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

23 March 2018

Dear Sir/Madam

Re: Emerging and Innovative Companies CP

In the context of determining suitability for Biotech companies, we, on behalf of a US-based biotech company, would suggest that the Exchange clarify the prong relating to intellectual property to align with common market practice. We have used the same defined terms as set out in the consultation paper "A Listing Regime for Companies in Emerging and Innovative Sectors" dated February 2018 (the *Consultation Paper*).

In paragraphs 8 and 74 of the Consultation Paper, the Exchange has set out a list of proposed requirements that a Biotech Company must establish to demonstrate that it is suitable under the new Chapter 18A.

In these paragraphs, the Exchange proposes "that a Biotech Company that does not meet any of the three Financial Eligibility Tests could be suitable to list under Chapter 18A if it can demonstrate the following features... (e) it *must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property* in relation to its Core Product(s)" (emphasis added).

Of course the Exchange and market participants must pay attention to the source of the intellectual property rights. However, we want to ensure that the guidance remains flexible enough to allow for companies that have licensed intellectual property from universities and other academic institutions that retain the intellectual property relating to research conducted at those institutions.

In the United States and several European jurisdictions, innovation most often occurs in an academic setting, at universities, and is then out-licensed from these universities to companies which then develop and commercialize the technology. Typically, the licensing would entail exclusive, world-

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wide rights to the subject technology. This practice is indeed the most common way in which innovation occurs and is then transferred to private commercial enterprises for development. We are concerned that if the requirement to “have... intellectual property” is interpreted to mean that a Biotech Company cannot license technology from recognised institutions as is consistent with international best practices, it may stymie the Exchange’s ability to attract the best and the brightest international Biotech Companies in the manner clearly intended by the proposed new chapter.

To provide an example of how this works in practice, we are submitting this on behalf of a Cayman/US biotechnology company that is currently progressing (i) one Phase 3 global clinical trial in its lead rare disease indication, (ii) one Phase 2/3 clinical trial in a second rare disease indication, (iii) one Phase 2 clinical trial in a third rare disease indication and (iv) one Phase 2B clinical trial soon to commence in a disease affecting millions of elderly people for which there is no approved therapy. The company has an extensive intellectual property portfolio, holding exclusive licenses from a major US academic institution to the worldwide rights for its lead clinical stage product candidates, and as the sole owner of novel proprietary compounds in early preclinical development; together these comprise an intellectual property portfolio of over 200 granted patents. The company is led by an experienced management team with decades of collective biotech experience, including executive team members who previously held director or executive director level positions at global pharma companies, and an experienced board of directors including a founder of a global private investment group, a long-term veteran of a major global biotech investment fund, and an executive officer of a publicly listed US biotech company.

To present a credible and compelling alternative to other global listing venues, the Exchange’s rules and guidance need to be responsive to and reflective of international best practices.

Sincerely yours,

Freshfields Bruckhaus Deringer, on behalf of a US-based biotech company