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Dear Sir/Madam

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

Introduction

1. I, being an individual retail investor, refer to the above consultation paper released on 17 June 2016 (the "**Consultation Paper**"). I am in general agreement with the proposals set out in the Consultation Paper.
2. As you requested in the Consultation Paper, I set out my written comments below using the following headings in order to assist your collation of information. Unless otherwise defined, terms used in this submission shall have the same meanings as those defined in the Consultation Paper.

Policy Development

3. I think the policy development is heading to the right direction. The Listing Policy Committee ("**LPC**") should take away some of the responsibilities from the Listing Committee ("**LC**") in terms of, among others, Listing Rules amendments and overall listing policy. I always believe that the appointments of LC members are not transparent. Eight out of twenty-eight LC members who were appointed by the Board of The Stock Exchange of Hong Kong Limited ("**SEHK**") based on the recommendations from the Listing Nominating Committee are supposed to represent the investing public. However, we do not really know who these people are. I do not know the selection criteria for these eight LC members. I found no information about the number of applicants for appointment of LC members. I do not know the reason(s) why an individual was appointed and why other applicants were rejected. I guess an applicant for appointment as LC member might not even know the reason(s) why he or she was rejected. It appears to me that the selection process was being conducted

inside a black box. Members of LC, other than the eight people, are investment bankers, accountants from big four accounting firms (currently, Mr Stephen Taylor from Deloitte, Mr Edmond Chan from PwC, Mr Timothy Pogson from EY and Mr Andrew Weir from KPMG), lawyers from magic circle firms, etc. who have had vested interests in the listing policy and related matters. I consider LC is like a celebrities' private social club where some members might have made use of their positions in the LC for promoting the business of his/her professional firm! I believe this is highly undesirable from the perspective of "perceived conflict of interests". Frankly, I personally do not see how the LC can perform its duty fairly to oversee the listing policy and policy-related listing matters.

4. For the proposed LPC, the number of members are equally presented by SEHK and SFC. I believe this would provide a balanced view of the LPC. In addition, the composition and appointment of LPC members are transparent. This would also significantly reduce (if not eliminate) the perception of conflicts of interests.

Listing applications by new applicants

5. For IPO applications involving suitability issues/concerns or broader policy implications, I agree that these cases should be handled separately by the Listing Regulatory Committee (the "LRC"). By doing so, I believe this would ensure SFC to have earlier and more direct input on listing matters involving suitability issues. I support this proposal.
6. I note that the Listing Department (the "LD") will continue to have the authority to reject any IPO applications (including LRC IPO cases) without referring these cases to the LC or LRC, subject to review. However, the Consultation Paper is not clear as to whether the LD has the authority under Listing Rules to return an LRC IPO case. Paragraph 28 of Appendix B of the Consultation Paper sets out clearly that the LD may issue a Return Decision under Rule 9.03(3) of the Listing Rules. But in paragraph 27 of Appendix B of the Consultation Paper, it appears that the LD may not be able to issue a Return Decision to an IPO case under Rule 9.03(3) once the LD determines that the IPO application is an LRC IPO case. Under the proposal, an LRC IPO case that is referred by the LD can only be approved or rejected by the LRC. It appears that the LD will not have the authority to issue a Return Decision for an LRC IPO case.
7. As you are aware, a Return Decision under Rule 9.03(3) of the Listing Rules is not a rejection decision for the purposes of the Listing Rules. A Return Decision adopts the "name and shame" approach where sponsors and listing applicants would find it very difficult to accept. I believe the real intention behind the proposal is: the LD should be able to issue a Return Decision for an LRC IPO case on the ground that the application and its prospectus are not substantially complete under Rule 9.03(3) of the Listing Rules. If you are agreeable with my thinking, you may wish to clarify this point and make sure that the LD is able to issue a Return Decision to an LRC IPO case in the first place (just like any non-LRC IPO case) without referring it to the LRC for consideration. Please see Appendix to this submission for my mark-ups.

Matters involving listed issuers

8. For listed issuers, I wish to say something about publication of guidance letters by the LD. The LD has, from time to time, published guidance letters which purport to assist the public's understanding of the Listing Rules. The LD has published more than 80 guidance letters since April 2006. A number of these guidance letters have been withdrawn, modified, updated on numerous occasions. For example, the guidance letter HKEX-GL6-09 was first published in July 2009. This guidance letter was updated two months later in September 2009 and subsequently updated again in November 2011 and August 2012. This guidance letter was finally superseded by the guidance letter HKEX-GL6-09A in July 2013 which was subsequently updated in January 2014 and updated again four months later in May of the same year.
9. Take another example, the guidance letter HKEX-GL25-11 was first published in October 2011. But it was revised one month later in November of the same year and subsequently revised in March 2012, June 2013, March 2014, September 2015 and finally revised again in July 2016. I do not quite understand why these guidance letters need to be revised/updated so frequently. If the relevant Listing Rules are not clear and need clarification or guidance, then the best way to correct this is to revise the Listing Rules per se. Simply updating or revising the guidance letters may not be able to resolve the roots of the problems. Sometimes, this would merely cause confusions to the markets and investors. This would also give the public the impressions that the Listing Rules were not clear enough and that the LD is not confident as to the interpretation and applications of the Listing Rules.
10. Sometimes, publication of guidance letters would do more harm than good. I can give you a number of examples where guidance letters contain various typos, wrong cross referencing or materials which were redundant or irrelevant. Guidance letter HKEX-GL78-14 (May 2014) is one of the confusing guidance letters. Reverse takeovers under Rule 14.06(6) of the Listing Rules have been subject to scrutiny for a number of years since the LC raised this issue in its Listing Committee Report 2007 (see paragraphs 55 to 58 of Listing Committee Report 2007). However, what action has LC or LD taken so far?
11. In its Listing Committee Report 2008, the LC said that the proposals to amend the reverse takeover rules will be subject to market consultation in due course (see paragraph 64 of the Listing Committee Report 2008). Up to now, there have been no indications as to when the market consultation will commence. However, the LC, rather than launching a formal market consultation on reverse takeovers, allows the LD to publish the guidance letter HKEX-GL78-14 (May 2014). In my view, the purpose for publication of the guidance letter HKEX-GL78-14 (May 2014) was to avoid kicking off market consultation on reverse takeovers rules. The SEHK can simply publish guidance letter so as to achieve its objective - revising the Listing Rules without going through the statutory procedures, namely market consultation, consultation conclusion and approval from SFC. The LD knows better than anyone that changes to the Listing Rules must be recommended by the LC and endorsed by the Board of the SEHK.

These changes will not take effect unless approved by the SFC under section 24 of the SFO.

12. One has to note that guidance letters do not override the Listing Rules and if there is any conflict or inconsistency between any guidance letter and the Listing Rules, the Listing Rules prevail. Unfortunately, the LD and the LC give the wrong impression to the market that the guidance letters form part of the Listing Rules. The public has been misled into believing that non-compliance with guidance letters would have similar effect as breaching the Listing Rules. The situation is even worse if guidance letters are confusing or even contradicting to the relevant Listing Rules, like the guidance letter HKEX-GL78-14 (May 2014). Frankly, I have read this guidance letter many times but I still do not understand what guidance it has given or clarification it has made! I am sorry to say that I am very confused as to the policy intent behind this guidance letter.
13. My concerns relating to guidance letters above are also applicable to others guidance materials, such as Listing Decisions and frequently asked questions ("FAQs"). But I am not going to elaborate more for this in this submission.
14. In summary, I honestly believe that a revamp of all the interpretation and guidance materials is necessary. Currently, there are listing decisions, guidance letters, FAQs, interpretative letters, guidance on the Exchange's practices and procedures for handling listing-related matters (which comprises: (i) guide on practices and procedures for post-vetting announcement of listed issuers and handling matters involving trading arrangements prior to publication of announcements; (ii) guide on pre-vetting requirements and selection of heading categories for announcements, interpretation of listing rules and requests for individual guidance; (iii) waivers and modifications of the listing rules; (iv) guide on trading arrangements for selected types of corporate actions; (v) guide on disclosure of record date, book closure and latest time for lodging transfers of shares; (vi) guide on distribution of dividends and other entitlements; and (vii) guide on general meetings) and other guidance materials for listed issuers.
15. The SEHK must educate the public about the authority and status of the materials as set out in paragraph 14 above. Simply putting up a disclaimer like "...does not override the Listing Rules and...in case of inconsistency with the Listing Rules, the Listing Rules shall prevails" is not enough. The public also need to know the interaction between the Listing Rules and these materials as well as the relationship among these materials themselves. Mass publication and numerous updating and revision of these materials would only cause confusion to the public.
16. I note that the SFC has similar concerns about these guidance materials. Please refer to paragraphs 40 to 45 of the Report on Securities and Futures Commission's 2015 annual review of the Exchange's performance in its regulation of listing matters issued on 24 June 2016 ("**SFC Annual Review Report**").

Review of listing decisions

17. I found the proposals acceptable. I have no further comments.

Disciplinary matters

18. The proposals appear to be fair and reasonable. I have no further comments.

Oversight of the listing function

19. I support the proposal that the LPC should replace the LC as the body responsible for oversight of the listing function and the performance of the LD. It always appears to the public that the SEHK and its LD is like an "imperial empire" where it can freely make the Listing Rules (through publications of various guidance materials with the indirect effect of revising/modifying the Listing Rules), interpret the Listing Rules, administer the Listing Rules and enforce the Listing Rules without any check and balance. It appears to me that the LC is no longer able to oversee the LD's performance. I note that the LD has by-passed the LC in the performance of duties and responsibility on a number of occasions. I note in paragraph 47 of SFC Annual Review Report that the LD has published eight Listing Decisions in 2014 but only one Listing Decision was considered and endorsed by the LC. There was no evidence suggesting that the LC has reviewed any of the other published Listing Decisions in 2014.
20. In paragraphs 50 to 55 of SFC Annual Review Report, SFC found that the Listing Decision HKEX-LD8-2011 was decided solely by the LD without being considered or endorsed by the LC. SFC also found that the basis on which the LD arrived at the conclusion for HKEX-LD8-2011 was unclear. Had the LD submitted its draft listing decision to the LC for consideration and endorsement, the reasons given or the conclusion arrived for HKEX-LD8-2011 might have been very different.
21. Based on paragraphs 19 and 20 above, it seems that the LC may not be able to perform its role as overseeing the listing function. In its recommendations section of SFC Annual Review Report, the SFC recommends that the SEHK should review the process for determining when post-listing matters, such as waiver applications, rule interpretations or decisions should be escalated to the LC for its consideration and endorsement (see paragraph 75(a) of SFC Annual Review Report).
22. If LPC is to replace the LC for overseeing the performance of the LD, I think this would resolve the problem of the lack of oversight by LC.
23. A professor of a local university has commented on the proposal set out in paragraph 22 above in his article published in a local financial newspaper on 8 September 2016. It seems to me that he does not agree with the proposal that LPC should replace LC for overseeing the performance of the LD. He worries that if LPC is responsible for determining the overall compensation of the LD and its senior executives, this will give the impression to the public that SFC is pressurizing the senior executives of the SEHK in the performance of their duties. I think these worries are not necessary. It is simply because the SFC has an inherent statutory duty under section 5(1)(b) of the SFO to supervise, monitor and regulate the activities carried on by the SEHK. The Listing MOU also provides

that the SFC should periodically review the SEHK's performance in its regulation of listing-related matters. In March 2004, the HKSAR Government published its Consultation Conclusions on Proposals to Enhance the Regulation of Listing. The consultation conclusions recommended that the SFC prepares annual reports on its review of the SEHK's performance of its listing functions and submits these annual review reports to the Financial Secretary before publication. The SFC has issued eleven such annual review reports since 2005.

24. I think it is crystal clear that the SFC has the power to monitor the performance of LD. The most effective way for monitoring the performance of LD is to allow SFC to exercise this power directly to determine the bring home package of the senior executives of the LD. Replacing the LC by LPC for appraising the performance of senior executives of the LD has already been a fallback position.
25. In paragraph 12 of Financial Services Development Council's (the "FSDC") response to the Consultation Paper released on 9 September 2016 (the "FSDC's response"), the FSDC comments that "...Under the proposed structure, the LD will be responsible for deciding if a matter should be referred to the LRC. If a matter is referred, the LRC would be accountable for its decision. If not referred, the decision would be made by the LD and LC, which will be accountable for the decision. This would in fact induce LD executives to err on the safe side and refer more matters to the LRC than under the current regime...". With due respect, I disagree with this view. I think this view has brought disrespect to the LD. Executives and officers of LD are technical persons who are fully conversant with the Listing Rules and listing matters. Of course they know which IPO applications are LRC IPO cases and which are not. That is the reason why the consultation proposal allows the LD to decide whether to designate an IPO application as an LRC IPO case. FSDC's view has undermined the professionalism and judgements of these executives and officers. In the highly unlikely event where the LD executives unjustifiably refer more matters to the LRC than under the current regime, the LPC will take note of this and this will be taken into account for evaluation of their performance as well as assessing their compensation. I believe a reasonable LD executive would not be stupid enough to put his or her career at risk by referring non-LRC IPO cases to LRC as if they were LRC IPO cases. It goes without saying further that this is exactly why LPC should take up LC's role for overseeing LD's performance. I, therefore, do not share the same view of FSDC as set out in paragraphs 12 and 13 of FSDC's response.
26. In addition, I do not agree with FSDC's suggestion set out in paragraph 19 of FSDC's response. In paragraph 19, FSDC suggests that it might be useful for the Executive Director and one of the Senior Directors of the SFC Corporate Finance Division to attend LC meetings as observers. I believe this is exactly what the market practitioners are worrying about: SFC is taking steps to take control over the LC entirely! With due respect, I cannot agree with FSDC's suggestion at all.

Publication of decisions

27. I agree with the proposals for publication of decisions set out in paragraphs 134 to 137 of the Consultation Paper except that any guidance or decisions made by

the LD or the LC (such as guidance letters, listing decisions, FAQs, etc.) must be subject to LRC's consideration and endorsement before publication. This is consistent with the recommendation made by the SFC in paragraph 75(a) of the SFC Annual Review Report.

Composition and Procedures of the LPC

28. I found the proposals acceptable. I have no further comments.

Composition and Procedures of the LRC

29. I found the proposals acceptable. I have no further comments.

Composition and Procedures of the Listing Regulatory (Review) Committee

30. I found the proposals acceptable. I have no further comments.

Composition and Procedures of the Listing (Disciplinary) Committee, the Listing (Disciplinary Review) Committee and the Listing Disciplinary Chairperson Group

31. I found the proposals acceptable. I have no further comments.

Other matters

32. As HKEx and its subsidiary SEHK are profit-making organisations, they may not have incentive to promote any environmental issues that relate to listing matters. Mixed Media Offers ("MMO") is a typical example for this issue. In simple words, MMO means a printed application form is not required to be accompanied by a printed prospectus during offer period of an IPO. Although the relevant Listing Rules concerning MMO have become effective from 1 February 2011, however, no significant steps have been taken by LD or LC to promote the use of MMO for IPOs. It has been more than five years after the implementation of MMO for the LD to issue its first guidance letter HKEx-GL81-15 in June 2015 to raise public awareness of MMO. Following implementation of the proposals set out in the Consultation Paper, I hope the LD will take more initiatives to preserve our environment so far as listing-related matters are concerned.

Conclusions

33. Subject to my comments set out above, I support all the proposals set out in the Consultation Paper.

34. I hope my comments above would be helpful to you. I also hope that discussions on the subject matter would not be too political. Hopefully, all parties involved in the consultation process would be guided by what is the best interest of Hong Kong's financial markets.

35. I wish to emphasize that I have not consulted anybody in the writing of this submission. Therefore, mistakes, inaccuracies, inconsistencies and misguided

views, etc, are all my responsibility. I also offer my apologies to those who may be upset by my, sometimes rather too honest and sincere views.

36. Finally, please also note that the comments above represent my own personal views and, therefore, do not necessarily reflect or represent in anyway those of my employer or the professional institutions or associations of which I am a member.
37. I have read the Personal Information Collection Statement set out in Appendix C of the Consultation Paper. I have no objection for my name and comments to be published, in whole or in part on the SFC's and/or HKEX's website and/or in other documents to be published by the SFC and/or HKEX. Should you have any questions, please feel free to call me at _____ or via e-mail:

Yours faithfully

SUEN Chi Wai
Encl.

27. The following chart provides an overview of the review structure for LRC IPO cases:

Reviews of LRC IPO cases

May issue a Return Decision?

Listing Department

- May reject an LRC IPO case

LD cannot return a LRC IPO case?

Listing Regulatory Committee

- May issue in-principle approval for, or reject, an LRC IPO case
- For any LRC IPO case rejected by the Listing Department, conducts a first review of the Listing Department's decision at the request of the applicant

or returned?

Listing Regulatory (Review) Committee

- For any LRC IPO case initially rejected by the Listing Department, if the Listing Regulatory Committee endorses, modifies or varies the Listing Department's decision, the Listing Regulatory (Review) Committee will conduct a second review at the request of the applicant
- For any LRC IPO case initially rejected by the Listing Regulatory Committee, the Listing Regulatory (Review) Committee will conduct a first review of the Listing Regulatory Committee's decision at the request of the applicant
- The Listing Regulatory (Review) Committee's decision upon review is conclusive and binding

or returned?