion of the Exchange, be suitable for listing”. This in theory gives LRC power over all listing applications, as suitability consideration exists in every case.

In practice, suitability has no clear definition (even with the current guidance letters), and although the consultation paper further describes the characteristics of matters the LRC would preside over (“LRC matters”) (para 73b-d of consultation paper), those characteristics remain ambiguous and it is the discretion of the Listing Department to classify a case as an LRC case. It is possible that under the notion of “erring on the side of caution”, a high percentage of cases may be referred to the LRC. In any event, the ambiguities of suitability concerns create uncertainty and lengthen the time of the IPO application process, rather than streamlining it. With a smaller membership of six persons, it is questionable how the LRC will cope with the workload if many cases are put before it. If indeed the processing time would be lengthened, the resulting backlog of IPO applications would impede our market efficiency. More importantly, any decisions made by the LRC would be made in a “small circle”, lacking the breadth and depth of the expertise, experience and perspectives of the LC. Although the LC can give its views on the IPO cases considered by the LRC via

the LC Chairman and the two deputies, their views are only non-binding. The same goes for the LPC. This is a regression.

The key feature and advantage of LC is that, with its diverse expertise, experience and market perspectives, it complements the regulator's perspective. It addresses the regulator's concerns, meets the needs of the market and can cope with the ever-evolving market trend. The Ian Hay Davison Report also maintained that a practitioner-based regulatory system was best suited to Hong Kong as it would "avoid the danger of straight-jacketing the securities market by a strict regulatory regime which might all too easily lead to insensitive or heavy handed over-regulation" (Para 3.24, Hay Davison Report). Such practitioner-based regulatory system, which is conducive to the healthy development of the financial market, will no longer exist under the new structures.

Hong Kong's success as an international financial centre is due to market participation in the process of both IPO vetting and policy setting. This market participation element is drawn from the diverse experience of LC, and its active participation and constructive inputs in the process have helped shape the policies. If the new structure is adopted, the LC would be sidelined and there would be no weight to its role. There would be no incentive to attract the most capable and talented persons to sit in the LC.

Listing Policy Committee Dominates the Listing Rule Regime

The proposed LPC is charged to initiate, steer and decide listing policy proposals and proposed Listing Rule Amendments, including market consultations and other matters that have policy implications or general effect (para.62 of consultation paper). In other words, it has overall control over the Listing Rules regime affecting all listed companies of Hong Kong. The authority of the SFC will become extensive and far-reaching. Under the existing structure, for any new rules or amendments, the Listing Department will submit proposals to the LC for consideration. The Listing Committee will discuss and decide using its diversified expertise and experience. In the future and if the proposals are adopted, these changes will go directly to the LPC which is composed of eight members only, with much less market experience. Although the LC would be invited to give opinions on the proposals, their views are non-binding.

In addition, the proposals give LPC, which is heavily SFC-led, control over the Listing Department. It is a major departure from current practice. At present, the Exchange is involved in appraising performance and recommending salary of senior staff of the Listing Department with input from the LC. Giving these powers to a SFC-led committee is like making the Listing Department subordinates of the SFC, effectively giving it full control of what is traditionally an Exchange function. There will also be corporate governance concerns if the appraisal and remuneration of the Listing Department are determined and/or influenced by LPC.

SFC Wields Absolute Power in both IPO Approval and Policy Setting

It was argued that the proposed structures do not give extra power to the SFC as it has

always own veto power over LC's decisions. Nobody disputes the veto power of SFC. However, there is a marked difference between veto power and absolute power which SFC would have under the new structure. At present, decisions by the LC, be it about IPO applications or Listing Rules, are made after thorough discussion by seasoned market practitioners. Unless there is a compelling reason, the veto power cannot be exercised indiscriminately, and the basis for exercising such power must be well-substantiated. Under the new structures however, the LC is bypassed (at most offering their non-binding views), and the LRC and LPC will make final decisions based on much narrower perspectives, without the valuable and active input by a group of market practitioners of a diverse background. The whole decision-making dynamics are altered. It is worrisome that such important decision making powers would be concentrated in such a few hands without proper checks-and-balances.

Proposed Structures Unnecessary for Combating Current Market Problems

If the proposed structures are stemmed from the regulatory need to combat the widespread reverse takeovers and poor quality of newly listed companies including suspected 'manufacturing' of listed shell companies, the means is wrong. There is no compelling evidence or reason suggesting the current structure of the LC does not perform functions in market management and regulation as contemplated by the Ian Hay Davison Report, which states: "Market management and regulation by practitioners offer scope for flexibility and adaptability in a rapidly changing market. It draws on the market knowledge of practitioners and thereby is better able to win the support of market members. Statutory regulators will not always have the knowledge and experience" (Para 3.25, Hay Davison Report).

The aforesaid market problems should be tackled by focused and targeted methods rather than changing the fundamental policy/IPO approval structures. These methods include for example, amending the listing requirements or imposing additional conditions, e.g. extending the moratorium, increasing the shareholder base, or compulsory IPO with public offering rather than full share placements, coupled with tightening of rules, longer trading halts, more robust delisting policy and investigation and prosecution of wrongdoers. It is not necessary to undertake such drastic moves as the proposed structures that would shake the proven systems of our market. If the Listing Rules and the SFO are properly enforced, the quality of the new issues and the compliance after listing will be enhanced under the existing structure and the new structure per se will not guarantee the same.

In fact, if the SFC takes prompt actions against the wrongdoers in the market with vigor for market manipulation, insider dealings, creation of fake market, etc. under the SFO, this will deter future occurrences of such market misconduct and will enhance the quality of our market. Hong Kong has a set of sophisticated and well-established rules and codes which govern corporate behaviour and treatment of minority shareholders. They can be relied on to protect investors. But this is the job of the SFC, to police, to monitor, and to punish wrongdoers. The listing function reorganization has no real jurisdiction over market misconduct.



Slowing Down of Market Development

The primary role of the SFC is to regulate and not to lead market development. The disadvantage of SFC playing frontline gatekeeper (in a SFC-led set-up) is that the regulator mindset will dominate and shut out companies and innovations based on subjective and conjectural beliefs. This was clearly warned against in the Ian Hay Davison Report (1988) when the SFC was set up. This is not beneficial for overall market progress and international competitiveness of our market as an international financial centre.

The proposed structures will concentrate power in a few hands under control of SFC which is regulator-minded. This mindset will tend to be risk-averse and protect the regulator by shutting off the door to many companies, or raising the threshold to such high level that less and less listings will be attracted to Hong Kong. This would compromise Hong Kong's position as an international financial centre. The same goes for new types of investment products.

Take the REIT market in Hong Kong as an example. It's been regulated solely by SFC since inception. Unfortunately the regulator mindset has stifled development of this REIT market, making it not a favourable market to list REITs as compared with other markets, like Singapore. This is very unfortunate for Hong Kong, as REITs normally account for 8-10% of US, Australia and Japan's total market capitalization.

The regulator mindset that would take center stage in the proposed structure would lessen the focus on market development for Hong Kong. This is the future of Hong Kong as an international financial centre. We are getting severe competition from the mainland's and other exchanges, and we must open the market more, instead of shutting it.

Without counter-balance and being lopsided towards the SFC, the proposed structures would only accentuate the regulator mindset which is not conducive in developing the market and products. Eventually, Hong Kong would slowly diminish its significance as an international financial centre.

Merit-based Regime

Overtime, it is likely that a Merit- or Regulator-based regime would result under the new structures and move Hong Kong backwards in regulation for listing matters. Hong Kong has adopted a Disclosure-based regime, similar to those in the US and Australia. It is interesting to note that the Standing Committee of National People's Congress endorsed a plan on December 2015 to start a reform which would hand over IPO vetting duties (suitability) to stock exchanges. This should be implemented in the 13th Five Year Plan (2016-2020). The proposed structure of Hong Kong will move Hong Kong in the opposite direction.

The Disclosure-based regime allows the market to decide and educate investors to be responsible for their investment decisions. The Merit- (Regulator) based regime will make



the regulator assume the responsibility of investment, which is obviously not ideal since the regulator cannot possess all the knowledge and experience to judge whether a company is suitable for listing (aside from ethical issues like drugs, vice and illegal operations).

The London Stock Exchange handed back the listing function to the Financial Services Authority (FSA) in 2000 and UK's regime became Regulator-based. Since then the number of listings on London Exchange Main Market has dropped dramatically as opposed to London AIM Board which has prospered.

It should be noted that according to the latest news report, the Singapore Stock Exchange is considering admitting companies having "weighted voting rights" share structure. This is something that the SFC has rejected in 2015 under its merit-based mindset. In face of keen competition for listings from other exchanges, Hong Kong will lose out if this mindset continues. It is interesting to see that Singapore Monetary Authority is planning to devolve the listing function to Listing Committee under the Singapore Exchange.

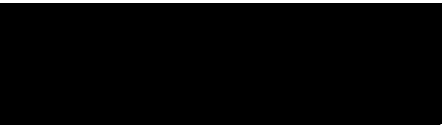
Conclusion

The Chamber objects to the proposals in that they give SFC all-encompassing control over regulatory and listing matters, with power concentrated in a few hands without proper checks and balances; they are detrimental to market development, and would lead Hong Kong back to a merit-based regime where decisions are made in a small-circle without valuable market input. We worry that the regulator-mindset would stifle the market if the proposal is enacted.

Collectively, these will harm Hong Kong's position as an international financial centre. Therefore, we propose that the current three-tier regulatory structure be continued and that the current proposals are not necessary, will not enhance the regulatory regime and will move our market backward and not forward. The current regime has worked well for the past and there is no reason to change it in particular, to a new regime that may harm the position of Hong Kong as an international financial centre.

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Yours sincerely,
For and on behalf of
The Chamber of Hong Kong Listed Companies


Mike Wong
Chief Executive Officer



BY HAND AND BY EMAIL
SECOND LETTER

Our Ref.: PYI/CS/H1/16/09/L02

15 September 2016

Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Dear Sirs,

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

We refer to the above captioned matter and our letter issued earlier today setting out our support of the views expressed by The Chamber of Hong Kong Listed Companies.

We are writing separately to you setting out our response to the above captioned consultation paper issued jointly by the Securities and Futures Commission (“SFC”) and Hong Kong Exchanges and Clearing Limited (“HKEX”) on 17 June 2016 (“**Consultation Paper**”).

We strongly oppose the structural and procedural changes as proposed in the Consultation Paper to the way in which listing regulation is carried out (“**Proposals**”), for the following reasons:

- (1) The additional layers of governance structure (and the remuneration review mechanism) set out in the Proposals are radical structural changes to the three-tier regulatory structure for the securities and futures industry and will likely lead to the SFC taking over the front-line regulator role.**

The two new committees under the Proposals, namely, the Listing Policy Committee (“LPC”) and Listing Regulatory Committee (“LRC”), will be heavily influenced by the SFC through its control of selection of members.

With the LRC proposed to oversee, give guidance on and decide



matters that involve the suitability for listing of a new applicant and its business, the Listing Committee (“LC”) will be marginalised.

Currently, new companies looking to list in Hong Kong has the benefit of the LC that consists of market participants to decide on applications and on the questions that should be asked. Members of the LC have diverse expertise, experience and market perspectives, which can complement the regulator’s perspective. **Most notably, currently members are appointed to the LC based on nominations from the Listing Nominating Committee (“LNC”). The LNC is composed of three non-executive directors of the Board of HKEX and the Chairman and two Executive Directors of the SFC. The SFC already has an influence in the LNC and thus on the composition of the LC under the current regime.**

Under the Proposals, the LPC is to initiate, steer and decide listing policy proposals and propose amendments to the Listing Rules, including market consultations and other matters that have policy implications or general effect. **In effect, it will have overall control over the Listing Rules regime affecting all companies listed or going to list in Hong Kong. The authority of the SFC will become more extensive and far-reaching, as the SFC already has the aforesaid influence in the LNC as empowered by the Listing Rules.** Although the LC would be invited to give opinions to matters considered by LPC, their views are non-binding.

The LPC will also appraise performance and recommend salary adjustment of senior staff of the Listing Department with input from the LC. In effect, the Listing Department is to be made subordinate to the SFC, which this particular proposal itself is a radical change to the existing regulatory regime as it would blur the accountability line between the two regulators in the existing three-tier regulatory structure.

(2) The changes set out in the Proposals are radical changes to the existing regulatory regime instead of mere enhancement.

In the Proposals, the stated objectives of introducing the proposed structures are to achieve closer co-ordination and co-operation between the SFC and The Stock Exchange of Hong Kong Limited (“**Exchange**”) on policy formulation and to provide the SFC with earlier and more direct input on listing policy matters and listing regulation, and to streamline the processes for making important or difficult listing decisions.

Currently, there are existing channels and mechanisms for the aforesaid coordination and cooperation which the SFC is informed of including



listing applications and the oversight and control of the formulation and administration of the Listing Rules and listing policies. As mentioned above, we believe that the changes set out in the Proposals are radical changes to the existing regulatory regime. At the same time, we note that **the Consultation Paper is silent on (i) the discussion of the possibility to achieve the stated objectives by working on the existing platform without introducing radical changes; and (ii) the shortcomings of the existing platform.** Our disagreement to radical changes to the existing regulatory regime is further elaborated below.

- (3) **Structural changes, which would inevitably bring uncertainties, are unnecessary while we have an established and proven system in place. Also, the regulators have already been empowered by the existing laws and regulations to uphold market integrity.**

While under the existing mechanism, the roles between the front-line regulator (i.e. the Exchange) and the back-line regulator (i.e. the SFC) are delineated, we believe that the changes set out in the Proposals **will cause a disruption to the existing balance between market development (with the front-line regulator closer to the market) and investor protection (with the back-line regulator a statutory body).**

In addition to the aforesaid proven regulatory structures in place, the existing civil and criminal regime for market misconduct offences already empowered the SFC to protect Hong Kong's markets and investors from serious crime and misconduct which can undermine investor confidence and cause severe financial losses. Therefore, we believe that radical changes to the existing regulatory structure are unnecessary.

- (4) **The uncertainties in association with structural changes could bring unintended undesirable consequences.**

As mentioned above, we believe that the Proposals indicate a departure from the existing three-tier regulatory structure. The changes as set out in the Proposals are likely to cause a disruption to the existing balance between market development and investor protection. Consequentially, the mind-set of the market as a whole will also be affected. For example, a regulator-based regulatory regime will tend to encourage a risk-averse approach in decision-making process, which will thus stifle innovation. We strongly believe that a departure from the existing regulatory regime is detrimental to Hong Kong when we are facing the challenge of global competition.

We conclude by suggesting that the possible negative effects that the



Proposals may bring, whether directly or indirectly, should not be underestimated. On the other hand, enhancements on the platforms currently in place are always possible without creating unnecessary uncertainties to the market and the regulatory regime. Therefore, we strongly oppose the Proposals in their entirety.

Yours faithfully,
For and on behalf of
PYI Corporation Limited



Shing On Wai
Company Secretary