From:
Sent: 18, September, 2016 4:02 PM
To: Listing Regulation
Cc: response@hkex.com.hk
Subject: [Confidential Submission] Consultation Paper on Proposed Enhancements to the Exchange Decisionmaking and Governance Structure for Listing Regulation

I am writing to recommend **AGAINST** the enactment of all the proposed changes to the listing processes contained in the Consultation Paper cited above.

Quite simply, we should avoid the further concentration of power in the hands of the SFC, its leadership and its bureaucracy, but rather should encourage the SFC to: (i) when and if merited, propose specific, very targeted rule changes that would enhance the listing process as well as information disclosure requirements, and (ii) actually begin to seriously investigate and prosecute on a more widescale basis the alleged wrongdoing that is occurring in the Hong Kong market. A "land grab" of further regulatory power during the listing process achieves neither of the above, but rather only serves the organizational and personal aims of the SFC and its leadership.

Taking a step back, it is important to look at the Hong Kong regulatory system in light of global practices (indeed, the SFC often compares and contrasts itself to the U.S. Securities & Exchange Commission). The U.S. SEC promotes and oversees an information-forcing regulatory regime. Core to the U.S. regime is the fact that the free market of investors, not regulatory bureaucrats, is best able to assess the merits of any given offering. The SEC is there to ensure all material information is placed into the hands of the investors. Enforcement of actual wrongdoing is investigated and prosecuted on the back end, once it allegedly occurs. A case of actual wrongdoing needs to be made and proven.

In contrast, the mandate of Hong Kong's SFC includes passing upon the "suitability" of a given listing applicant for investors. How one defines "suitability" is tricky, which opens itself to regulatory abuse and mismanagement. Often the interests of retail interests are citied. However, in today's marketplace, it is the large institutional investors -- the investors best able to assess and assimilate information -- that drive IPO and other offering pricing, while retail investors are clear price takers. To claim that SFC bureaucrats are smart and knowledgable enough to properly assess, upfront, which issuers are fit to be offered to investors is not a credible assertion. Everyday experience with government bureaucracies indicates exactly the opposite. At least under the current Exchange-led listing regime, a collection of individuals from different backgrounds and experiences in the securities marketplace (in the form of the Listing Committee) is better positioned to weigh and assess the merits of listing applications.

In this consultation initiative, what the SFC is hoping to accomplish (besides grow its regulatory power base) is to establish a new committee to "screen" some/many listing applicants in an effort to 'weed out' the proverbial 'bad apples'. This would presumably save the SFC the hard work of identifying and prosecuting actual wrongdoing once it occurs down the road. However, the approach that the SFC hereby proposes will: (i) increase complexity and lessen process transparency, (ii) stifle the growth in the Hong Kong markets, (iii) ultimately offer less investment choice to Hong Kong investors, and (iv) concentrate power in the hands of a few, opening it to potential abuse. As an intellectual exercise, ask yourself: would Enron (for example) at the time of its IPO have passed muster under a SFC-controlled committee? I think the answer is that it certainly would have. The difference is that the SFC would not have prosecuted the wrongdoing of Enron's management as vigorously as the U.S. SEC actually did once the wrongdoing developed and became apparent -- years after Enron's IPO.

Another question: how has the SFC performed when given control over listing processes in other situations? We have good case studies in the ETF and REIT markets. If your initial reaction to this question is "what ETF and REIT markets in Hong Kong", that is precisely my point. SFC listing oversight have left Hong Kong's ETF and REIT markets lagging behind practically all of its major global competitors. Over time, the same regulatory tendencies would increasingly deteriorate the Hong Kong equities markets.

It is my understanding that the SFC is currently empowered to directly stop a particular listing application that it finds objectionable. However, the listing applicant has a right of court review should this occur, with the right of appeal. Is part of what the SFC is hoping to achieve here is to hide behind Stock Exchange to avoid a lengthy court process should it disapprove of a particular applicant? If so, this is troublesome for all the obvious reasons.

Commentators (and the SFC itself) often cite the aborted Alibaba offering and its dual class structure as symptomatic of the failure of the current listing process. But the "word on the street" in the Hong Kong (and indeed global) markets is that, in fact, it was the SFC that stymied and delayed the Alibaba offering, not the personnel from the Stock Exchange and its Listing Committee. How would these new committees proposed by the SFC here perform any better? They wouldn't. Alibaba still would list in New York.

In sum, as someone who is intimately familiar with global securities markets, the proposed consultation changes are just a bad idea. Targeted disclosure-based solutions and actual judicial enforcement against proven bad actors are much better. Indeed, if the SFC is successful here, what will it try to grab next?