

31 August 2018

Hong Kong Exchanges and Clearing Limited  
10th Floor, One International Finance Centre  
1 Harbour View Street, Central  
Hong Kong

BY POST AND EMAIL (response@hkex.com.hk)

Dear Sirs,

Re: Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments (the "Consultation")

The HeungKong Financial Group welcomes the opportunity to respond to The Stock Exchange of Hong Kong Limited's ("HKSE") invitation for comments on the Paper issued in June 2018.

As a market practitioner, we appreciate HKSE's efforts in maintaining the quality of the companies listed on HKSE, protecting investors' interest and safeguarding the reputation of Hong Kong as a leading global financial centre. In addition, we fully support HKSE's initiative to review and address some of the shortcomings of the current regulatory regime relating to backdoor listings.

Set out below are our comments on the Consultation and we express no particular views on matters which are not addressed below. Unless herein defined, capitalised terms used herein shall have meanings ascribed to them in the Paper.

1. Backdoor Listing and Proposed Rule Amendments

- 1.1 We concur with HKSE's view that although shell trading activities represent a small segment of the market, these activities can invite speculative trading and lead to opportunities for market manipulation, insider trading and unnecessary volatility in the market which are not in the interests of the investing public. As such, we agree in principle with HKSE that certain modifications to the existing rules are necessary to discourage attempts to circumvent the listing requirements.

*Aggregation period for a "series of arrangements"*

- 1.2 While we agree that there should be safeguards to prevent the circumvention of the bright line test by conducting a series of smaller transactions, we consider the current "series of arrangement" criterion under the six assessment criteria stipulated in Guidance Letter 78-14 to be sufficient for this purpose. The additional concept of "reasonable proximity" is too vague and, with respect, transactions conducted in "reasonable proximity" to each other does not necessarily mean that they are related.





- 1.3 The vagueness of the concept of “reasonable proximity” is further highlighted by the HKSE’s clarification that it “normally refers to a period of 3 years or less”. However, notwithstanding this clarification, in paragraph 43 of the Consultation, the HKSE states, as an example, that transactions proposed shortly after the three year period would give rise to concerns about circumvention of the RTO rules because the transactions would have been contemplated within the three year period. This series of clarifications and explanations go to demonstrate the practical difficulties with the application of the “reasonable proximity” concept.
- 1.4 Furthermore, the vagueness of the proposals relating to the aggregation of transactions would, in practice, result in listed issuers having to review its past and future transactions over a six year period (i.e. the past three years and the next three years) every time it contemplates a transaction. It is submitted that this would create unnecessary restrictions on listed issuers and unduly burden their ability to carry out transactions in a rapidly changing business environment.
- 1.5 If an aggregation period is to be provided in the rules, we would propose that the period be set at two years. It is submitted that a two year period strikes an appropriate balance between the need to safeguard against circumvention of the new listing requirements and the need to enable listed issuers to carry out legitimate corporate transactions.

#### *Restriction on disposal*

- 1.6 For reasons stated above, we would also propose that the restriction on material disposals under Rule 14.92 (new Rule 14.06E) be retained at 24 months.

#### *“Extreme transactions” – guidance on “principal business of a substantial size”*

- 1.7 We submit that the new requirements Proposal A(5) would in effect restrict the application of “extreme transactions” classification to large conglomerates. We would recommend setting the threshold for annual revenue or total asset value to HK\$100m or more for issuers listed on the Main Board and HK\$50m or more for issuers listed on GEM.

## 2. Continuing Listing Criteria and Proposed Amendments

#### *Proposal C(2) – Amendment of Rule 14.83*

- 2.1 We submit that the proposed amendment to subject securities brokerage businesses to cash company rules (notwithstanding the discounting of client moneys) to be inappropriate. Unlike other businesses which utilises other forms of assets to produce income, securities brokerages rely predominantly on cash capital to generate revenue. Furthermore, the Securities and Futures (Financial Resources) Rules (Chapter 571N of the laws of Hong Kong) (the “FRR”) require that securities brokerages maintain a minimum level of liquid capital (which, under the





FRR, is made up predominantly (if not exclusively) of cash). It is therefore submitted that the mischief which the cash company rules seek to address do not apply to securities brokerage businesses and that the exemption afforded in Rule 14.83 ought to be retained.

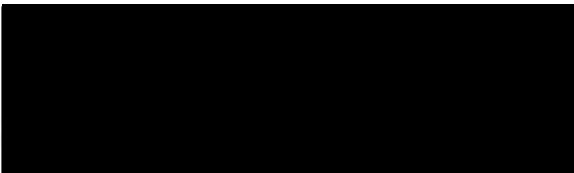
### 3. Other Proposed Rule Amendments

#### *Proposal D(1) – Confine the revenue exemption for securities transactions*

- 3.1 As shell activities represent only a small segment of the market, we are of the view that: (i) the current Rules 14.82 to 14.84, as fortified by the Proposal C(1), are sufficient to tackle the shell activities conducted by some listed issuers; and (ii) Proposal D(2), which requires listed issuers to disclose in their annual reports details of each securities investment representing 5% or more of their total assets, can enhance investor protection. Hence, we are not in favour of the implementation of Proposal D(1).

As mentioned above, we appreciate HKSE's continuous efforts to improve the current market regime. We believe that a regime which protects the investing public and supports businesses' legitimate access to the capital markets will benefit all market participants.

Yours faithfully,  
For and on behalf of HeungKong Capital Limited



Tony Yau  
Chief Executive Officer

