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The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Review Structure In Relation To Listing Committee Decisions

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10th Floor, One International Finance Centre
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Hong Kong

Dear Sirs

Consultation Paper (CP) on Review Structure In Relation To Listing Committee Decisions

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

Market Developments

As set out in paragraph 2 of the CP (the definitions of which are adopted in this submission), following the Joint Consultation and Conclusions, the SFC has now adopted a front-loaded approach to listing regulation. As explained elsewhere by the SFC this was following the discovery of the Securities and Futures (Stock Market Listing) Rules (SMLR). In short, the SFC's concerns under the Joint Consultation are now being addressed by the SFC directly. This means that the ultimate gatekeeper not only for IPOs but generally on matters covered under the SMLR is now the SFC. In this context, we do not see any particular issues whether the proposals under the CP are implemented or not. The focus should rather be how the proposals could lighten the burden upon the Listing Committee and LAC members. As such, we support the proposals under the CP that helps Listing Committee and LAC members lighten their workload from a practical governance perspective.

Response to the CP

In relation to the questions raised by the CP, please find our submission as follows:

Q1: Do you agree to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review? Please give reasons for your views.

From Member views because of the *de novo* nature of the review hearings at LRC, LD(R)C and LAC, there could well be new updates and materials provided for the decisions of Material Significance which was not originally provided and/or emphasised at the original Listing Committee hearings. Given the LAC comprises a limited pool of persons, there is justification for the proposal under the CP for a review to be at one level only. This is because it is logical to ask why a person should have three chances to make an application *de novo* at the Listing Committee, LRC or LD(R)C and then LAC. We therefore support the proposal based on practical governance.

Q2: Do you agree with:

(a) the proposal to establish a new independent review committee to replace the LRC and the LD(R)C respectively and to hear reviews currently conducted by them?

With the SFC now using its powers under SMLR we are not certain that the concerns expressed during the Conclusion stage are as material as they would otherwise be. This is especially given the elaborate internal processes of Listing Committee to ensure that the members reviewing Listing Committee decisions are independent and do not have any conflicts. However, as the proposal lightens the workload of the Listing Committee members, we support the proposal from this perspective. An alternative would be simply to expand the Listing Committee with members specifically with an appellate function.

(b) the size and composition of the new independent review committee (including the mix of members' representation)?

We have no particular issue with there being one committee with 15 persons, but believe that governance professionals like Chartered Secretaries should be within the mix of members' representation. Please note that the UK Privy Council has approved a second designation for Chartered Secretaries as Chartered Governance Professionals which HKICS would confer as from

September 2018. Those with governance experience should be qualified to be considered for appointment.

Q3: If the Exchange decides to retain two levels of review for decisions of Material Significance made by the Listing Committee, do you agree that the LAC is to be replaced by a review committee with members being drawn from the proposed new independent review committee and chaired by a member of a separate chairperson panel? Are there any additional process or safeguards that you would suggest to enhance this aspect of the review structure for such decisions of Material Significance? Please give reasons for your views.

As set out in our answer to Q.1 this is unnecessary. In any event, if the LAC review is to be retained, the normal procedures adopted for the review of other decisions should apply in case the appeal to LAC is to be retained.

4. Do you agree with the proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters on the basis described in paragraphs 102 to 105? Please give reasons for your views.

The most important issue is how the LAC intends to go about its decision making process. The proposal under paragraphs 98 to 101 would make the LAC decision making process more in line with those of a court which would probably result in a formalised and precedent based approach over time. The current *de novo* flexible hearings approach would eventually be changed. This is a policy issue over which the concerns set out in paragraph 99 of the CP need to be addressed.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at

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Yours faithfully,

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David Fu FCIS FCS(PE)

President

The Hong Kong Institute of Chartered Secretaries