SLAUGHTER AND MAY

SUBMISSION BY SLAUGHTER AND MAY

REGARDING THE STOCK EXCHANGE OF HONG KONG LIMITED'S

CONSULTATION PAPER ON A NEW LISTING REGIME FOR COMPANIES FROM

EMERGING AND INNOVATIVE SECTORS

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We refer to The Stock Exchange of Hong Kong Limited (the **Exchange**)'s Consultation Paper on A Listing Regime for Companies from Emerging and Innovative Sectors (the **Consultation Paper**), in which the Exchange requested public comments on (a) the substance of the proposals described in the Consultation Paper and (b) the draft changes to the Hong Kong Listing Rules (the **Rules**) to implement the proposals.

The comments of Slaughter and May are set out below for the Exchange's consideration. Unless otherwise specified, defined terms have the meaning given to them in the Consultation Paper.

1. Substance of the proposals

We support the substance of the proposals and the efforts by the Exchange to attract innovative companies to list in Hong Kong within an appropriate investor protection framework.

2. Changes to the Rules

We have the following comments on the draft changes to the Rules:

Weighted voting rights

A. The Exchange's suitability assessment would require a WVR beneficiary to have taken an active executive role, but draft Rule 8A.11 would permit a WVR beneficiary to assume a non-executive director role from listing – please can the Exchange confirm this is the intention.

B. If a mandatory lapse of WVRs is triggered, the WVR shares of the relevant beneficiary would convert to one-share one-vote. Consequently, the voting power of all remaining shareholders would increase proportionately. The implications of this may need further consideration. Consultation with the SFC will also be required on the potential effect of a mandatory lapse of WVRs (for example, a mandatory offer being triggered due to the increased voting power of a non-WVR holder or WVR beneficiary) to ensure that potential issues are addressed in the Takeovers Code and the Rules.

C. For clarity, the Exchange could consider amending draft Rule 8A.13 so that the reference to the "weighted voting rights in the listed issuer must cease" is amended to "shares carrying weighted voting rights in the listed issuer must convert into ordinary shares in accordance with Rule 8A.22" (or words to that effect). The same comment applies to draft Rules 8A.19 and 8A.20.

D. We request that the Exchange clarify the application of draft Rule 8A.25(2). As most companies' constitutional documents or laws of incorporation would require variation of class rights to be approved at a separate class meeting, is the intention of draft Rule 8A.25(2) to require a general meeting (in addition to any class meeting) where all shares are voted on a one vote per share basis?

E. We note the Exchange is considering the matters of corporate holders of WVRs and adapting the existing continuing obligations to facilitate compliance by WVR listed issuers. We welcome the Exchange's consideration of these matters and look forward to hearing further details.

Biotech companies

F. Under the definition of "Competent Authority" in draft Rule 18A.01, the Exchange indicates it may, at its discretion, recognise another national or supranational authority as a Competent Authority. It would be helpful to receive further guidance on the criteria the Exchange may consider when deciding whether a national or supranational authority could be recognised as a Competent Authority by the Exchange.

G. Under draft Rule 18A.04(2)(c), a biotech company must disclose in its listing document a summary of material communications with the relevant Competent Authority in relation to its Core Product(s) unless such disclosure is not permitted under applicable laws or regulations, or the directions of the Competent Authority. The communications between a biotech company and the relevant Competent Authority may contain highly sensitive commercial information for

the biotech company. It would be helpful if the Exchange could expressly specify that the disclosure obligation whould not require it to disclose highly sensitive commerical information.

H. The Exchange's suitability assessment requires a biotech company to demonstrate that it has durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s). It is common for a biotech company to develop and commercialise a biotech product which is based on another product, the right of which was obtained by the biotech company from another company through a licensing agreement. As a result, a biotech company may have the right to develop and commercialise a biotech product which is not patented by the biotech company. Please can the Exchange clarify whether, in such a case, the applicant could be considered suitable for listing under the biotech regime. We propose such applicants should not necessarily be disqualified for listing under the regime. Many biotech companies look to academic institutions for new leads to intergrate into their discovery pipelines (which are mostly directed at the early stages of the pipelines) in order to further develop and commercialise the product / technology being licensed.

I. The Exchange has outlined the development milestones for a Regulated Product in order to demonstrate it has been developed beyond the concept stage. The terms used, such as Phase I clinical trials or Phase II clinical trials, are benchmarks used by the US FDA. It would be helpfule if the Exchange could outline what it considers to be the corresponding benchmarks used by the other Competent Authorities.

J. We understand the China Food and Drug Administration has a fast track approval process for certain qualified biologic products. The fast track approval process allows a biotech company to combine certain phases of clinical trials, for example, a biotech company can apply for phase 1 and phase 2 trials for its qualified biotech product at the same time and does not need to obtain a formal approval from the China Food and Drug Administration at the end of phase 1 trials in order to start phase 2 trials. It would be helpful if the Exchange could clarify how it would determine whether a biotech product has been developed beyond the concept stage in such a case.

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