

23 March 2018

Corporate and Investor Communications Department  
Hong Kong Exchanges and Clearing Limited  
12/F One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Dear Sir/Madam,

**Re: Emerging and Innovative Companies CP**

On behalf of the Asset Management Group (“AAMG”) of Asia Securities Industry & Financial Markets Association (“ASIFMA”)<sup>1</sup>, we would like to submit our responses to the Hong Kong Stock Exchange’s (the “Exchange”) Consultation Paper (the “Consultation Paper”) on a Listing Regime for Companies from Emerging and Innovative Sectors. AAMG was launched by ASIFMA in 2014 to represent the interests and concerns of asset managers (buy side) in Asia ex-Japan ex-Australia and we have an Equities Sub-Committee that focuses specifically on equity issues affecting or impacting asset managers in the region.

AAMG members generally believe in the fundamental principle of “one share, one vote” and that the granting of special voting rights to certain shareholders or permitting voting rights that are disproportionate to a shareholder’s effective economic interest is detrimental to the efficient functioning of markets. We understand the Exchange’s desire to introduce a listing regime in Hong Kong that would attract “innovative” companies, particularly, those established in mainland China, to list in Hong Kong as opposed to NASDAQ or elsewhere. However, given key differences in market characteristics and regulatory environment, it is crucial that the Exchange implement and enforce a well-designed set of safeguards to preserve the long-term integrity of the Hong Kong market.

Set out below are our comments on some of the proposals in the Consultation Paper:

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practice and standards to benefit the region.

## DEVELOPING ASIAN CAPITAL MARKETS

## **Listing criteria of early stage and WVR companies**

AAMG notes that a number of key qualifications for listing early stage or pre-revenue companies or companies with weighted voting rights (“WVR”) structures are not set out in the draft Listing Rules and therefore, leave open a number of key issues. For example, the definition or parameters of “innovation”, “new technologies”, “research and development”, etc. AAMG is concerned that while this provides flexibility for the Exchange to review listing applications from these companies on their individual merits, the lack of clarity also creates uncertainty for both potential issuers as well as investors.

Similarly, with respect to secondary listings, just because a company meets the specified criteria for listing does not automatically mean that it will receive listing approval as much depends on the view of the Listing Committee. Again, we feel that there is a lack of transparency in the process. We also question the rationale for differentiating between Grandfathered Great China Issuers and Non-Greater China Issuers as AAMG members are generally of the view that the same rules should apply across all types of issuers.

Therefore, AAMG urges the Exchange to provide the market with a better idea of the nature of businesses that are likely to be suitable for listing under the new listing regime. A regime that relies on the subjective judgment of the Exchange to determine listing eligibility could result in inconsistent and unfair listing decisions, opening the Exchange to criticisms of “cherry picking” and leading to an uncertain regulatory environment.

## **Sophisticated investors as cornerstone / pre-IPO investors**

AAMG has been a supporter of the various steps taken by the Exchange to develop Hong Kong’s market and we see engagement from the institutional investor community as an important part of the development of Hong Kong’s market.

Among the Exchange’s proposed requirements for the listing of early stage, biotech and WVR companies is the requirement that they must have received meaningful investments from Sophisticated Investor(s) at least six months before the IPO. AAMG agrees that third party investment in these types of companies would be a form of external validation for the business of these companies. But, AAMG suggests that the specific criteria on what the Exchange would consider an investor to be a “Sophisticated Investor” to be spelled out.

AAMG would like to take this opportunity to bring up a long-standing issue that asset managers have with the Hong Kong IPO framework which has prevented many asset managers (for and on behalf of the funds and separate account mandates they manage) from participating actively in the pre-IPO and cornerstone tranches of IPOs in Hong Kong.

Under the Exchange’s no “double-dipping” rule, if a fund managed by an asset manager makes a pre-IPO or cornerstone investment, all funds or client mandates managed by such manager or its associates will be precluded from participating as a placing investor in the IPO unless the prior consent of the Exchange is granted.

Given that large asset managers manage numerous funds and separate client mandates and the short timeframe for making these investments (making it difficult to obtain consent from the Exchange), we urge the Exchange to consider a holistic review of the afore-mentioned restriction and other existing limitations in the Hong Kong IPO framework. In particular, AAMG would like to request the Exchange to apply the no “double dipping” rule at a fund/client level and not at an asset manager level as different clients and funds whose investments are managed by the same asset manager are unfairly disadvantaged by the application of such a rule.

#### **WVR: Implementation and enforcement of shareholders’ safeguards**

We note the measures the Exchange has proposed to preserve the appropriate level of shareholders’ rights safeguards, including limiting the WVR regime to certain qualifying industries and enterprises only. Nevertheless, AAMG members continue to have concerns about the long-term implication of WVR and the potential weakening of corporate governance over time. We reserve our judgment on whether or not the Exchange’s proposed safeguards are sufficient and note that the key is how well these safeguards are implemented in practice. The efficacy of scrutiny by independent directors, the likelihood or effectiveness of enforcement actions, and the lack of clarity on some concepts which may lead to difficulty in enforcement are examples of key areas in which there is room for improvement. AAMG would urge the relevant regulators to take proactive measures to monitor compliance and to ensure genuine protection for retail investors.

As the market gains more experience with these new types of issuers, it will be important to have suitable adjustments and enhancements of the corporate governance regime. AAMG urges the relevant regulators to monitor the general effectiveness of Hong Kong’s corporate governance regime, and in particular the way it is implemented by the new types of issuers.

#### **WVR: Corporate vs. individual beneficiaries**

AAMG understands that specific rules on WVR beneficiaries and attendant safeguards will be the subject of a forthcoming consultation. AAMG would like to note that our members are generally opposed to corporate WVR beneficiaries for the following reasons:

- (a) WVR, if allowed, should only be granted to natural persons or individuals (i.e. founders and key executives) in recognition of their contribution to the past and future development of the company, including the future growth of its business, which is the basis stated by the Exchange as part of the rationale for the introduction of WVR;
- (b) Allowing corporate WVRs would, in effect, extend such rights in perpetuity and have the potential of removing any association with the individuals who have contributed or will contribute to the past and future development of the issuer; and
- (c) Allowing corporate WVRs could provide a “backdoor” way to effect a change of control without going through the Hong Kong Takeovers Code.

## **WVR: Permitted transfers**

We note that the Exchange has worked into the draft Listing Rules a degree of flexibility for transfers of WVR to non-individuals such as trust, limited partnership, private companies, etc., provided there is no circumvention of the general transfer restriction.

AAMG would like the Listing Rules to ensure that individual WVRs cannot be transferred except for tax or trust planning purposes where the voting rights continue to reside with the individual WVR beneficiaries even though the legal ownership of the shares of the listed company may be transferred to a trust, limited partnership or private company.

In terms of ongoing compliance, it may also be helpful for the Exchange to provide guidance on the ways in which the listed company (as well as investors) can monitor their WVR shares, for example by way of the Part XV Securities and Futures Ordinance disclosure of interest provisions. This should be a useful compliance aid for all concerned.

## **Conclusion**

AAMG understands that ASIFMA's sell side members are in agreement with the general direction of the draft Listing Rules, with some caveats and observations as set out in their separate response. AAMG members, however, continue to have some fundamental concerns over the new regime and have highlighted the issues of most concern to us. AAMG urges the Exchange and the SFC to place more emphasis on enforcement and the ongoing monitor of the efficacy of the safeguards, as well as close scrutiny of the corporate governance regime in Hong Kong generally.

Please feel free to contact Eugenie Shen at [REDACTED] or Tel: [REDACTED] if you have any questions regarding any of our comments.

Yours sincerely,

[REDACTED]

Managing Director  
Head of Asset Management Group  
Asia Securities Industry & Financial Markets Association