

Corporate Finance Division  
Securities and Futures Commission  
35/F, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

9 July 2016

Dear Sirs,

**Re: Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation**

We write in response on the Joint Consultation Paper on the proposed enhancements to SEHK's decision-making and governance structure for listing regulation.

Our view on the proposal is summarised as follows:

- We conditionally agree on the establishment of the Listing Policy Committee to initiate and steer policy development.
- We conditionally agree on the establishment of the Listing Regulatory Committee to handle the listing applications involve suitability or policy implication.
- We disagree the Listing Regulatory Committee to be the body to review decisions of the Listing Committee.

A detailed explanation is provided below.

We are in the view that the reform is more as a change of the process rather than of a reallocation of powers. We agree with the objective of the proposed reform as to streamline the structure of the current listing regime for the purpose to enhance the efficiency and transparency of the current listing regime. Meanwhile, the traditional regulatory philosophies of self-regulation by market practitioners, and sufficient check and balance are retained in the new regime.

*Listing Policy Committee (LPC)*

In light of the policy development, the SFC has been vested with the statutory power to amend or veto the change of listing rules. Therefore, the Listing Rules of the HKEx can only be amended with the consent of the regulator.

Such power in practice places an important check and balance on the SEHK. In the last year for instance, the SEHK decided not proceed with its controversial draft proposal on the weighted voting rights ("WVR"), after the board of SFC has unanimously concluded that it does not support the draft proposal, with the view that "Hong Kong's securities markets and reputation would be harmed if WVR structures became commonplace"<sup>1</sup>.

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<sup>1</sup> SFC statement on the SEHK's draft proposal on weighted voting rights, issued on 25 Jun 2015

Under the proposed new regime, there are only three SFC representatives out of eight member LPC. By contrast, a half of the committee members are market practitioners and investors. In other words, the SFC has in effect lost its veto power under the new regime.

Therefore, we agree the establishment of the LPC to steer listing policy, subject to the condition that the SFC covenants that it will not exercise the statutory veto power so long as the LPC makes its decision following the prescribed procedures in respect to the conduct of meetings. As the consultation paper submits, it is to provide a better coordination between the market practitioners, the exchange, and the regulators. We otherwise disagree the proposal as the new arrangement vests the SFC with extra powers.

#### *Listing Regulatory Committee (LRC)*

The SFC currently has been vested with powers to object or to impose additional conditions on the listing applications<sup>2</sup>.

In practice, the SFC has exercised the power under s.6(3)(b) of the Securities and Futures (Stock Market Listing) Rules during the listing of RUSAL (486.hk) in 2010, where it decided to impose conditions restricting retail investors from dealing the stocks of the Russian aluminium giant<sup>3</sup>.

Under the proposed new regime, there is a balanced representation between the market practitioners and the regulator. The LRC serves as a single platform allowing both parties to exercise their powers and perform their functions simultaneously within it. The real effect of the establishment of the LRC is to limit the power of SFC to the listing applications involving policy or suitability issues only. Similar to the LPC case, the proposal streamlines the process and improve the efficiency.

Therefore, we agree the establishment of the handle the listing applications involve suitability or policy implication, subject to the conditions that: (1) the SFC covenants not to exercise the statutory power so long as the LPC makes its decision following the prescribed procedures in respect to the conduct of meetings; and (2) the SFC and HKEx issues further guidance to clarify the definitions of the term "suitability concerns or broader policy implications".

The consultation paper has defined the term "suitability concerns or broader policy implications" by classifying it into four categories<sup>4</sup>. As suitability for listing is a requirement set out in the Listing Rules<sup>5</sup>, the HKEx has published a guidance to raise some factors the HKEx may take into account when considering the suitability of a listing application<sup>6</sup>.

Nonetheless, the rest of the criteria are notoriously vague and difficult to follow. For instance, there is no further explanation on a matter of a "novel, controversial or sensitive nature". The SFC and HKEx therefore should issue further guidance to clarify the matter.

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<sup>2</sup> s.6, Securities and Futures (Stock Market Listing) Rules

<sup>3</sup> Prospectus of United Company RUSAL, page 60

<sup>4</sup> Paragraph 73 of the joint consultation paper

<sup>5</sup> Listing Rules 2.03, 8.04

<sup>6</sup> Guidance on suitability for listing (GL68-13)

The guidance should provide a set of understandable, clear and predictable guidelines to the Listing Department, the investing public, as well as the market practitioners. The recent Australian proposal<sup>7</sup>, which aims to provide more examples and guidance on the suitability and policy issues, may shed some light on it.

#### *Appeal and Review*

Under the proposed regime, the LRC will replace the current Listing (Review) Committee as the review and appellate body for a Listing Committee decision. Currently, the Listing (Review) Committee comprises market practitioners from the Listing Committee.

The appeal cases on the decision of the Listing Committee in respect to the listing application by new applicants involve no suitability or policy issues. In light of this, we are not in the opinion that it ought to be an area the regulator to trespass on by designating LRC as the review and appeal body. The proposed reform appears to be in contradiction with the traditional thinking since the Davison Report, that as the knowledge of practitioners is much better than the regulators and the Government, it is best for the market practitioner to decide on such matter.

Our view has borrowed further support from the overseas examples. Except the UK as a possible example, we are unaware of any similar arrangement being adopted in other major financial centres.

We have also noted from the consultation paper that, members of the Listing Committee are full time professionals who may only be available for the work of the Listing Committee on a part-time basis<sup>8</sup>. However, it is paramount that the overarching principle of market self-regulation should not be compromised merely by the operation infeasibility.

Should the SFC or the HKEx wish to discuss on the comment, please do not hesitate to contact us.

Yours faithfully,

WONG Yuet

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<sup>7</sup> May 2016 consultation paper on “updating ASX’s admission requirements for listed entities”, pp 9-10

<sup>8</sup> Paragraph 25 of the joint consultation paper