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BY HAND

14 November 2016

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

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

Dear Sirs,

We, Y. T. Realty Group Limited, write with reference to the captioned matter and are pleased to submit our views on the proposals (the "Proposals") in the captioned consultation paper published in June 2016 (the "Consultation Paper").

We submit that the Proposals do not align well with the existing appeal of Hong Kong's regulatory system nor do they directly address the objectives stated in the Consultation Paper (the "Purported Objectives"). In addition, the Proposals would create new problems for both the regulatory regime and the market.

**THE PROPOSALS ARE ANTITHETICAL TO HONG KONG'S EXISTING
APPEAL**

Inconsistent with Our Established Regulatory Environment

1. The complementary roles of market operation and regulation have been respectively the foci of The Stock Exchange of Hong Kong Limited (the "HKEX") and the Securities and Futures Commission (the "SFC"). Under the current regime, the roles of market operation and regulation are clearly delineated: HKEX is responsible for the front line regulation of listed companies; approval of listing are handled by an independent Listing Committee (the "LC") comprising of market practitioners and professionals; whereas back-line regulation and approval of rule changes are the responsibility of the SFC. This coordinated system has been functioning competitively since before the handover.



2. The balance and allocation of regulatory roles in the current regime has accounted for the success of Hong Kong as hub for both overseas and Chinese enterprises. For instance, the facilitation of listings on the Growth Enterprise Market board has lent uniqueness to our capital formation success. As we have not seen any evidence pointing to a failure of the existing regulatory regime to maintain a fair market and protect public investors, there is no imminent need to give a general overhaul of the entire functioning system when the emerging regulatory needs can be readily resolved under the existing mechanism. On the other hand, the Proposals may lead to deterioration of the regulatory regime, thus undermining Hong Kong's attractiveness as a reputable and desirable venue of choice for raising international capital.

Market Development may be Stifled

3. As explained in the Ian Hay Davison Report in 1988 (the "Davison Report"), in view of Hong Kong's market position compared to its competitors, it is strategically suitable for Hong Kong to adopt a market regulation approach in line with its "traditional free market philosophy" (paragraph 3.23), and that "*given the complexity of modern securities markets and the speed of market events, **there is no alternative to practitioner-based regulation**. Only the market authorities can keep abreast of overall market conditions and the financial position of intermediaries; and are in a position to undertake on the spot detection of trading abuses"* (paragraph 3.26). As a result, "[the SFC] is thus the watch-dog, with the market handling the day-to-day supervision and regulatory tasks".
4. Contrary to the abovementioned overriding principle, what the Proposals in effect purport to do is to reduce market handling of the "day-to-day supervision and regulatory tasks" to routine operational tasks, by shifting the power to the SFC which has already been armed with the power to perform the watchdog function. This will inevitably undermine the foundational philosophy and market direction of Hong Kong as an international financial hub.
5. As a result of the Proposals, the disclosure-based orientation in the regulatory regime is going to give way to cumbersome supervision and control due to a spectacular increase in the SFC's structural power in listing matters. As will be explained, the proposed increase in the SFC's power does not necessarily address the inefficiencies or the conflicts of interest in the existing system, and thus do not necessarily aid in achieving the Purported Objectives. On the contrary, the failure to provide a balance against such a structural change towards stringency will inevitably adversely affect market expectation and stifle development.

LITTLE JUSTIFICATION FOR THE PROPOSALS

6. The Consultation Paper purports to lend focus to the structural changes serving to clarify responsibilities thereby promoting coordination and efficiency between HKEX and SFC to adopt a more proactive approach towards identifying and addressing potential public interest issues. It is proposed that two new bodies be set up to oversee listing matters: the Listing Policy Committee (the "LPC") which will initiate, steer and decide listing policy proposals and proposed rule amendments,



and the Listing Regulatory Committee (the “LRC”) which will adjudicate on novel or controversial listing applications. However, the proposed structure adds an extra layer in the form of the LRC to the current listing approval process, which goes against the Purported Objectives to streamline the current process. There is little justification for the Proposal when such Purported Objective can also be achieved by streamlining or promoting liaison within the existing structural framework without giving an overhaul to the current structure.

7. While the LC is currently in charge of all the listing applications, the SFC is not only informed of the process but is also able to carry out its supervisory and enforcement role when necessary. Moreover, under the current regime, members of the LC are appointed by the Listing Nominating Committee with half of its members from the SFC (namely the Chairman and two Executive Directors of SFC), this gives the SFC an inherent veto power over the nomination of LC members, thereby ensuring SFC’s early involvement in listing matters and introducing regulatory elements in the current listing process. In consequence, the argument that a full structural revamp is required to equip the SFC with power to prevent the future occurrences of regulatory mishaps is invalid. Similarly, the SFC has influence over the policy direction of the LC under the existing framework (paragraph 6.5-6.7 of the Memorandum of Understanding Governing Listing Matter dated 28 January 2003).

EXISTING REGIME SUFFICIENT TO COMBAT CURRENT MARKET ISSUES

8. Whilst we appreciate that there is a realistic need to tackle irregularities in the market such as insider dealings, suspected back-door listing and related share plunges, it is the manner in which they are tackled is called for, and not a fundamental revamp of the regulatory structure, as there is no indication that the current regulatory framework has failed to curb such activities nor introduce timely policy changes to address market problems.
9. For instance, in respect of fraudulent listings, matters of quality of investment banks’ professional scrutiny of companies’ financial records and matters of prospectus disclosure are to be specifically addressed by the SFC in exercise of its monitoring and enforcement functions. Under the existing structure, the listing requirements or conditions can also be moulded to suit the requirements of emerging regulatory needs, and investigation and enforcement by the SFC be conducted with a tightened fist to send a clear message of deterrence.
10. Regardless of the market and regulatory structure, Hong Kong has comprehensive law that provides for the regulatory sector to enforce the listing standards and for the private sector to protect shareholders, including minority shareholders’ interest. Effort may be concentrated on implementing the measures or framework already in place and optimizing its use, rather than wishing for a structural reorganisation to eventually address all the specific listing requirement and enforcement issues.



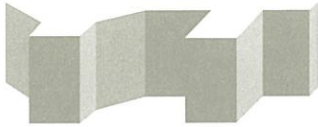
SPECIFIC PROBLEMS INHERENT IN THE PROPOSED STRUCTURAL CHANGES

The Power Imbalance between HKEX and SFC

11. We note that with the formation of the LPC and the LRC (collectively the “New Committees”), the power balance between the HKEX and the SFC will be tilted with the SFC gaining major influence and control over the New Committees.
12. It is proposed that both the LPC and the LRC will have equal representation from the HKEX and the SFC, out of which the Chairperson and Deputy Chairpersons of the LC shall serve as representatives of HKEX on the New Committees. However, as explained in paragraph 7 herein, the SFC has the power to veto an appointment of the Chairperson or the Deputy Chairpersons of the LC which in turn will also affect the composition of the LPC and the LRC. Accordingly, the Proposal will give the SFC even greater influence over committees of the HKEX.
13. Indeed, in the Davison Report at paragraph 4.44, the idea of the Government appointing all the members of the LC equivalent was rejected as “*it would represent an unnecessary and undesirable level of continuing interference in the internal affairs of the SEHK*”.

The Disproportionate Control Proposed for the Listing Policy Committee

14. Under the current structure, the LC takes recommendations from the Listing Department (the “LD”) or the SFC (through the monthly listing matters liaison meetings) in respect of rules and policy-making, and considers modifications or developments with the aid of the LC’s members’ practice experiences and input, subject to the approval of the SFC.
15. It is proposed that the LPC will takeover the LC’s role to “*steer the Exchange’s work on the Listing Rule amendments and overall listing policy*” (see paragraph 10 of the Consultation Paper). Whilst the LD will still present to the LC any matter to be discussed with the LPC, comments provided by the LC are non-binding on the LPC. As such, LC’s role will effectively be reduced to an intermediary, the Proposals also serve to abrogate the existing influence of market participants and substantially extend the role of the SFC in rules formation and amendments. Further, as SFC will have dominating influence over the composition of the LPS (see paragraph 12 herein), having the LPC overseeing the rules formation and amendments function would in effect reinforce SFC’s influence thereto, rather than facilitating better coordination between HKEX and SFC.
16. Currently, the LD is part of the organisational structure of the HKEX and thus is subject to the HKEX’s internal performance appraisal and salary recommendation policy. Under the Proposals, the LPC will also be vested with the power to appraise the senior executives of the LD in the performance of their regulatory responsibilities, and LPS’s assessment will be taken into account by the HKEX’s Remuneration Committee when determining the overall compensation of the senior executives of LD.



17. The Proposals would thus allow the LPC, which is subject to the SFC's dominant influence as explained in paragraph 12 herein, to exert extensive control and oversight over the LD, and in turn, substantially shift the HKEX's role of assessment and supervision of the LD to the SFC. There is no convincing evidence for the need of such a fundamental change.

The Diminished Role of the Listing Committee

18. The LC's existing independence and composition have contributed greatly to the current regulatory regime. Specifically, the LC's composition of the HKEX's chief executive, 27 market practitioners and investor representatives allow for the injection of expert perspectives from experiences in relation to market and regulatory system. With such a composition, the LC's role in processing listing applications has been crucial to the flexibility, diversity and innovation in our regulatory regime.
19. Under the Proposals, the decision-making power of the LC would be reduced to that over applications that do not involve "suitability concerns or broader policy implications". While the Consultation Paper provides (in paragraph 7) that the large majority of cases will still be dealt with by the LC, with few being referred by the LD to the LRC, we submit that with regard to the elusive definitions of "suitability concerns" and "broader policy concerns", there is no guarantee that decision on the large majority of cases will remain under the LC should the Proposals be implemented. Moreover, if a matter is not referred by the LD to the LRC, the decision would be made by the LD and LC which shall jointly bear responsibility and be accountable to such decision, this would induce the LD to always place a safe bet by referring more matters to the LRC. This is especially so given that the performance of the LD senior executives are proposed to be evaluated by the LPC. The Proposals will put the LD in a difficult situation whereby their performance is assessed by a committee comprising mostly of non-HKEX members who are their regulator. It inevitably marginalises the role of the LC.
20. Further, considering that the composition of the LC is mainly of market practitioners, should the role of the LC be limited to routine matters and subjected to the elusive exclusion of matters involving "suitability concerns or broader policy concerns", not only will the market input in the regulatory regime be diminished to an unhealthy extent thereby departing from the existing balance between market operation and regulation, but also the highly qualified and experienced market practitioners would find less genuine incentive to take part in the LC.

SFC's Current Power Sufficient

21. Under the existing regime, the SFC already has sufficient regulatory and veto power with regard to important matters such as amendments to the Listing Rules and policy making by the HKEX. There is satisfactory balance to the market practitioners' input in the process of approving IPO applications and formulating listing policies.



22. The argument that the extent of the SFC's powers under the Proposals do not differ much from the existing structure is untrue. The Proposals serve to substantially increase the SFC's power in direct and active control of the market operation organs except on routine matters by taking over the functions currently undertaken by the LC, as opposed to the veto power it currently enjoys over the listing application and policy-making process. LC's function is reduced to routine matters or giving "non-binding" opinion.
23. It is also apparent that given the primary function of the SFC is regulatory, it is inevitable for the SFC to hold a relatively risk-averse and conservative approach, this conflicts with the initiative to develop the market to embrace new opportunities.

From a Disclosure-based Regime to a Merit-based Regime?

24. In view of the ongoing fierce competition from stock exchanges of other jurisdictions, it is unfortunate that the Proposals direct Hong Kong to set a deep foot into a merit-based regime. As stated in the Davison Report at paragraph 3.25, "*market management and regulation by practitioners offer scope for flexibility and adaptability in a rapidly changing market... Statutory regulators will not always have the knowledge and experience*". A merit-based regime unnecessarily restricts business freedom and innovation. Furthermore, unlike a disclosure-based regime, an interventionist regulatory mind-set compromises the ability of the market to take responsibility for investment decisions, learn from experience and self-renew in the process. It is especially inapt to promote a merit-based regime in a market like Hong Kong whose appeal has been its market-oriented environment. The Proposals suffer the classic problem in a merit-based regime, which is that the regulator is trusted with dominant control to understand the market enough to regulate it while accommodating its needs and innovation in the long run. It is doubtful whether, with a primary and historical role in regulation, the SFC is institutionally suited to strike a balance between conflicting concerns in market operation and regulation.
25. Only 2 years ago Hong Kong lost the Alibaba IPO to New York due to the inability to accommodate its weighted voting rights structure. This is to be contrasted with Singapore's sanctioning of unlisted public companies to issue shares with weighted voting rights to provide for capital management flexibility. The paternalistic regulatory mind-set has prevented innovation in allowing such share structures and is against the international trend of moving towards a disclosure-based regime. For the SFC to step up in its already supervisory role will be damaging to Hong Kong's international competitiveness.
26. It is likely that the Shanghai and Shenzhen markets will steer towards having stock exchanges in charge of IPO vetting and suitability, instead of the China Securities Regulatory Commission, according to the endorsement by the Standing Committee of the National People's Congress in December 2015. Hong Kong should be mindful to maintain its edge in this regard.



渝太地產集團有限公司
Y. T. REALTY GROUP LIMITED

CONCLUSION

27. For the abovementioned reasons, we object to the Proposals for their inability to directly address the current market issues and to optimise the use of the existing regulatory structure, their effect of abrogating the proven regulatory power of the market practitioners and the HKEX in the LC, and the creation of new problems due to the undue concentration of power on the SFC without proper balance. It is of ample importance that the existing and well-established regulatory be flexibly utilised to meet the evolving needs of the market and its regulation. The substantial changes in the Proposals would do more harm than good to the competitiveness of the Hong Kong stock market and reputation as a financial hub.

Yours faithfully
For and on behalf of
Y. T. Realty Group Limited



Yuen Wing Shing
Executive Director