

19 October 2016

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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 (the "Consultation Paper")

On behalf of the Asia Securities Industry and Financial Markets Association ("ASIFMA"),¹ we have set forth below our comments on certain of the Proposals included in the Consultation Paper. Slaughter and May has assisted us in preparing and coordinating this response. Unless otherwise defined, terms used in this letter have the same meaning given to them in the Consultation Paper.

1. Success of the Existing Regulatory Regime and Support for the Broad Objectives of the Consultation Paper

1.1 As a general observation, the existing regulatory regime for new listings in Hong Kong has served the market well in providing an efficient platform for deciding listing applications and listed issuer

¹ ASIFMA is an independent, regional trade association with over 90 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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matters, while simultaneously maintaining the quality and reputation of the market. The success of the existing regime is reflected in the fact that Hong Kong has consistently ranked among the top equity-raising platforms globally, including ranking first for IPO funds raised in 2015 and the first nine months of 2016 and ranking among the top three for IPO funds raised in 2014 and 2013. Accordingly, ASIFMA does not consider it necessary to implement significant changes to the existing regulatory regime in Hong Kong, particularly if such changes may lead to procedural complexities or negatively impact on the efficiency of the existing regime.

- 1.2 We believe one of the key reasons for the success of the existing regime in Hong Kong is the appropriate balance the system strikes between the SFC, as the statutory regulator, the Exchange, as the frontline regulator, and the Listing Committee, through its well-balanced composition of market participants. Robust input from each of these parties has been pivotal in the development and operation of Hong Kong's markets, and the Proposals set forth in the Consultation Paper risk destabilizing the current successful balance of interests by (i) effectively removing the Listing Committee from the most important aspects of that process in favour of smaller and less representative committees and (ii) making the Listing Committee less attractive to Hong Kong's best and brightest as a result of its greatly diminished role.
- 1.3 The Listing Committee consistently attracts some of the most experienced and highly regarded market users and practitioners, with a mix of representatives of investors, listed companies and market practitioners in corporate finance, accountancy and law. The depth of market knowledge and breadth of perspective brought by the Listing Committee is invaluable to the application of the rules and policy formulation in Hong Kong. We are therefore cautious about reforms that take decision-making power away from the Listing Committee in favour of the much smaller Listing Policy Committee and Listing Regulatory Committee, which do not have the same mix of viewpoints as the Listing Committee. In addition, we have concerns that the Proposals – which remove more complex cases from the remit of the Listing Committee – would result in the Listing Committee being less able to attract highly qualified and experienced members.
- 1.4 While we believe the existing regulatory regime has served the market well, we welcome the principles behind the SFC's enhanced involvement in the review process for listing applications, listed issuer matters and market and policy development, as proposed in the Consultation Paper. In particular, we are supportive of the objectives set forth in the Consultation Paper to provide the SFC with more direct input in policy formulation, achieve closer coordination and cooperation between the SFC and the Exchange, streamline the processes for making important or difficult listing decisions and simplify the process for IPO applications so that they can be vetted and approved more efficiently. However, we feel that these objectives would be better achieved through an alternative approach to the Proposals, as discussed more fully in Section 2 below.

2. Alternative Approach – Addition of SFC Representatives to the Listing Committee

- 2.1 Among the key objectives set forth in the Consultation Paper, we have significant concerns that the Proposals may negatively impact on the objectives of streamlining the processes for making important or difficult listing decisions and simplifying the process for IPO applications so that they can be vetted and approved more efficiently. In particular, adding additional committees to the existing Listing Committee approval process could have a negative impact on the efficiency of the listing decision process as a result of each listing application involving an LRC Matter having to be considered multiple times by different departments and committees (*i.e.*, first by the Listing Department followed by the Listing Committee and then the Listing Regulatory Committee).

- 2.2 As discussed above, we also have significant concerns with the shift of decision-making power from the Listing Committee (with its wider and more balanced mix of representatives) to the smaller and narrower pool of members on the Listing Regulatory Committee and the Listing Policy Committee.
- 2.3 We believe that the Consultation Paper's broad objectives could be better achieved by the simpler solution of adding SFC representatives to the existing Listing Committee. Such representatives could be added as either observers, who could articulate the views of the SFC during Listing Committee deliberations, or as regular Listing Committee members, who could participate in the Listing Committee decision making process. In either case, the SFC would retain its existing statutory veto power.
- 2.4 This alternative approach provides a number of benefits, including:
- (A) providing the SFC the opportunity to be involved in the Listing Committee decision making process and raise any concerns they may have as part of that process;
 - (B) allowing the SFC to hear the views of the Listing Committee directly, without the need for such views to be reflected through the LC Chairpersons;
 - (C) preserving the existing role of the Listing Committee (with its wide-ranging expertise) and its ability to attract "the best and the brightest"; and
 - (D) eliminating the need for any additional committees and any inefficiencies that may result from such additional committees.

3. Comments on Procedural Aspects of the Proposals

- 3.1 In the event that the SFC and the Exchange decide to proceed with the Proposals, then we would offer the following comments on certain procedural issues raised by the Proposals.

Combined hearings in order to minimise delays and enhance coordination

- 3.2 We understand from the Consultation Paper that where the Listing Department or the Listing Committee refers an LRC IPO case to the Listing Regulatory Committee for its decision, the Listing Committee will first hear the case and provide its non-binding views to the Listing Regulatory Committee, the listing applicant and its sponsor(s). The Listing Regulatory Committee hearing will then be held "as soon as reasonably practicable" following the Listing Committee hearing.
- 3.3 As such proposal will involve two separate committee hearings for an LRC IPO case, we are keen to minimise delays to the timetable for any potential listing applicant and would propose the following arrangement for consideration:
- (A) the Listing Committee and the Listing Regulatory Committee would be briefed on the LRC IPO case by the Listing Department at the same time;
 - (B) a combined Listing Committee and Listing Regulatory Committee hearing would then be held as soon as reasonably practicable thereafter. The Listing Committee would provide its non-binding views directly to the Listing Regulatory Committee during that hearing;

- (C) the Listing Regulatory Committee would then decide on the LRC IPO case during that hearing (with or without the presence of the Listing Committee); and
 - (D) any preliminary comments expressed by the Listing Committee and/or the Listing Regulatory Committee should be passed to the relevant sponsor(s) to provide the sponsor(s) with an opportunity to take remedial actions or to address such comments/issues.
- 3.4 The above streamlined arrangement would allow the Listing Regulatory Committee to take on board the Listing Committee's views in a more time-efficient manner, without having to wait for a separate Listing Committee hearing to be held and its views written up and passed to the Listing Regulatory Committee for consideration. In addition, such arrangement would allow the members of the Listing Regulatory Committee to seek the views of the members of the Listing Committee directly, which should facilitate discussions and feedback between the Listing Regulatory Committee and the Listing Committee and enable the Listing Regulatory Committee to fully consider the views and benefit from the wide-ranging expertise of the Listing Committee.
- 3.5 The above combined meeting approach should also apply to Listing Policy Committee meetings, as well as Listing Regulatory Committee hearings for Post-IPO LRC Matters. While the timing implications may not be as critical in connection with such meetings and hearings, for the reasons set forth above, the Listing Policy Committee and the Listing Regulatory Committee should also have direct feedback from the Listing Committee on such matters.

Access to the Listing Regulatory Committee in connection with pre-IPO enquiries

- 3.6 As set forth in paragraphs 95 and 96 of the Consultation Paper, we understand that potential listing applicants and their sponsors may continue to seek informal and confidential guidance from the Listing Department prior to the formal submission of a listing application, and the Listing Regulatory Committee, at the request of the Listing Department, may give a preliminary indication on any LRC Matter (including whether a particular issuer or its business is suitable for listing).
- 3.7 We would respectfully submit that applicants and their sponsors should have the ability to either consult directly with the Listing Regulatory Committee on LRC Matters during the pre-IPO enquiry process or be able to require the Listing Department to consult with the Listing Regulatory Committee on such matters so that applicants and their sponsors can obtain sufficient visibility on whether an application may be considered an LRC IPO case prior to submitting an application. This is consistent with the objective of establishing clearer accountability for decision making on such decisions and would also provide market practitioners with a clear avenue to obtain guidance on difficult or novel matters.

Periodic review to determine whether Consultation Paper objectives are being met

- 3.8 We would propose that the Exchange releases, on an annual basis, statistics on the percentage of IPO applications that have been designated as LRC IPO cases and the length of time such cases took to consider (starting from the date they were submitted to the Listing Department and ending on the date the Listing Regulatory Committee issued their decision on the case, and, to the extent that there is a time period between the Listing Committee forming its non-binding view on an LRC IPO case and the Listing Regulatory Committee making a decision on such case, the length of time between such decisions). This would then allow the Exchange, the SFC and the market to review how IPO applications have been designated and whether certain objectives of the proposals (*i.e.*,

simplifying the IPO application process and streamlining the processes for making important or difficult listing decisions) are being met and whether any changes to the revised committee structures should be implemented.

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Please do not hesitate to contact

Yours truly,

Mark Austen
CEO