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IFPHK's Response to the Hong Kong Exchanges and Clearing Limited (HKEx) Consultation Paper on A Listing Regime for Companies From Emerging and Innovative Sectors

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Institute of Financial Planners of Hong Kong (IFPHK) - Profile

<u>Background</u>
The IFPHK was established in June 2000 as a non-profit organization for the fast-growing financial industry. It aims to be recognized in the region as the premier professional body representing those financial planners that uphold the highest standards for the benefit of the public.

The IFPHK is the sole licensing body in Hong Kong authorized by Financial Planning Standards Board Limited to grant the much-coveted and internationally-recognized CFP^{CM} certification and AFP^{TM} certification to qualified financial planning professionals in Hong Kong and Macau.

It represents more than 6,800 financial planning practitioners in Hong Kong from such diverse professional backgrounds as banking, insurance, independent financial advisory, stockbroking, accounting, and legal services.

Currently there are more than 147,000 CFP certificants in 24 countries/regions; the majority of these professionals are in the U.S., Canada, China, Australia and Japan, with more than 4,700 CFP certificants in Hong Kong.

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<u>IFPHK's interest in this consultation</u>
The mission and vision of the IFPHK is to promote the importance of financial planning[1]. The IFPHK is the sole licensing body in Hong Kong authorized by the FPSB to grant the internationally recognized CFP^{CM} Certification and AFP^{TM} Certification to qualified financial planning professionals in Hong Kong and Macau.

As the leading professional body for the welfare of the financial planning industry, the IFPHK actively responds to policy changes that affect the industry or the financial system as a whole. In 2009, we commented on the Securities and Futures Commission (SFC) proposal put forward in the wake of the Lehman Brothers Minibond Saga that suggested ways to better protect the investing public. In 2010, the IFPHK submitted a response to the consultation paper on establishing an Investor Education Council and a Financial Dispute Resolution Centre. In 2014, the institute responded to the Consultation Document on developing an effective resolution regime in Hong Kong. Last year, it commented on Hong Kong's Financial Competency Framework and Hong Kong's Strategy for Financial Literacy. A list of IFPHK responses to various consultation papers can be found on our website (http://www.ifphk.org/ee/importance-of-advocacy).

[1] www.fpsb.org. Financial planning refers to the process of setting, planning, achieving and reviewing life goals through the proper management of finances.

In 2016, IFPHK responded to the Join Consultation Paper on Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation Issued by the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited. We supported the proposals to enhance governance of the listing process.

In light of the above, IFPHK wishes to comment on the proposals set out in the Consultation Paper.

IFPHK's representation

IFPHK was founded by 30 members (the 'Founding Members') to raise the standards of financial planners and highlight the importance of sound financial planning.

IFPHK currently has 37 Corporate Members, including banks, independent financial advisors, insurance companies and securities brokerages. With our Corporate Members providing a full spectrum of client services and products, the IFPHK is well positioned to understand the needs, concerns and aspirations of the financial planning community.

Executive Summary

On 23 February 2018, the Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx) published a consultation paper seeking public feedback on proposed rules to expand Hong Kong's listing regime. The changes would facilitate listings of companies from emerging and innovative sectors ("consultation paper"). The Exchange has invited broad market feedback on the substance of its proposals and the proposed Listing Rules. The public comment period ends on 23 March 2018.

Following Alibaba's attempt to be listed in Hong Kong in 2013, HKEx published a concept paper seeking views from the public on whether weighted voting rights (WVR) structures should be permissible for companies currently listed, or seeking to list, in Hong Kong. There has been much impassioned debate and dispute on the subject. The Exchange published the New Board Concept Paper Conclusions on 15 December 2017 (the "Concept Paper"). The proposals set out in this Consultation Paper are in response to that Concept Paper.

Although financial planners are not directly affected by the proposed regime, the changes are significant for the financial service industry as a whole because publicly listed securities are major investment vehicles. For this reason, the IFPHK would like to provide general comments on the proposals of the Consultation Paper.

Our comments are based on the following principles

1. Assuring the quality of listed companies

Over the past two decades, many newly listed companies have later been deemed unfit for public listing. This unacceptably large proportion of failures reflects the shortcomings of the current voluntary-disclosure system in protecting investors' interests[2]. Hong Kong's position as a key IPO destination does not lie with the amount of funds raised or the number of new listings. Sustainable growth of the local stock market relies on the quality of its listed companies. Heightened concerns over growing IPO fraud and the deteriorating quality of listed companies have raised questions about whether or not the Exchange should continue its dual role as a for-profit company and a regulator of listed companies. Major international stock markets have, for many years, moved the responsibility for listing matters entirely to the securities regulator or an independent regulatory body, as in the US and the UK. Hong Kong is behind the curve in terms of having an independent regulator to administer listing matters.

2. Enhancing investor protection

The IFPHK supports a regulatory system that would facilitate delivering better financial products and services for the investing public as well as protecting them. The IFPHK is aware that many overseas companies are seeking a listing in Hong Kong to tap into the market for long-term institutional investment funds. To attract these companies, Hong Kong must maintain a transparent and well-regulated market. Effective consumer protection and a healthy balance between robust regulations and market development are our areas of focus.

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[2] Peter Liang, "Opinion: IPO reform – stockbrokers need to look at both sides of the coin, China Daily, 3 August 2016

The Exchange has a statutory duty to act in the interest of the investing public, but HKEx is also a listed company that polices the companies that provide its revenue and shareholder dividends. Such a dual role is not ideal. There are conflicts of interest.

2. Enhancing investor engagement and stewardship
The London Stock Exchange has established an independent body consisting of representatives from the regulatory sector, professionals, and the investing public, to vet IPO applications. The engagement of retail investors in Hong Kong, however, is almost non-existent. Retail investors hardly ever vote, despite the advances of technology and emergence of online brokers. Even the participation of institutional investors is not very active compared with the US. Principles of responsible ownership and investor stewardship are now widely discussed in the asset management industry. The Government and regulator should increase the engagement of retail investors and institutional investors.

3. Enhancing financial literacy and promoting financial education
Well-informed and educated consumers are core elements in a healthy regulatory system. For a market to perform effectively and for consumers to be protected properly, a fundamental understanding of how financial products work is essential. Given that such a high proportion of Hong Kong people invest in financial markets, especially securities, it is important for them to adopt and apply responsible attitudes towards investing and money management.[3] The IFPHK considers it effective and appropriate to empower, and improve the awareness of, investors through means such as investor education.

While the IFPHK is open to the idea of introducing a WVR structure, we recognize that such changes are very important and critical to the markets and the economy. We believe they are of such significance that they warrant revolutionary change to the Listing Regime and the Regulatory Framework rather than a relaxation of the Rules accompanied by piecemeal safeguards for investors.

IFPHK's comments are summarized as follows:

- Review the power and roles of the Exchange
  As repeatedly stated in IFPHK's submission, our major concern is the dual and conflicting roles of HKEx and the Exchange. There is growing criticism that the Exchange is putting too much emphasis on advancing the interests of its shareholders and members as a publicly listed company and too little on fulfilling its fiduciary duty as a regulator of listed companies. We urge the Government to review the Exchange's dual roles as a profit-making company and a regulator of listed companies. The IFPHK thinks that in the long run a complete segregation of the Exchange's regulatory functions from its commercial and operating activities is needed. This will align with international best practice and avoid conflicts of interest that jeopardise investor interests.

- Composite of the Listing Committee
  The definition of "innovative company" is vague. Pre-revenue listings of biotech companies would essentially involve approving companies without any track record. We have doubts that Listing Committee members possess the know-how to assess these companies. The

[3] Investor Education Council, press release on 23 July 2013.

IFPHK suggests that the Government diversify the Listing Committee membership to include retail investors' advocates, institutional investors and those with the technical expertise to understand the "new economy". The engagement of retail and institutional investors would act as a watchdog for the listing process.

- Enhance investor education on the securities market
  Compared to other exchanges, the Hong Kong's Exchange does relatively little in terms of promoting financial literacy and educating the investing public. Given the high participation of local investors in Hong Kong's securities markets, the Exchange has the responsibility to educate the public on shareholder's rights and the risks associated with securities products. The IFPHK urges the Exchange to spend more on, and invest more resources in, investor education.

- Establish a Trust to provide legal assistance to retail investors.

- Additional safeguards for example, setup mechanism that enable non-WVR shareholders to dismiss a WVR beneficiary, obtain record s from independent regulators and/or judiciary for secondary listing issuers, etc.

Hong Kong's position as a key IPO destination does not lie in the amount of funds raised or the number of new listings. Sustainable growth of the local stock market relies on the quality of listed companies. "One-share, One-vote" is still the gold standard. For this reason, there should be a proper balance between business development on one hand and good corporate governance on the other. The Exchange as a frontline regulator of listing matters must function effectively as a gatekeeper. Given its conflicted roles, suspicions that the Exchange's decisions are purely commercial is inevitable. We find it urgent that the Government address these concerns.

The statements given in the IFPHK's response to the Consultation Paper are based on objective and independent analysis of market and consumer needs. To ensure that the IFPHK understands the concerns and practicality of the issue, it has sought comments from active industry practitioners who deal with this issue on a regular basis.

The HKEX Consultation

On 23 February 2018, the Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx) published a consultation paper seeking public feedback on the proposed new rules to expand Hong Kong's listing regime to facilitate listings of companies from emerging and innovative sectors ("consultation paper"). The Exchange invites broad market feedback on the substance of its proposals and the proposed Listing Rules to give effect to the proposals. The public comment period ends on 23 March 2018.

The proposals in the consultation paper closely follow the Way Forward as set out by the Exchange on 15 December 2017 in the New Board Concept Paper Conclusions (the "Concept Paper").

The paper includes draft Main Board Listing Rules (Listing Rule or Rules) to:

(a) permit listings of biotech issuers that do not meet any of the financial eligibility tests of the Main Board;

(b) permit listings of companies with weighted voting right (WVR) structures; and

(c) establish a new concessionary secondary listing route for Greater China and international companies that wish to secondary list in Hong Kong.

The Exchange has proposed separate new chapters in the Listing Rules for biotech, WVR and the new concessionary secondary listing route.

In its proposals, the Exchange offers specific guidance on the listing eligibility for pre-profit/pre-revenue biotech issuers that produce pharmaceuticals (small molecule drugs), biologics, and medical devices (including diagnostics). Manufacturers of other biotech products will be considered on a case by case basis. Since issuers listed under the proposed biotech chapter would not meet any of the financial eligibility tests of the Main Board, these issuers potentially carry additional risks to investors. Accordingly, the proposals include detailed eligibility and suitability criteria for determining appropriate applicants, a higher market capitalization requirement, enhanced disclosure requirements as well as restrictions on fundamental changes of business.

On innovative issuers with WVR structures, the proposals closely follow the position set out in the Way Forward section of the New Board Concept Paper Conclusions. An applicant will be required to demonstrate that it is eligible and suitable for listing with a WVR structure by reference to a number of characteristics, including the nature of the company and the contribution of the proposed WVR beneficiaries. Recognizing the potential risks associated with WVR structures, the Exchange has proposed detailed safeguards, including limits on WVR power and measures to protect non-WVR holders' right to vote, enhanced corporate governance requirements as well as enhanced disclosure requirements.

For the proposed new secondary listings chapter, the Exchange aims to strike a balance between facilitating listings of innovative companies that are primarily subject to regulation overseas and providing appropriate investor protection. As a result, it has proposed a new regime for three types of companies that are primary listed on a Qualifying Exchange (QE) in the US or the UK, namely: (a) Greater China issuers that were primary listed on a QE before the publication of the New Board Concept Paper Conclusions; (b) those that were primary listed on a QE afterwards; and (c) non-Greater China issuers.[4]

[4] Stock Exchange press release 23 February, 2018 http://www.hkex.com.hk/News/News-Release/2018/180223news?sc_lang=en

IFPHK's Submission

The views expressed in this submission paper are not necessarily simply summaries of the views taken from the industry. They have undergone independent and critical analysis and consideration by the IFPHK as a professional body. As a result, not all the views collected by the IFPHK are recorded in this submission paper. Nor have all the views expressed in this paper been directly endorsed by the industry representatives or members consulted. The IFPHK takes the practical implications of the proposed changes for the work of financial planners, who advise and provide professional services to investors, as its utmost priority.

In considering the various proposals of the Consultation Paper, the IFPHK's comments are based upon the following principles and beliefs:

IFPHK's Principles

1. Assuring the quality of listed companies

Over the past two decades, many newly listed companies have later been deemed unfit for public listing. This unacceptably large proportion of failures reflects the shortcomings of the current voluntary-disclosure system in protecting investors' interests[5]. In 2010, the Chief Executive of China Forestry was arrested. The SFC asked the court to freeze around HK$400 million of his assets as potential reparation to investors. Another company, the Chinese fabric maker Hontex, was accused by the SFC of issuing a prospectus containing false and misleading information. Hontex agreed in June 2012 to repay more than HK$1 billion to investors. In 2015, the Exchange cancelled China Metals Recycling Holdings' seven-year-old listing. According to HKEx, the company obtained its initial listing by fraud and so was no longer suitable for listing[6]. In view of the seriousness of the IPO fraud, the SFC immediately reformed the IPO sponsor regime. Recent actions against the financial company Convoy Global again raised concerns over the quality of listed companies.

Hong Kong's position as a key IPO destination does not lie with the amount of funds raised or the number of new listings. Instead, the sustainable growth of the local stock market relies on the quality of listed companies. Heightened concerns over growing IPO fraud and the deteriorating quality of listed companies pushed the SFC to review and reform the listing process and put forward a Consultation Paper in 2016. However, this led to no significant changes.

For many years, major international stock markets have moved the responsibility for listing matters entirely to a securities regulator or an independent regulatory body, as we have seen in the US and the UK. In our view, Hong Kong is behind the curve in that it has not developed an independent regulator to administer listing matters.

Enhancing investor protection

The IFPHK supports a regulatory system that facilitates delivering better financial products and services for the benefit of the investing public, as well as protecting them. The IFPHK is aware that many overseas companies are seeking a listing in Hong Kong to tap into the market for long-term institutional investment funds. To attract these companies, Hong Kong must maintain a

[5] Peter Liang, "Opinion: IPO reform – stockbrokers need to look at both sides of the coin, China Daily, 3 August 2016
[6] Peter Guy, "Mainland Chinese define fraud differently, and Hong Kong regulators should wake up", SCMP, 14 January 2016

transparent and well-regulated market. For that reason, effective consumer protection and a healthy balance between robust regulations and market development are our areas of focus.

While the Exchange has a statutory duty to act in the interest of the investing public, HKEx is a listed company and polices the companies that provide its revenue and shareholder dividends. Such a dual role is not ideal and involves conflicts of interest.

There are claims that there are adequate checks and balances within the Exchange to avoid such conflicts of interest. However, given increasing demand for better corporate governance, the IFPHK notes that there is inevitable and growing criticism that, as a publicly-listed company, the Exchange puts too much emphasis on the interests of its shareholders and members and too little on fulfilling its fiduciary duty to the public as a monopoly[7]. To better protect retail investors, measures should be taken to address the conflicting roles of the Exchange.

2. Enhancing investor engagement and stewardship
The London Stock Exchange has established an independent body consisting of representatives from the regulator, professionals and the investing public to vet IPO applications. The engagement of retail investors in Hong Kong, however, is almost non-existent. Retail investors hardly ever vote, despite advances of technology and the emergence of online brokers. The Government and regulator should consider encouraging greater engagement of retail investors. Compared to the US, there is even relatively low participation of institutional investors. The principles of responsible ownership and active investor stewardship are widely discussed in the asset management industry.

Investor stewardship is a global trend. For example: more companies are signing on to the Japan Engagement Consortium (led by Governance for Owners Japan). There is a growing sense that Japanese firms are more willing to engage with investors, even as investors become more active. This is evidenced by the way that Japan's Government Pension Investment Fund (GPIF) has taken on a leadership role regarding domestic asset owners[8].

3. Enhancing financial literacy and promoting financial education
Well-informed and educated consumers are the core elements in a healthy regulatory system. For a market to perform effectively and for consumers to be protected properly, a fundamental understanding of how financial products work is essential. It is the IFPHK's view that improved financial literacy levels will not only allow consumers to make more informed investment decisions, but also result in greater consumer appreciation of the need to plan a long-term financial future, a concept the IFPHK continually advocates. Given the high degree of participation of Hong Kong people in financial markets, especially securities, it is important for them to adopt and apply responsible attitudes towards investing and money management. The IFPHK considers it effective and appropriate to empower and improve investors through means such as investor education.

[7] Peter Liang, "Opinion: IPO reform – stockbrokers need to look at both sides of the coin", 3 August 2016, China Daily
[8] Global and Regional Trendsin Corporate Governance for 2018, Russell Reynold Associate

Questions raised in the Consultation Paper

Dual class shares or weighted voting rights (WVR) companies

A new Chapter 8A of the Listing Rules that sets out the requirements for companies with WVR structures will be introduced. Companies with WVR structures will be required to have a minimum expected market capitalization of HK$10 billion and, if the expected market capitalization is below HK$40 billion, it will also need to have at least HK$1 billion of revenue in the full financial year before listing.

The proposals largely follow the concept paper, but some clarification of the meaning of "innovative" is set out in this Consultation Paper. The applicant is an innovative company by reference to the following characteristics:

- its success is demonstrated to be attributable to the application of (1) new technologies; (2) innovations; and/or (3) business model to the company's core business, which also serves to differentiate the company from existing players;
- research and development is a significant contributor to its expected value and constitutes a major activity and expense;
- its success is demonstrated to be attributable to unique features or intellectual property; and
- it has an outsized market capitalization/intangible asset value relative to its tangible asset value.

For this Consultation Paper, only individuals (who are directors) can be WVR beneficiaries.

There are certain limitations on WVR companies, for example:

- The voting power attached to WVR shares is capped to not more than ten times the voting power of ordinary shares.
- Non-WVR shareholders' rights to vote must be protected.
- Non-WVR shareholders must be entitled to cast at least 10% of the votes eligible to be cast on resolutions at general meetings.
- Non-WVR shareholders holding at least 10% of the voting rights on a one-share one-vote basis must be able to convene a general meeting.
- Key matters have to be decided on a one-share one-vote basis.
- Conversion of WVR shares into ordinary shares must occur on a one-to-one ratio.
- Prior approval by the Hong Kong Stock Exchange is required for the listing of the conversion shares.

In the interest of enhancing investor protection for WVR companies, the Stock Exchange will require WVR companies to adopt enhanced corporate governance measures, including the establishment of a Corporate Governance Committee comprised of a majority of Independent non-executive director (INEDs) and chaired by an INED. The Exchange will also require WVR safeguards to be incorporated into the issuer's constitutional documents, to allow shareholders to take civil actions to enforce provisions in the constitutional documents (including WVR safeguards) against the issuer.

Additional disclosures are also required for WVR companies (such as a stock marker "W" to be used at the end of the stock names of issuers with WVR structures). A warning statement "a company controlled through weighted voting rights", the description of the WVR structure, the rationale for having the WVR and the associated risks must be disclosed on the front page of all listing documents, periodic financial reports, circulars, and announcements required by the Listing Rules. The warning statement must also appear on share certificates.

IFPHK Responses

The IFPHK is open to the idea of introducing WVR structure and does recognize the need to enhance Hong Kong's competitiveness and diversify Hong Kong's market. Still, we wish to find a balance between high growth and corporate governance standards.

Opponents of the proposals say that they are a big step backward in terms of corporate governance. The IFPHK does not have a strong view on this aspect, even though minority shareholders are certainly placed in a less favourable position under a WVR structure. However, even under the existing "one-share, one vote" structure, the engagement of retail investors in Hong Kong is almost non-existent. Few minority shareholders fully understand their rights, and the legal remedies against managerial misconduct available to shareholders in Hong Kong are very limited. Minority shareholders may not be made significantly worse off by the introduction of WVR issuers given that, under the current system, they are already in a fragile position.

The critical issue lies with the corporate governance of the listing process. Our major concern is the dual and conflicted role of HKEx and the Exchange. Such conflicting roles (a regulator administering the Listing Rules as well as acting as a for-profit exchange) give rise to doubts about whether the decisions of the Exchange are in the best interests of investors.

Stock exchanges in the United States are not market regulators. Therefore it is understandable that they establish their listing criteria solely on a commercial basis. Also, the SFC does not have similar powers to those of the SEC. The SEC has the power to enforce federal securities laws. We urge the Hong Kong Government to carefully review the Exchange's dual roles as a profit-making company and a regulator of listed companies. The IFPHK thinks that in the long run a complete segregation of the Exchange's regulatory functions from its commercial and operating activities is needed. This will align with international best practice and to avoid conflicts of interest that jeopardise investors' interests.

The qualifications for an "innovative company" are set out in the Consultation Paper but they are not stated in the draft Listing Rules. The definition of an "innovative company" is highly vague. This gives the Exchange flexibility and a high degree of discretion in interpreting what an "innovative company" is. Nevertheless, it is doubtful that the Listing Committee possesses the necessary know-how to assess an "innovative company". Most (if not all) Listing Committee members are from the "old economy". We doubt that they have the know-how to judge whether companies qualify as innovative companies and understand the risks associated with these companies. The London Stock Exchange has established an independent body consisting of representatives from the regulator, professionals, and the investing public, to vet IPO applications. The IFPHK suggests the Government diversify the Listing Committee membership to invite advocates for retail investors, institutional investors, and those with technical expertise who have knowledge of the "new economy". The engagement of retail and institutional investors acts as a watchdog for the listing process.

The Exchange is also proposing to supplement its current powers to impose or issue a sanction against a non-compliant WVR beneficiary. The Listing Committee may be requested to issue directions for remedial action, which may include the WVR beneficiary giving up his/her WVRs. At first glance, this empowers the Stock Exchange to protect investors from managerial misconduct. However, the technical and legal bases for such powers are not clearly stated. This requires further clarification, and the practical exercise of those powers may require further consideration[9]. Again, we are concerned that the dual roles of the Exchange hinder it from effectively administering the rules and enforcing the penalties.

Notwithstanding the above, we welcome the proposed safeguards set out in the Consultation Paper. We consider that they do provide certain protections for investors. However IFPHK also suggests additional safeguards for the Government to consider:

- Set up a mandatory removal mechanism for WVR beneficiaries whereby WVRs attached to a beneficiary's share lapse if the WVR beneficiary dies, is no longer a member of the board, is incapacitated or no longer meets the requirements of a director. Other than the above requirements, the IFPHK thinks a mechanism should be in place to enable non-WVR shareholders to dismiss a WVR beneficiary. For example, a WVR beneficiary could perhaps be removed by 75% of the votes of ordinary shareholders plus a majority vote from WVR beneficiaries
- Increase the number of INEDs who can act as checks and balances. For instance, increase the proportions of INEDs of WVR structure issuers.

[9] Davis Polk & Wardwell, Hong Kong Stock Exchange Fleshes Out Game Plan for Dual Class and Biotech Listings, 27 February 2018

Secondary listing

HKEX proposes modifying the existing Listing Rules in relation to overseas companies to create a new concessionary secondary listing route that will attract companies from emerging and innovative sectors with a good record of compliance for at least two years on a qualifying exchange and an expected market capitalization of at least HK$10 billion.

The issuer must:

- be an innovative company;
- be primary listed on a qualifying stock exchange (being the New York Stock Exchange, NASDAQ and the "premium listing" segment of the London Stock Exchange's Main Market);
- have a good record of compliance for at least two full financial years on a qualifying stock exchange; and
- meet market capitalization requirements.

For grandfathered companies with WVR, the WVR safeguards will not apply. These companies will not be subject to the requirements as to one-share-one-vote reserved matters, or the restrictions on post-listing creation of further WVR shares.

IFPHK Responses

The amendments seem to pave the way for the "homecoming" of Great China tech giants.

As previously mentioned, the term "innovative companies" is subjective. We are concerned whether the Exchange with its dual role is able to make decisions in the best interests of investors. Also, there is room for doubt regarding the competence and expertise of Listing Committee members to assess "innovative companies".

One of the suitability requirements is to obtain a good record of compliance for at least two full financial years on a Qualifying Exchange. These Qualifying Exchanges are for-profit companies. IFPHK does not consider that reports from "for-profit exchanges" are sufficient in determining whether an issuer is fit for listing. Due diligence should be extended to include obtaining records from independent bodies such as regulators and/or the judiciary of the primary listing countries.

Biotech companies which are pre-revenue

The biotech sector was chosen as the initial focus for early stage companies, as their activities tended to be strictly regulated. Pre-revenue biotech companies applying for a listing under this new chapter will be required to have a minimum expected market capitalization of HK$1.5 billion.

IFPHK Responses

Given that revenue is no longer a suitability requirement, we are doubtful whether the Listing Committee has the expertise to assess biotech companies without track records.

Other Comments

In addition to the specific comments set out above, the IFPHK has some general comments for the Government to consider:

Enhance investor education on securities market

Compared to other exchanges, the Exchanges do relatively little to promote financial literacy and educate the investing public. The Investor Education Centre is a cross-sectoral investor education body aimed at improving the financial knowledge and capability of the general public. However, given the high participation of investors in securities markets, the Exchange does have the responsibility to educate the public on shareholder's rights and the risks associated with securities products.

The Exchange can refer to overseas examples. The New York Stock Exchange has established a private philanthropic foundation, the New York Stock Exchange Foundation, and hosts a financial literacy week. In 2015, World Exchanges announced the launch of a Global Financial Education & Literacy Initiative. The Japan Exchange Group has led the WFE Financial Education & Literacy Project. The TMX Capital Markets Learning Centre (www.tmx-edu.com) is a free, web-based information portal designed to help Canadians gain a better understanding of the markets.

Provide legal assistance to retail investors

The IFPHK believes strongly that consumers have rights. Among other things, they have the right to be heard, the right to be informed, the right to choose, and the right to redress. Legal remedies available to shareholders in Hong Kong against managerial misconduct are currently very limited. For retail investors, private actions are costly, time-consuming and basically not an option.

The incorporation of WVR safeguards into the constitutional documents is intended to give public shareholders a civil cause of action against the company in case of any breach. This, however, does not address the practical aspects of private enforcement in the Hong Kong market framework[10]. Legal remedies are not a viable option for minority shareholders due to the costs and complexity. To address this issue, we suggest establishing a Trust to help retail investors find legal assistance and fund certain litigation costs. The Trust shall be funded by part of the levies collected by the Exchange.

[10] Davis Polk & Wardwell, Hong Kong Stock Exchange Fleshes Out Game Plan for Dual Class and Biotech Listings, 27 February 2018