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By post and email: listingregulation@sfc.hk

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

Thank you for the opportunity to provide comments on the Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited's ("Exchange") joint consultation regarding the Exchange's decision-making and governance structure for listing regulation.

The Hong Kong Association of Banks ("HKAB") welcomes the public consultation given the importance of the listing regulations to the Hong Kong financial market. We set out below our views which addresses the matters raised in the Joint Consultation Paper on Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation ("Joint Consultation Paper") released by the SFC and the Exchange.

Unless otherwise defined, terms used in this letter have the meaning given to them in the Joint Consultation Paper.

Executive summary

1 In summary:

- (a) **Importance of market practitioners:** HKAB submits that it is important for the market practitioners with up-to-the-minute and hands-on experience to continue their roles under the current regime. Please refer to paragraphs 2.2 to 2.3;

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- (b) **Closer coordination and cooperation can be achieved under the existing regulatory framework:** HKAB acknowledges the need for closer coordination and cooperation between the SFC and the Exchange on policy formulation, however HKAB is of the view that it can be achieved by other means under the existing regulatory framework, such as changes in the composition of the Listing Committee and the SFC's participation in the monthly SEHK-SFC (Listing) Liaison Committee Meetings. Please refer to paragraphs 2.4 to 2.6;
- (c) **Scope of LRC Matters may lead to uncertainty and delay:** HKAB notes that the broadly defined scope of the "LRC Matters" may lead to uncertainty and delay. As such, HKAB seeks clarification from the SFC and the Exchange to provide guidance when professional advisers encounter LRC Matters, and urge the SFC and the Exchange to further consult the industry. Please refer to paragraph 3;
- (d) **Two-step referral decision making process may lead to uncertainty and delay:** HKAB is concerned the two-step referral process may be potentially onerous and impose additional delay in the listing process. To reduce uncertainty and delay that may arise during the IPO process and post-IPO, HKAB provides a number of suggestions including that there should be a clear timeframe for the decision-making process of the Listing Regulatory Committee. Please refer to paragraphs 4 to 6;
- (e) **Two-stage review of listing decisions:** HKAB considers the current two stage review process of listing decisions should be maintained. Please refer to paragraph 7;
- (f) **The Listing Policy Committee should not be appraising senior executives of the Listing Department:** HKAB is concerned that the proposed arrangement will influence performance of roles and result in conflicts of interest. Please refer to paragraphs 8 to 9.
- (g) **Publication of disciplinary decisions:** HKAB has no objection to this proposal. Please refer to paragraph 10.

Policy development

2 The Listing Policy Committee and the Listing Regulatory Committee

- 2.1 HKAB acknowledges the need for closer coordination and cooperation between the SFC and the Exchange on policy formulation and the need for the SFC to provide



earlier and more direct input on listing policy matters and listing regulation. To address these needs, the SFC and the Exchange proposed, amongst other things, the establishment of the Listing Policy Committee and the Listing Regulatory Committee, on which the SFC and the Exchange are equally represented. However, HKAB submits that this need is achievable by other means without the establishment of these committees.

- 2.2 By way of background, the current listing regulatory regime was established following the comprehensive review of the Hong Kong market set out in the Report of the Securities Review Committee on "The Operation and Regulation of the Hong Kong Securities Industry" (the "**Davison Report**") in 1988. The Davison Report concluded that a practitioner-based regulatory system was best suited to Hong Kong as the SFC noted that it would "avoid the danger of straight-jacketing the securities market by a strict regulatory regime which might all too easily lead to insensitive or heavy handed over-regulation". The SFC has also separately observed that "market management and regulation by practitioners offers scope for flexibility and adaptability in a rapidly changing market" and that "statutory regulators will not always have the necessary knowledge and expertise".¹
- 2.3 HKAB agrees with the SFC and the Exchange that the current listing regulatory structure has served the market well. Whilst the SFC and the Exchange consider the changes are necessary because markets are increasingly large and complex, HKAB submits that the role in the regulatory process currently performed by practitioners with up-to-the-minute and hands-on experience of those markets is of increasing, not diminishing, importance. Hence, HKAB disagrees with the SFC and the Exchange that there is such a need to revise the current decision-making structure and adopt the Proposals.
- 2.4 HKAB also submits that closer coordination and cooperation between the SFC and Exchange can be achieved through other means under the existing regime without the proposed changes. For instance:
- (a) the composition of the existing Listing Committee may include delegates from the SFC;
 - (b) the SFC may send observers to the Listing Committee meetings; and
 - (c) the SFC may provide input on listing policy matters and listing regulation in the monthly SEHK-SFC (Listing) Liaison Committee Meetings as provided in the Memorandum of Understanding on Governing Listing Matters.

This would enable the SFC to have a direct interaction and communication with the Listing Committee members on all listing related regulatory matters.

¹ The Securities and Futures Commission, *Securities Regulation in Hong Kong* (2002), at pages 48-49, available at <https://www.sfc.hk/web/doc/EN/speeches/public/others/speechbook/fullversion.pdf>.



- 2.5 If, nonetheless, the SFC and the Exchange decide to set up these committees as proposed, HKAB urges the committees to be open-minded to the variety of innovation that may occur in the market and the need to juggle the traditional ways of evaluating a business with some flexibility for evaluating a business based on non-traditional methods, and to provide clear explanation to market practitioners the exact roles and accountabilities of the these committees.
- 2.6 Further, HKAB notes that the Listing Policy Committee's functions are to initiate, steer and decide listing policy, including new Listing Rules and Listing Rules amendments. However, HKAB also notes that the proposed Listing Policy Committee consists of more SFC officer representatives than that of the Exchange.² HKAB maintains that, as the front-line regulator, the Exchange has a better understanding and hands-on experience of the markets and would be in a better position to determine whether amendments to the Listing Rules are necessary and when these amendments should be introduced. As such, HKAB submits that the Exchange should not be under-represented in the Listing Policy Committee and suggests that, in addition to the existing proposed composition, two additional senior members nominated by the Listing Department of the Exchange should be included in the Listing Policy Committee.

3 The scope of LRC Matters

- 3.1 Paragraph 73 of the Joint Consultation Paper sets out the LRC Matters where the Listing Regulatory Committee will oversee, give guidance on and decide in the first instance when they arise in the day-to-day administration of the Listing Rules.
- 3.2 HKAB considers the matters listed in the LRC Matters are too broad and lack clarity. For example, the Joint Consultation Paper did not state which matters would be of "a novel, potentially controversial or sensitive nature".³ As the LRC Matters are fairly broad and not clearly defined, HKAB submits that it would be difficult for professional advisers to advise new listing applicants and listed issuers with certainty as to whether a particular matter falls within the ambit of an LRC Matter. Therefore, HKAB requests the SFC and the Exchange to provide further guidance on the scope of LRC Matters and further consult the industry prior to issuing such guidance.

² Joint Consultation Paper, paragraph 65.

³ Joint Consultation Paper, paragraph 73(b).

Listing application by new applicants

4 General comments

The establishment of various committees

- 4.1 As stated in paragraph 1 of the Joint Consultation Paper, the Proposals are intended to, among other things, streamline the processes for making important or difficult listing decisions, and simplify the process for IPO applications. HKAB notes that the SFC and the Exchange propose to establish the following committees: the Listing Policy Committee, the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, and the Listing Disciplinary Chairperson Group. HKAB questions whether these objectives will be achieved given that there will be more committees within the proposed listing regulatory regime.

SFC's comments during the vetting process

- 4.2 HKAB notes that under paragraph 89 of the Joint Consultation Paper, the SFC will no longer, as a matter of routine, issue a separate set of comments on the statutory filings made by listing applicants. Under paragraph 90 of the Joint Consultation Paper, HKAB also notes that the Listing Department may resolve matters with the staff of the SFC. As the majority of IPO applications will be determined by the Listing Committee and the SFC is not involved in the Listing Committee, the SFC will not be directly involved in the IPO application process unless contacted by the Listing Department or until a later stage.
- 4.3 HKAB values the comments from the SFC as they allow the market participants to better understand the SFC's stance on various policy issues. Through the dual filing process and the SFC comments, market participants are able to attain transaction certainty at an early stage of the listing application process and plan their affairs accordingly. As such, the SFC should consider retaining its role during the vetting process under the current dual filing structure.
- 4.4 Alternatively, in lieu of comments and to promote transaction certainty, the SFC may wish to consider being more involved and at an earlier stage of the vetting process as part of the dual filing structure.

Diminishing the Listing Committee's role

- 4.5 Under the Proposals, the Listing Committee will provide non-binding views to the Listing Regulatory Committee in relation to IPO cases with suitability concerns or broader policy implications.⁴ HKAB is of the view that this proposal diminishes the Listing Committee's role in such cases and submits that this may affect recruitment

⁴ Joint Consultation Paper, paragraph 90.



and retention of market practitioners and professionals to form the composition of the Listing Committee.

5 Uncertainty and delay

- 5.1 HKAB submits that there will be transaction uncertainty under the Proposals. Under the Proposals, the Listing Department will refer all LRC IPO cases to the Listing Regulatory Committee while the Listing Committee will also have the discretion to designate any IPO application as an LRC IPO case.⁵ The Listing Committee may also give non-binding views on LRC IPO cases. It appears from the chart in paragraph 90 of the Joint Consultation Paper that the LRC IPO cases, as determined by the Listing Department, would be subject to a non-binding view of the Listing Committee before being referred to the Listing Regulatory Committee for consideration. Under such setup, the Listing Committee actual role in both the listing approval and policy formulation processes are very much undermined, retaining market practitioners and professionals whom form the composition of the Listing Committee would be difficult.
- 5.2 HKAB submits that instead of streamlining the listing process, an additional layer of approval is added under the Proposals. HKAB further submits that this two-step referral process may be potentially onerous and may impose additional delay in the listing process. The uncertainty and delay will make the logistics of conducting an IPO more challenging, and result in a process which may extend the timetable of the IPO and impact the ability to launch in time. This may be detrimental to listing applicants and may lead to an increase in costs. As a result, it may harm the competitiveness of the Hong Kong market to attract future listings.
- 5.3 HKAB suggests the following measures to be adopted by the SFC and the Exchange in order to manage any uncertainty or delay that may be caused by the implementation of the Proposals and to streamline the administrative process:
- (a) there should be a clear timeframe in which a listing applicant or sponsor will be notified when a listing has been referred to the Listing Regulatory Committee;
 - (b) there should be a clear timeframe in which Listing Regulatory Committee would make a decision after a listing has been referred to the Listing Regulatory Committee;
 - (c) the Listing Regulatory Committee and the Listing Committee meetings should be held simultaneously or within a short space of time of each other;

⁵ Joint Consultation Paper, paragraphs 91 to 92.



- (d) where the Listing Department escalates a case to the Listing Regulatory Committee, the Listing Committee's non-binding opinion may be sought concurrently or informally;
- (e) listing applicants and their sponsors should be notified without delay of the formal designation of their case as an LRC IPO case, no later than the issue of the first comments on the draft listing documents. Further the final decision on such designation should be taken within a specified time frame with full alignment within the view of the Listing Department, the Listing Committee, the Listing Regulatory Committee and the SFC; or
- (f) sponsors should also have the right to escalate a potential suitability issue directly to the Listing Regulatory Committee at any stage of a listing application.

Matters involving listed issuers

- 6 When an LRC Matter is escalated in the post-IPO stage, HKAB is of the view that the Exchange has the additional responsibility to ensure minimum disruption to the market and maximum certainty for public investors. HKAB repeats its submissions regarding the scope of LRC Matters and potential delay in paragraphs 3 and 5, insofar as they are applicable.

Reviews of listing decisions

- 7 HKAB welcomes the proposed reforms regarding the review powers and process.⁶ However, HKAB considers that, in the interests of market protection and to maintain the existing checks and balances for final review, the current review framework (by the Listing (Review) Committee and the Listing Appeals Committee) should be maintained instead of the proposed one-stage review by the Listing Regulatory (Review) Committee for LRC Matters.

Oversight of the listing function

- 8 HKAB notes that the primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities has been passed to the Listing Policy Committee and the Exchange's Remuneration Committee will take into account the assessment of the Listing Policy Committee when determining the overall compensation of the Listing Department and its senior executives.⁷

⁶ Joint Consultation Paper, paragraphs 107 to 115.

⁷ Joint Consultation Paper, paragraphs 130.



- 9 HKAB is of the view that this arrangement is highly likely to result in influencing the way the executives will perform their roles and accordingly result in conflicts of interests for the individuals involved. This contrasts with the present practice where the Listing Committee has no input into the remuneration of executives of the Exchange. HKAB submits that the primary responsibilities for evaluating the performance of individual staff members of the Listing Department should be maintained by their respective managers while the Exchange's Remuneration Committee continues to consult the Exchange and have overall responsibility in relation to remuneration matters at a more general level.

Disciplinary Matters

- 10 In the interests of transparency and accountability, HKAB has no objection to the publication of disciplinary decisions on the Exchange's website.⁸

We hope the above comments are helpful for the SFC and the Exchange in considering the Proposals. HKAB would be pleased to engage in further discussions with the SFC and the Exchange in relation to the Proposals and to provide further industry input where necessary.

If you have any questions, please contact

Yours faithfully,

Doris Ma
Secretary

⁸ Joint Consultation Paper, paragraphs 134.