

4 October 2016

CORPORATE FINANCE DIVISION
SECURITIES AND FUTURES COMMISSION
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Sirs,

**CONSULTATION PAPER ON PROPOSED ENHANCEMENTS TO THE EXCHANGE'S DECISION-
MAKING AND GOVERNANCE STRUCTURE FOR LISTING REGULATION**

This is our submission on the listing regulation enhancement proposals (the *Proposals*) by the Exchange and the SFC in their joint consultation paper issued in June 2016 (the *Consultation Paper*).

Despite the laudable objectives of the Proposals, there are concerns which we outline below.

A shift in listing regulation philosophy?

1. Global trend is towards market transparency and investors education. An informed market under a disclosure-based regulation regime is most efficient in allocating risk and capital. The Proposals – with notable influence of the SFC at all levels of the decision-making – have a smack at bringing back a merit-based or regulator-led regime. A listing regulation regime driven by regulators is not conducive to market development.
2. If (rather unfortunately) the view is to go down the route of a regulator-led regime, the SFC should take back and assume all the listing regulation functions to the exclusion of HKEX. The Proposals on this are "half-baked" as there remains veto possibility by non-SFC lay-members if there is disagreement on issues.
3. Opportunities are ahead under the stock market connect among Hong Kong, Shanghai, and Shenzhen. Under this, there is a great variety of businesses, appetite for capital, products, and innovations driving growth of the capital market which will also benefit Hong Kong as a whole. The listing regulation regime should prepare Hong Kong to take pole position, steering the stock market of the three cities to become a Pan-Asian capital formation hub. With opportunities there are risks. Regulators are averse to risks and opportunities can be missed. This can cost Hong Kong dearly.

Any need to change?

4. The present regulatory system with the SFC and the Exchange taking different roles has been serving the Hong Kong stock market well for decades. Our system is unique with the HKEX being part of and with the knowledge and expertise it gains from the market, also regulates the market. It is this unique system that puts Hong Kong among global peers as a top IPO/fund raising centre.

5. The Consultation Paper has not pinned point any structural deficiency, nor has it cited instances of failure in the decision making or governance structure under the present regime which prompts a need to change. It has not suggested any concrete benefits under the Proposals either, apart from oblique claims of better coordination or pooling of knowledge. The Consultation Paper has not suggested in what way the Proposals will facilitate market developments, such as the setting up of a 3rd board for IT/tech/venture capital, and the accommodation of alternative or high-risk listing structures for more businesses to come to list on the Hong Kong market.

6. The Proposals bestow frontline regulation powers on the SFC, through half of the membership it has on the Listing Policy Committee and Listing Regulatory Committee. The Proposals are changing the existing division of roles of the SFC and the Exchange rather than enhancements as the Consultation Paper suggested.

7. We do not support changing the existing system when there is neither systemic failure nor clear benefits.

Why do we need 2 new committees?

8. There is strong SFC influence in the two proposed committees, through its direct-appointed staff and the influence the SFC has at the Listing Nomination Committee over the appointment of the Chairperson and Deputy Chairpersons of the Listing Policy Committee and the Listing Regulatory Committee.

▪ The Listing Policy Committee

9. At present, there has already been close dialogue and interaction – at both working level and senior level – between the Exchange and the SFC on IPOs/post-IPO listing matters, which cover policy and issues that have general impact¹. Views of the SFC on policy and wide-impact issues are taken and reflected when the Exchange makes (or amends) Listing Rules, which requires the consent of the SFC. The SFC has the power to direct the Exchange to make specific Listing Rules, or make statutory listing rules itself². We see neither need nor urgency for a Listing Policy Committee for rules and policy purposes.

10. Under the Proposals, the Listing Department – while remaining within HKEX – will report to the Listing Policy Committee. There is likelihood that personnel of the Listing Department may act in deference to the views of the SFC whose staff members at the Listing Policy Committee appraise the performance of these HKEX employees. This can create conflict as HKEX pays these Listing Department employees who may refuse the kind of listing business that HKEX (as a listed company) wants.

11. Changing the reporting line of the Listing Department is “half-baked” as there is no dual allegiance. If “governance from within” is a concern, a straight-forward way will be to internalise the Listing Department within the SFC.

12. However, we agree with the part of the Proposals that the Chief Executive of the HKEX should not sit on the Listing Committee.

▪ The Listing Regulatory Committee

13. The Consultation Paper suggested majority of cases will stay with the Listing Committee with only a handful of cases that involves (a) suitability issue, (b) policy implications, (c) novel, controversial or sensitive nature, and (d) have general effect (i.e. **LRC Matters**) going to the Listing Regulatory Committee. There is a concern that what happens may be the opposite.

¹ See paragraphs 2 & 17 of Appendix B, and footnotes 42 & 44 thereunder, respectively, on page 32 & 34 of the Consultation Paper.

² See paragraph 23 on page 11 of the Consultation Paper.

14. Under the Proposals, the Listing Department will have to decide whether an IPO or a post-IPO listing matter involves suitability issue, and/or any of the matters described in (b) through (d) above. Suitability is itself a loose concept and it changes with time. The long list of listing decisions around the interpretation of the suitability concept speaks for the difficulty³. Concepts in (b) through (d) above are oblique, and taken to the extreme, virtually all listing matters can involve policy or have general effect one way or the other. Given the looseness of the suitability and the other concepts described under paragraph 73 (a) through (d) of the Consultation Paper, there is a concern that the Listing Department may refer more IPOs and listing matters to the Listing Regulatory Committee than necessary in order to avoid making wrong judgement on borderline cases. Failure to spot LRC Matter and refer listing cases to the Listing Regulatory Committee may impact the appraisal of the executives of the Listing Department, which can be another incentive to send more cases to the Listing Regulatory Committee.

15. Can the Listing Regulatory Committee cope with the large number of cases coming to it? Among its members, the three SFC appointees work full time. The other three (viz. the Chairperson and the Deputy Chairpersons) are not full time, and they have to attend meetings of the Listing Policy Committee as well. The Listing Regulatory Committee is also to hear review of listing decisions by the Listing Committee, and cases of LRC-Matter referred to it by the Listing Committee and the Listing Department. Market efficiency will suffer if the Listing Regulatory Committee is overloaded with cases, and quality of vetting will be compromised when there is a rush to clear case backlog.

16. What happens if an IPO application/post-IPO listing matter is returned by the Listing Regulatory Committee as in the end no LRC Matter is found? Time is wasted. It is unfair to the IPO candidate/issuer if he has to re-join the queue of cases with the Listing Committee when the "stud-period" may have by then expired.

17. As with the concern that the Listing Department may channel more IPOs/post-IPO listing matters to the Listing Regulatory Committee than necessary, the same concern can arise in the opposite. The Listing Department may fail to channel an IPO which involves LRC Matter to the Listing Regulatory Committee, and the Listing Committee (undetected of the LRC Matter) has meanwhile approved that IPO in the normal running of the system. While the SFC has power under the SFO to revoke the Listing Committee's approval, the SFC's reputation will be at stake if a listing decision has to be reversed after a process in which the SFC is involved.

18. We fail to see any work process stream-line in the proposed set-up. It is likely that considerable amount of time will be wasted within the Listing Department and the Listing Committee in their attempt to sort out (or even in dispute with the sponsors/advisors over) which IPO/post-IPO listing matter involves what LRC Matter.

Unpredictability

19. Whether a case involves LRC Matter can be judgmental. The designation of an IPO and the referral of an IPO to the Listing Regulatory Committee by the Listing Department or the Listing Committee are discretionary and are not subject to review. The IPO candidate will lose out on the market window he/his sponsor desires while these work hiccup and bureaucracy are being sorted out.

20. IPO candidate/issuers and their sponsors will have difficulty in planning (and practically, have no control over) their activities and fund-raising program if there is unpredictability in getting approval on a LRC Matter IPO and timing of the approval from the Listing Regulatory Committee. No listing candidate/issuer (and their sponsors/advisors) wants uncertainty. It will be very unfortunate if the IPO candidates/listed issuers avoid Hong Kong to list elsewhere because of this lack of certainty.

³ See footnotes 36, 37 & 38 on page 19 of the Consultation Paper.

Shrinking of the Listing Committee

21. The Listing Committee is effectively side-stepped.

22. LRC IPO/listing matters are likely to be big or high profile cases. Only three out of the 28 Listing Committee members will have the chance to participate in exciting developments affecting the market through their membership at the Listing Regulatory Committee. The tenure of the three "chosen ones" is six years or even longer, as paragraph 47 of Appendix B of the Consultation Paper proposes.

23. Those who do not have the privilege of having the "nod" of the SFC representatives at the Listing Nomination Committee to become the Chairperson and Deputy Chairpersons of the Listing Committee (and join the Listing Regulatory Committee accordingly) will lose out and have to wait six years (or longer) before the chance comes up again. Non-LRC IPOs/listing matters commit the other Listing Committee members no fewer time, lesser responsibilities, or smaller efforts than LRC IPOs/listing matters but they will have no share of the fame and glory. These other Listing Committee members have other full time professional or business commitments. There will be less incentive for them to join the Listing Committee. With dwindling interest from market participants, the wealth of market experience, industry expertise, and financial services and other knowledge – built up and accumulated over the years at the Listing Committee – will be lost. This is counter-productive to the development of the Hong Kong stock market.

Listing Regulatory (Review) Committee

24. We think the review of listing decisions by the Listing Committee can stay with the present Listing (Review) Committee.

25. At review level, SFC inputs will add credibility, objectivity, and impartiality to the process. There are merits in reorganising the Listing (Review) Committee with membership comprising the Chairperson of the SFC Board, an NED nominated by the SFC Board, the CEO of the SFC, and three former Listing Committee members along the lines suggested in paragraph 112 through 115 of the Consultation Paper.

26. We address the specific issues on page 30 of the Consultation Paper as follows:

Heading	Response
27. <i>Policy development</i>	<ul style="list-style-type: none"> We do not see any need to set up a Listing Policy Committee – please see paragraph 9 to 11 above. We agree that the CEO of the HKEX should not sit in the Listing Committee to avoid conflict of interest between his role as HKEX CEO and as regulator.
28. <i>Listing applications by new applicants</i>	<ul style="list-style-type: none"> We do not support the setting up of a Listing Regulatory Committee and the classification of LRC or non-LRC IPO. Please see paragraph 13 to 23 above.
29. <i>Matters involving listed issuers</i>	<ul style="list-style-type: none"> There is no need to classify a listing matter as LRC or non-LRC listing matter. Please see paragraph 13 to 23 above.

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| 30. <i>Reviews of listing decisions</i> | • We see merits of having SFC inputs on review of listing decisions.
• Please see paragraph 24 & 25 above. |
| 31. <i>Disciplinary matters</i> | – No particular view. |
| 32. <i>Oversight of the listing function</i> | • We do not see any need for a Listing Policy Committee, or for the Listing Department to be under that Committee.
• Please see paragraph 10 to 12 above. |
| 33. <i>Publication of decisions</i> | – No particular view. |
| 34. <i>Composition and Procedures of the Listing Policy Committee</i> | • We do not see any need to set up a Listing Policy Committee.
• Please see also paragraph 8 above. |
| 35. <i>Composition and Procedures of the Listing Regulatory Committee</i> | • We do not support the setting up of a Listing Regulatory Committee.
• Please see paragraph 8, 14 & 15 above.
• It is indeed strange for the Listing Regulatory Committee to have fewer members (six only) than the Listing Policy Committee (eight), when accordingly to the Consultation Paper the former will need to meet more frequently, and (if our prediction in paragraph 14 above is right) will have more cases and a higher work load than the latter. |
| 36. <i>Composition and Procedures of the Listing Regulatory (Review) Committee</i> | • We think review of listing decisions can stay with the Listing (Review) Committee but agree for SFC to have representation at review level.
• Please see paragraph 24 & 25 above. |
| 37. <i>Composition and Procedures of the Listing (Disciplinary) Committee, the Listing (Disciplinary Review) Committee and the Listing Disciplinary Chairperson Group</i> | – No particular view. |
| 38. <i>Other matters</i> | • If combat of corporate wrongdoings is also an objective of the Proposals, one possibility is to give statutory backing to certain parts of the Listing Rules, notably Listing Rule 13.09 and Listing Rule 13.10 A & B, Chapter 14 (notifiable transactions), and Chapter 14A (connected party transactions) of the Listing Rules. |

We hope the above assists the SFC and the Exchange in considering ways for the Hong Kong stock market to make full use of the market opportunities and meet challenges going forward. Should you need any elaboration on any part of our submission, please contact the undersigned at

Yours faithfully,

CHEUNG Lee Ming Andy
Executive Director & CFO
LINK ASSET MANAGEMENT LIMITED
Manager of Link REIT