COMMENTS TO CONSULTATION PAPER – A LISTING REGIME FOR COMPANIES FROM EMERGING AND INNOVATIVE SECTORS

Part A General Information of the Respondent

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Part B Comments

We welcome the overall listing regime proposed for companies from emerging and innovative sectors without establishing a New Board, i.e. introducing new chapters to the Main Board Listing Rules for allowing the listings of biotech companies that cannot meet the financial eligibility test and innovative and high growth issuers that have weighted voting rights (WVR) structures, as well as modifying the listing rules for creating a new secondary listing route to attract innovative issuers that are primary listed on a qualifying exchange.

That said, due to the inherent risks associated with companies from emerging and innovative sectors as well as companies having the WVR structures, we would like to see enhanced education support for investors as part of the process to assist them to understand and manage investment risk in these new sectors and to participate in the revamped market with esteemed confidence.

Our specific comments on the consultation paper ("CP") are set out as follows, with the definitions used being the same as those set out in the CP:

1. Biotech Companies

- We suggest to expand the minimum number of Core Product beyond the concept stage for listing eligibility (Paragraph 74(a) of the CP)
  Due to the low passing rate (which may be less than half) of Biotech Products at each phase of clinical trials, the proposed minimum listing requirement for having at least one Core Product beyond the concept stage may risk the issuer having no other viable pipeline if its only Core Product failed to go through the clinical trials or other approval processes, which may result in the cancellation of listing and is not in the best interest of both the issuer, its investors and the market.

- We suggest to provide more guidance on what represents "meaningful" third party investment (Paragraph 74(g) of the CP)
  There is a risk that the market or the new applicant may interpret the concept of "more than just a token investment" differently from the Exchange which may result in confusion, uncertainty and delay over the listing process of the new applicant given such investment is required to be

completed at least six months before the date of the proposed listing. We believe whether an investment is considered as "meaningful" should take into account, among others, the then working capital requirements of the new applicant for achieving a designated milestone in its business plan.

- We suggest to impose an industry qualification requirement on the substantial shareholders, directors and management of the new applicant (Paragraphs 74 and 75 of the CP)
  Although the proposal requires, among others, the oversight by the Competent Authority on the Core Product of the new applicant for listing eligibility which provides investors with a reference to judge the stage of development of the Regulated Products by the new applicant, as this is a specialised industry we believe it is equally important that the substantial shareholders, directors and management of the new applicant have the necessary experience, technical expertise and track record to potentially develop the Core Product to completion. In particular, its directors and management should have sufficient and satisfactory experience for a certain period of time in the line of business and sector of the new applicant in order to mitigate the high risk of failure in achieving the business plan in this sector.

- We suggest to provide clarifications on the track record period and ownership continuity requirements (Paragraph 81 of the CP)
  The proposal requires the new applicant to be in operation in its current line of business for at least two financial years prior to listing under substantially the same management. We recommend the Exchange to clarify (i) the trading record period required for preparation of information in the listing prospectus if the new applicant has more than 2 years of operations; and (ii) whether there are ownership continuity and control requirements for the new applicant.

- We suggest a quarterly reporting as part of the enhanced disclosure requirements (Paragraph 83 of the CP)
  Investing in early stage Biotech Companies that have not yet achieved a meaningful level of revenue or profit imposes higher risks to investors. We believe investors will appreciate a more frequent dissemination of relevant information from the issuer, say, on a quarterly basis, to enable them to make an informed investment decision.

- We suggest to remove the restriction of cornerstone investors from counting towards the initial public float requirement of the new applicant at the time of listing (Paragraph 84 of the CP)
  We appreciate the rationale behind the restriction of cornerstone investors for maintaining a market-driven pricing process of Biotech Companies; however, cornerstone investors have historically demonstrated an important bearing to support the successful listing of new applicants in Hong Kong, and this may even be more prominent on the Biotech sector as it is relatively new to investors here. We believe the shareholders' spread requirements under the Listing Rules are sufficient to address the concern on the pricing process.

2. Issuers with WVR Structures

- We suggest to publish periodic guidance on the characteristics of an innovative company (Paragraph 106(a) of the CP)
  We agree that the definition of an innovative company will evolve over time. For an efficient capital market, we believe the market will need published guidance from time to time to form a preliminary judgement if a potential candidate may be regarded as an innovative company under the factors set out in the CP, prior to submitting a written consultation for guidance from the Exchange. We also recommend to form a panel comprising experienced people both at the Listing Department level and the Listing Committee level to specifically handle these consultations effectively and efficiently which are likely to be of considerable amount given the ever-changing nature in its characteristics.

- We suggest the threshold of voting rights of Non-WVR Shareholders on a one-share one-vote basis for convening a general meeting be lower than 10% and determined on a sliding scale (Paragraph 127 of the CP)
  Based on the relatively high entry level for listing of companies with WVR structure in terms of the expected market capitalisation, the public float requirement may be lowered to the 15% floor at the Exchange's discretion and approval. As there may be practical difficulties to cumulate the 10% votes when the public float is below the standard 25% (e.g. due to the high dispersity of the shareholding of the Non-WVR Shareholders) and to further enhance the rights of the Non-WVR Shareholders, we suggest the threshold for calling a general meeting be lower and determined on a sliding scale according to the percentage size of the public float for this protecting arrangement to be substantive. For instance, the threshold is reduced to 8% for a standard 25% public float and is then lowered to 6% when the public float is approved as 20%.

- We suggest to increase the number of independent non-executive directors to a majority on the board (Paragraph 137 of the CP)
  We agree that through an uplifting system of corporate governance, the risks associated with WVR structures are, to a certain extent, mitigated. Since independent non-executive directors play a key role in this critical function, their representation to a majority of the board, not counting the chairman, is expected to provide a more balanced view on governance. We also recommend to improve the general level of skills and qualifications of the independent non-executive directors of all issuers for a functional Corporate Governance Committee.

- We suggest a quarterly reporting on the work of the Corporate Governance Committee (Paragraph 138(g) of the CP)
  We believe a quarterly reporting will further enhance the effectiveness of the Corporate Governance Committee and to help ensure the issuer's compliance with the Listing Rules.

- We suggest to evaluate the ramifications on other regulatory rules when a beneficiary's WVRs fall away (Paragraph 154 of the CP)
  If a Non-WVR Shareholder's equity interest is 30% or more, there may be circumstance that the shareholder will be subject to mandatory offer requirement under the Takeovers Code when the WVRs of the WVR beneficiaries are retreated under the sunset restriction. We suggest to discuss this with the SFC for a resolution of this matter and evaluate other potential issues arising from the sunset arrangement before the new regime is put in place.

3. Secondary Listings of Qualifying Issuers

We agree in general with this proposal. However, based on the low trading volume and liquidity currently in the market for the securities listed secondarily by other Overseas Issuers, we believe it is worthwhile to revisit the need to require the Qualifying Issuer to offer new securities for subscription at the time of the secondary listing of its securities to create a local investors' base and draw better market attention.

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