THE
LAW SOCIETY OF HONG KONG
香 港 律 師 會

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE（電話）: (852) 2846 0500
FACSIMILE（傳真）: (852) 2845 0387
E-MAIL（電子郵件）: sg@hklawsoc.org.hk
WEBSITE （網頁）: www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

BY EMAIL & BY POST

3 October 2018

Hong Kong Exchanges and Clearing Limited,
10/F, One International Finance Centre,
1 Harbour View Street,
Central,
Hong Kong

Dear Sirs,

Consultation Paper on Review Structure in relation to Listing Committee Decisions

I refer to the captioned consultation, and I enclose the Law Society's Submissions on the subject matter for your attention.

Yours faithfully,

[redacted]

Eileen Tam
Assistant Director, Practitioners Affairs

Encl.

THE LAW SOCIETY OF HONG KONG 香港律師會

CONSULTATION PAPER ON REVIEW STRUCTURE IN RELATION TO LISTING COMMITTEE DECISIONS

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "**Exchange**") issued a consultation on the "Review Structure in Relation to Listing Committee Decisions". In response thereto, the Law Society provides the following submissions on the consultation questions posed.

Question 1: 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.

Law Society's response:

The current two-level review structure for decisions of Material Significance has worked well. It has largely insulated the Exchange's decisions from being challenged by way of judicial review. The existing system was designed with that in mind. Unless there are cogent justifications, the system currently in place, which was devised applying rules of natural justice, should be allowed to continue. While the Exchange is concerned that having two levels of review may give an applicant an unfair advantage, this is not borne out by the statistics which showed that only two out of the 12 cases were overturned at the second review hearing. A parallel can be drawn with the Hong Kong Court of Final Appeal ("CFA"): only a handful of cases were decided at the CFA. The importance is that the affected parties consider that there exist reasonable avenues for review without having to resort to judicial review proceedings. If the two-level review structure is retained, and the Listing Appeals Committee ("LAC") is to be replaced by a new independent review committee, this will be an improvement of the existing structure.

Question 2: Do you agree with:

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

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

Please give reasons for your views.

Law Society's response:

(a) We agree with the proposal to establish a new independent review committee. This is in particular if decisions of the Listing Committee will be subject to only one level of review, when the perception of independence is even more important.

(b) We agree with the proposed minimum size of the new independent review committee (being about half of the Listing Committee) and the proposed minimum number seats given to the investor representatives (being comparable to the Listing Committee). While having former Listing Committee members on the new independent review committee should help to ensure the quality and efficiency of the review process and result, it is essential for there to be a balanced representation of former Listing Committee members and investor representatives and market practitioners who have not been members of the Listing Committee and are experienced with the Listing Rules. A review committee with predominantly former Listing Committee members might not be seen to be entirely consistent with the objective of enhancing the independence of the review process.

Question 3: 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.

Law Society's response:

We agree that if the two-level review structure is retained, the LAC should be replaced by an independent review committee. Having said that, while the chairman will be chosen from a separate chairperson panel, the current issues

regarding the perceived lack of independence of the LRC/LD(R)C from the Listing Committee and the possibility of the less experienced members reviewing a decision at the second level would apply to such second level review committee if all (except one) of its members will be from the first level review committee. To address such issues, an entirely separate review committee would seem inevitable. This could be challenging in the light of a limited number of suitable and willing candidates. This is a further reason why a proposed two-level review structure might not be feasible.

Question 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.

Law Society's response:

We agree with the proposal to publish decisions of the new Listing Review Committee for non-disciplinary matters.

We note the proposal that if the Exchange considers that the disclosure of the identity of the review applicant may be unduly prejudicial to a party's interest or that the decision is price sensitive or may contain price sensitive information, the Exchange will have the discretion to publish the review decision on a no-name basis or to publish it on a delayed basis. In response to this we propose the following such that the publication on a no-name or delayed basis shall not be subject to the Exchange's discretion in certain circumstances.

(a) In the case of a new listing applicant, the review decision should <u>always</u> be published on a no-name basis. The objective of promoting transparency and accountability should not outweigh the confidentiality of any negative information about a new listing applicant when it is not yet (and may never be) listed on the Exchange.

(b) In the case of a review decision relating to any price sensitive information of a listed issuer, the publication of the review decision on a named basis should <u>always</u> be delayed until the listed issuer announces the price sensitive information in accordance with the Listing Rules and the Securities and Futures Ordinance. The fact that the price sensitive information is subject to the review process should not accelerate the disclosure of the price sensitive information under the Listing Rules and the Securities and Futures Ordinance, for example if the price sensitive information is about an incomplete proposal and the listed issuer has procedures in place to preserve and does preserve confidentiality of the information (such that the statutory disclosure obligation of the listed issuer might not have arisen yet). This means that if the listed issuer is allowed under the Listing Rules and the Securities and Futures Ordinance not to announce the price sensitive

information, the review decision should never be published on a named basis.

Chapter 5:
The Exchange does not consider that specific consultation is required in relation to these provisions (as they reflect the MOU and administrative procedures) but would be pleased to receive any comments from respondents.

Law Society's response:

We have no comments on the proposed codification of the SFC's existing powers.

The Law Society of Hong Kong
2 October 2018