

Dear Sirs

Re: Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure For Listing Regulation (the "Consultation Paper")¹

A. Introduction

1. We, the Listing Committee², would like to commend the broader efforts of the SFC and the Exchange to improve the regulation of listing applicants and listed issuers in Hong Kong.
2. The Listing Committee is a body independent of the Exchange with a membership comprising a wide spectrum of experienced people from the securities industry, the legal and accountancy professions, asset managers and representatives of listed companies. Prior to its publication, only the Chairman and the two Deputy Chairmen of the Listing Committee had been briefed on the scope of the Consultation Paper. Neither they nor the Listing Committee were involved in its development and were not afforded the opportunity to review it. Accordingly, a significant majority of Listing Committee members felt that it was important to provide our thoughts on the Proposals at this stage.
3. As stated in the Consultation Paper, the current "three tier" regulatory regime has served the market well³ (see also Appendices 1 and 2) and the Hong Kong listing market has experienced significant growth.⁴ The market has evolved from one that primarily served local companies and businesses in the early 1990s into a premier capital formation centre for Mainland and overseas companies.
4. We recognise that the Hong Kong market changes over time and therefore it is important to review the structure of the regulatory regime periodically to ensure that the regime remains relevant and effective. **While we support the objectives outlined in the Consultation Paper - greater efficiency, transparency, accountability, and coordination in the regulatory process, we do not believe the outlined changes in the Consultation Paper will achieve**

¹ Terms used in this letter shall have the same meaning as used in the Consultation Paper.

² To avoid any conflict of interest, Mr. Charles Li (ex-officio member of the Listing Committee, Chief Executive of HKEX and its subsidiary the Exchange) was not involved in the preparation or submission of this response.

³ Consultation Paper, paragraph 6

⁴ Over the past decade, the number of listed companies has increased by 64% from 1,135 to 1,866, while total market capitalization has multiplied threefold from HK\$8,180 billion to HK\$24,684 billion.

this in practice. Accordingly, we believe that the stated objectives of the Consultation Paper could be better achieved instead through enhancements to the current regulatory regime to ensure a closer and more effective working relationship between the SFC and the Listing Committee while maintaining the checks and balances that are a hallmark and we believe a key strength of the Hong Kong regime.

5. We note the Exchange and the SFC are currently engaged in a separate broader review around the Listing Rules and the Growth Enterprise Market (GEM). We believe this, together with a review of the exercise of the SFC's enforcement powers, should be the priority in addressing the concerns that have been expressed in some quarters around the quality of the Hong Kong market.
6. We have organised our specific views to the proposals in the Consultation Paper into the following sections:
 - (a) The Listing Regulatory Committee;
 - (b) The Listing Policy Committee;
 - (c) Review of Listing Decisions;
 - (d) Oversight of the Listing Function; and
 - (e) Disciplinary Matters.
7. We believe that the experience and the market perspective that the Listing Committee brings could benefit the development of the regulatory regime. We encourage the Exchange and the SFC to involve us in the development of any final proposals and would welcome a constructive discussion as to how the overall objectives can be best achieved and implemented in the best interests of Hong Kong.
8. This submission represents the majority view of the Listing Committee.

B. The Listing Regulatory Committee

9. Under the Proposals, the Listing Regulatory Committee, comprising three representatives of the SFC and the Chairman and the two Deputy Chairmen of the Listing Committee, will decide cases that involve suitability issues or have broader policy implications ("LRC Matters")⁵.

⁵ Consultation Paper, paragraph 1(b)

10. It is proposed that the Listing Committee will, at a meeting held beforehand, provide non-binding views to the Listing Regulatory Committee on listing applications that have been flagged by the Listing Department as “LRC Matters”.

Our view on the proposals

11. We support measures to improve efficiency of the listing process and welcome the direct participation of the SFC in listing matters. However we have significant concerns that the proposed addition of the Listing Regulatory Committee would appear to reduce, not enhance, the efficiency of the listing application process, given that (i) there is unavoidable ambiguity in what constitutes an “LRC Matter”, yet this determination is central to the entire new process, (ii) it would require two different meetings to approve an application; (iii) the Listing Regulatory Committee would not have direct access to listing applicants, sponsors, or the full Listing Committee, and there would be no forum for discussion and debate among these parties; (iv) listing applicants could be referred to the Listing Regulatory Committee as late in the process as the Listing Committee hearing; and (v) the pre-submission consultation process with the Exchange would become more complicated and uncertain.
12. However one defines “LRC Matters”, these complex cases, which will likely have broad policy impact, are precisely the areas where the collective input of the Listing Committee, alongside the Exchange and the SFC, is essential. We believe that the market would be better served by a more open debate among all parties, including practitioners ‘on the front lines’, instead of moving these decisions to a smaller and narrower forum.
13. We also note that the proposed Listing Regulatory Committee would comprise three executives from the SFC and the Chairman and the two deputy Chairmen of the Listing Committee. The appointment of the Chairman and the two Deputy Chairmen in practice require the approval of the SFC. We believe that the Listing Regulatory Committee thus represents a significant move away from the current ‘checks and balances’ among the SFC, the Exchange and market participants.
14. Lastly, the reduced scope and responsibility of the Listing Committee under the Proposals may impair its ability to attract and retain experienced market participants. Listing Committee members commit substantial time and expertise to the work of the Listing Committee. For most members, the opportunity to make a meaningful contribution to the ongoing success of Hong Kong’s financial market is the overwhelming reason they choose to serve. We believe that the Proposals are likely to reduce the incentive for experienced

market participants to serve on the Listing Committee.

Our alternative proposal

15. As noted, we strongly support the Consultation's objectives of increased coordination, transparency, and accountability among the SFC, the Exchange, and the Listing Committee. Given that objective, and to address the concerns outlined above, we believe that a simpler and more effective solution would be to have SFC representatives attend the proceedings of the Listing Committee on listing applications which raise issues of suitability (the SFC would have a view on which meetings to attend based on its review under the existing dual-filing system – in relation to applications which do not give rise to broader policy applications we welcome the proposal that the SFC would not as a matter of routine issue a separate set of comments). This would provide the efficiency of a single forum in which all parties will have a much clearer understanding of various perspectives, allow for direct debate, and lead to more informed decision-making.
16. The participation of SFC representatives at the relevant Listing Committee hearings will allow the SFC to hear both the wider industry and market perspective of the full Listing Committee as well as the response of the listing applicant and its sponsor (as appropriate) and be better informed on the listing application. The SFC would therefore be better placed to decide whether to exercise its existing power to veto a listing application on "public interest" grounds if it considers it appropriate to do so. The Listing Committee of course acknowledges the SFC's ultimate authority to take such action when it deems appropriate.
17. We suggest that the SFC representatives attend the Listing Committee meetings, as outlined above, as observers with the right to comment and indeed present the SFC's perspective. We do not propose that the SFC attend as voting members of the Listing Committee, so as to avoid potential conflict with the SFC's statutory oversight role.

Publication of decisions

18. We support the aim of the Proposals to improve the transparency of listing decision-making and assist the market's understanding of the Listing Rules and the activities of the Listing Department and the respective committees.
19. Currently, the Exchange publishes guidance from time to time. The guidance can be published in various forms, including as: a listing decision; a guidance letter; or an update to Frequently Asked Questions. The Exchange publishes

guidance at a time and in a manner that it believes will best inform the market.

20. The publication of listing decisions must be done with care, as a published decision has the potential to mislead as well as to inform. The Listing Committee may have made a decision for very particular reasons that may not easily apply to other circumstances. The publication of decisions on an equal basis may imply that they have equal authority and usefulness. Also, a growing body of published decisions may have the effect of closing down “grey areas” for further interpretation and discretion.
21. For these reasons, we suggest that instead of publishing all decisions on listing matters (with certain exceptions), the process for the publication of guidance should be formalised to ensure greater clarity and consistency and to address concerns that guidance can be used as a substitute for rule making without consultation.
22. We suggest that principles should be established to determine: (a) when guidance should be published on the interpretation and application of a Listing Rule and when a change to a Listing Rule should be proposed for consultation; (b) the most appropriate form of any guidance to be published; and (c) the approval process for publication. The publication process would then be regularly monitored to ensure that it is in line with the objective of providing greater clarity and consistency.

C. The Listing Policy Committee

23. The Consultation Paper proposes that a new committee, the Listing Policy Committee, be established by the Exchange to initiate, steer and decide listing policy (including new Listing Rules, Listing Rule amendments, market consultations and other matters that have policy implications or general effect).⁶
24. It is proposed that the Listing Policy Committee meet after the Listing Committee has put forward non-binding views on policy matters so that the Listing Policy Committee has the benefit of their input and expertise.⁷

⁶ Consultation Paper, paragraph 56

⁷ Consultation Paper, paragraph 13

Our view on the proposals

25. The Listing Committee welcomes the active and direct participation of the SFC in policy formulation. We believe that such matters require informed, thoughtful input from all market participants alongside the Exchange and the SFC, as these decisions must balance the sometimes conflicting objectives of various participants. We believe that the Listing Committee provides a forum for debate, ensures that issues of concern in the market are aired and provides perspectives 'from the front lines'. All of this is critical if Hong Kong is to maintain a leading position in the fast-growing and constantly innovating global financial marketplace.
26. We are concerned that the proposed establishment of the Listing Policy Committee would substantially weaken the input of the Listing Committee, and provide no single forum for the Exchange and the SFC together with the full Listing Committee to debate issues and reach optimal decisions.
27. In addition, the reduced scope and importance of the Listing Committee under the new proposals will likely impair its ability to attract and retain experienced market participants (see paragraph 15 above).

Our alternative proposal

28. We believe that the stated objectives of closer coordination between the Exchange and the SFC and direct input of the SFC in policy formulation could be better achieved through enhancements to the existing policy formulation framework.

Policy agenda

29. We note that paragraph 5.1 of the Listing MOU⁸ contemplated a High Level Liaison Group which would review systemic and policy issues concerning listing-related matters. We understand that this Group has met only twice since its formation in 2003. The members of the High Level Liaison Group are: the Chairman of HKEX; the Chairman of the Listing Committee; the Chairman of the GEM Listing Committee⁹; the Chairman of the Takeovers Panel; The Chairman of the SFC¹⁰; The Executive Director of the Corporate Finance Division, SFC, the Chief Executive of HKEX and the Head of Listing of HKEX.

⁸ The Memorandum of Understanding Governing Listing Matters signed in January 2003.

⁹ The Listing MOU was written prior to the unification of the Main Board and GEM Listing Committees.

¹⁰ The Listing MOU was written prior to the creation of the position of Chief Executive of the SFC.

30. We note that the composition of the High Level Liaison Group is similar to the proposed composition of the Listing Policy Committee. We believe that this Group, or an even wider Oversight Group, would be well placed to have direct input on the formulation of the policy agenda. We believe that the SFC's involvement on policy matters through such a Group would not only provide the SFC with earlier input on the policy agenda but also result in greater transparency and efficiency and ensure that relevant policy matters that need to be addressed are put before the Listing Committee.

Policy meeting of the Listing Committee

31. We note that currently there is already substantial discussion and coordination between the Exchange and the SFC in policy formulation. (The current arrangements are set out in Appendix 3.) The SFC routinely comments on policy papers prepared by the Exchange staff and Listing Committee members are specifically requested by the Listing Department to respond to these comments. This means that the SFC is always a "voice in the room" at Listing Committee meetings and one that carries significant weight. Currently that voice is not given physical representation.
32. We believe that an enhancement to this process would be to have SFC representatives attend the Listing Committee policy meetings and provide their perspective directly (in addition to their involvement on the policy agenda through the High Level Liaison Group). This will provide a single forum for the Exchange, the SFC and the Listing Committee to discuss and debate policy matters with the benefit of collective input from all parties. We believe this arrangement would support the stated objective of having closer coordination and cooperation between the Exchange, the Listing Committee and the SFC while avoiding our concerns above.
33. We suggest that the SFC representatives attend the Listing Committee meetings to hear policy matters as observers with the right to comment and present the SFC's perspective. We do not propose that the SFC attend as voting members of the Listing Committee, to avoid potential conflict with the SFC's statutory oversight role. The SFC would, of course, retain its right, under statute¹¹, to veto or approve Listing Rule changes.

¹¹ Section 24 of the SFO

D. Reviews of listing decisions

34. To enhance the decision-making structure for reviews, the Consultation Paper proposes that the Listing Regulatory Committee replace the Listing (Review) Committee as the body to review decisions of the Listing Committee.¹² In addition, a Listing Regulatory (Review) Committee would be formed to replace the Listing Appeals Committee as the final review body within the Exchange for certain types of listing decisions.¹³
35. The Listing Committee believes that the current review process works well and should not be amended in the manner proposed. Under the existing system, if the SFC is not satisfied, for whatever reason, with a particular decision made by the Listing Committee, it can (as it has in the past), ask the Listing Committee to review the decision. This includes decisions made by the Listing (Review) Committee.¹⁴
36. The need for the Listing Regulatory (Review) Committee is dependent upon whether the Listing Regulatory Committee is formed under the Proposals. We have expressed our concerns above (see paragraphs 11 to 15) regarding the formation of the Listing Regulatory Committee and have proposed, as an alternative, that SFC representatives attend Listing Committee meetings as observers (see paragraphs 15 to 17).

E. Oversight of the listing function

37. The Consultation Paper proposes that the Listing Policy Committee replace the Listing Committee as the body responsible for oversight of the listing function and the Listing Department's performance within the Exchange. To reinforce this oversight role, it is proposed that the Listing Policy Committee have primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities. HKEX's Remuneration Committee, which is responsible for determining the overall compensation of the Listing Department and its senior executives, will take into account the assessment of the Listing Policy Committee when determining

¹² Except where the Listing Department rejects a non-LRC IPO case or where the Listing Department makes a decision on any Post-IPO non-LRC Matter, the applicant has the right to have that decision reviewed by the Listing Committee not the Listing Regulatory Committee (Consultation Paper, paragraphs 21 and 31 of Appendix B).

¹³ Consultation Paper, paragraph 108 and 109

¹⁴ Paragraphs 10.6 to 10.7 of the Listing MOU, link [here](#)

such compensation.¹⁵

38. We believe that the Proposals represent a significant change to the 'balance of power' between the SFC and the Exchange, and risk creating actual or perceived conflicts of interest for management and staff on both sides. It is clear that the SFC, as the ultimate regulator, has the final say on decisions and actions taken by the Exchange. We think it is preferable for the SFC to exercise its oversight through this 'top down' authority, rather than getting more involved in the day to day operations and management of the Exchange.
39. Consequently, we suggest that the SFC and the Listing Committee are already well placed to contribute to the appraisal process for senior executives of the Listing Department but should not have primary responsibility for this matter which should remain with the Exchange.

F. Disciplinary matters

40. Under the Proposals, the Listing Committee will continue to decide upon disciplinary matters. To enhance procedural fairness for these matters, the Consultation Paper proposes that a Listing Disciplinary Chairperson Group consisting of practising or retired senior counsel (or other individuals of equivalent qualification) be established by the Exchange. Each disciplinary hearing (whether at first instance or upon review) will be chaired by a member of this Group.¹⁶
41. The existing disciplinary process is intended to provide direct input from the parties involved (not mediated through counsel, advisors, etc), and is conducted primarily based on written submissions of the parties involved for the following reasons:
 - (a) it is commensurate with the enforcement powers of the Exchange which are non-statutory and limited, primarily, to private reprimands, public criticism or public censure; and
 - (b) to expedite proceedings in a just manner to ensure the timely delivery of regulatory outcomes.
42. The proposal for each disciplinary hearing to be chaired by practising or retired senior counsel (or other individuals of equivalent qualification) would be a step towards formalising disciplinary hearings and may not be consistent either with

¹⁵ Consultation Paper, paragraph 28

¹⁶ Consultation Paper, paragraph 30

the Exchange's current enforcement powers or the aim of justly expediting enforcement proceedings. We would be particularly concerned if this change to the hearing format encouraged parties to rely more on external counsel, or to take an overly 'legalistic' approach to the matters at hand.

43. We agree that it is important to ensure the consistency and quality of the Chairman of disciplinary meetings. The Exchange currently has a formal process for selecting a Chairman of a Disciplinary Committee from the members of the Listing Committee under paragraph 5.1 of its Disciplinary Hearings Procedures. To enhance consistency and quality of the Chairman of disciplinary hearings, we suggest that all members of the Listing Committee are given formal training on disciplinary matters.

G. Addendum

44. The Listing Committee hopes that the SFC and the Exchange find our views helpful and our ideas worthy of consideration. The Listing Committee would welcome opportunities to discuss our response to the Consultation Paper and encourages the Exchange and the SFC to include the Listing Committee in the decision-making process that takes place in the light of responses to the Consultation Paper, so as to develop the best way forward in the best interests of Hong Kong.

Stephen Taylor
Chairman
Listing Committee

APPENDIX 1

HISTORY AND DEVELOPMENT OF THE “THREE TIER” REGULATORY STRUCTURE

(a) Origins

45. The existing “three-tier” regulatory structure comprising the Government (“Government”) of the Hong Kong Special Administrative Region (the Financial Services and Treasury Bureau (“FSTB”)), the SFC and the Exchange was recommended by the Securities Review Committee Report, commonly known as the “Hay Davison Report” which was published in May 1988 to review the constitution, powers, management and operation of the Hong Kong Stock and Futures Exchanges and their regulatory bodies.
46. The Hay Davison Report stated the Securities Review Committee’s unequivocal belief that practitioner-based regulation was the best available solution in Hong Kong. The Securities Review Committee formed this view based on the following reasons:¹⁷
- (a) a practitioner-based system can *“avoid the danger of straight-jacketing the securities markets by a strict regulatory regime which might all too easily lead to insensitive or heavy handed over-regulation”*;
 - (b) market management and regulation by practitioners *“offers scope for flexibility and adaptability in a rapidly changing market...”* and *“draws on the market knowledge of practitioners and thereby is better able to win the support of market members”*; and
 - (c) *“statutory regulators will not always have the necessary knowledge and experience”*.
47. The Securities Review Committee concluded that:
- “Given the complexity of modern securities markets and the speed of market events, we believe that there is no alternative to practitioner-based regulation...”*¹⁸
48. Today, the Listing Committee is a very well-balanced committee of market experts consisting of 27 seasoned market participants, including eight senior investor representatives, partners from each of the “Big Four” accounting firms, international and local reputable law firms, and senior representatives from

¹⁷ See Hay Davison Report paragraphs 3.24 to 3.26, link [here](#)

¹⁸ See Hay Davison Report paragraph 3.26, link [here](#)

APPENDIX 1

listed issuers, leading investment banks and corporate finance advisers. All devote a considerable amount of time and effort to the work of the Listing Committee.¹⁹

(b) Powers and Functions

49. The practitioner-based recommendations of the Hay Davison Report (see paragraphs 45 to 47 above) were implemented through a package of reforms devolving authority over listing matters to the Exchange.²⁰ The Exchange Board then delegated its powers and functions in respect of all listing matters to the Listing Committee. The Listing Committee, in turn, retained the most significant powers (e.g. approval of listing) and sub-delegated the remainder to the Listing Department.
50. As well as ensuring that practitioners are at the heart of listing regulation, this structure also reduces any actual or perceived conflict of interest between the performance of the Exchange's regulatory powers and functions in relation to listing matters and its commercial interests. The structure was formalised in the Listing Rules²¹ and in a Memorandum of Understanding signed between the SFC and the Exchange dated 31 December 1991.²²
51. Since then, the Listing Committee has been serving both as an independent administrative decision-maker and an advisory body for the Exchange and has been performing four principal functions:
- (a) to oversee the Listing Department (to the extent practicable given the Listing Committee's mode of operation);
 - (b) to provide policy advice to the Listing Department on listing matters and to approve amendments to the Listing Rules;²³

¹⁹ A list of the current members of the Listing Committee and their biographies is published on the HKEX website [here](#).

²⁰ These reforms included the establishment of the SFC function that it must "*promote and develop an appropriate degree of self-regulation in the securities and futures industry*", see section 5(1)(c) of the SFO, link [here](#).

²¹ Rules 2A.01 to 2A.03 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, link [here](#). References in this response to the "Listing Rules" refers to the Rules Governing the Listing of Securities on the Exchange for the Main Board unless otherwise specified.

²² This Memorandum of Understanding was subsequently superseded by one signed between the SFC and the Exchange in January 2003.

²³ This approval is subject to the approval of the Exchange Board and subject ultimately to approval by the SFC.

APPENDIX 1

- (c) to take decisions of material significance for Main Board listing applicants,²⁴ Main Board and GEM listed issuers and the individuals concerned. These include approvals of listing applications and cancellations of listing and disciplinary matters; and
- (d) to act as a review body (in its role as the Listing (Review) Committee) for decisions made by the Listing Department and by the Listing Committee.²⁵

(a) Subsequent Reforms

- 52. The “three-tier” regulatory structure has evolved over time (including reforms to the Listing Committee membership and mode of operation) to strengthen the enforcement capabilities of the SFC, address any actual or perceived conflict of interest between the Exchange’s commercial and regulatory roles and to enhance the quality and experience of Listing Committee members individually and as a whole, and their perceived and actual independence.
- 53. In October 1993, the Listing Nominating Committee was formalised in the Listing Rules as a body to nominate members of the Listing Committee for appointment. At that time, the Listing Nominating Committee consisted of three senior Exchange executives, and the Chairman and two Executive Directors of the SFC.²⁶
- 54. In March 2000, to implement changes related to the de-mutualisation of the Exchange and the formation of HKEX, the concept of “alternate members” of the Listing Committee was abolished and its membership was expanded from 12 members, with alternates, to 25 full members.²⁷
- 55. In January 2003, the SFC and the Exchange signed the Listing MOU between them setting out the respective roles and responsibilities in relation to listing matters in order to reduce duplication to the extent reasonably practicable, and for the benefit of mutual cooperation, public understanding, and the interest of the investing public.

²⁴ The power to approve listing applications to GEM was delegated from the GEM Listing Committee to the Listing Division with effect from 1 July 2008.

²⁵ Listing Committee Report 2015, Appendix 1, paragraph 3, link [here](#)

²⁶ Exchange “Note to Subscribers - Rules Governing the Listing of Securities”, Update No.4, dated November 1993 (not available on HKEX website)

²⁷ Exchange “Note to subscribers to rules governing the listing of securities”, Update No.49, dated 6 March 2000 (not available on HKEX website)

APPENDIX 1

56. On 1 April 2003, the Securities and Futures Ordinance came into effect which, together with subsidiary legislation²⁸, implemented the “dual filing” regime. Under this regime copies of listing applications and public disclosure materials of listed companies must be filed to the SFC in addition to the Exchange. This gives the SFC legislative power to make comments and object to a listing application. It also enables the SFC to exercise its statutory power to take action against false or intentionally misleading disclosure.²⁹
57. In March 2004, the FSTB published conclusions to a “Consultation Paper on Proposals to Enhance the Regulation of Listing” (“FSTB Conclusions”). The FSTB had asked for views on alternative regulatory models to the “three-tier” regulatory structure. This was preceded by the recommendation of a Government commissioned report³⁰ that the listing function should transfer from the Exchange to a new Hong Kong Listing Authority established within the SFC. The FSTB concluded that was general support for expanding the dual filing regime, rather than implementing an alternative regulatory model, by giving statutory backing to the most important listing requirements (see paragraph 61).
58. The FSTB Conclusions invited the Independent Commission Against Corruption (“ICAC”) to study the procedures and practices of both the SFC’s Dual Filing Team and HKEX’s Listing Unit (including the operation of the Listing Committee). This was with a view to *“removing any lingering doubts about the impartiality of the listing regime.”*³¹ The ICAC has conducted such reviews periodically since that date.
59. In 2005, the SFC conducted its first annual review of the Exchange’s performance in its regulation of listing matters, which it continues to perform each year.
60. A number of additional reforms were introduced in February 2006, namely:
- (a) expanding the membership of the Listing Committee from 25 members to a minimum of 28 members;

²⁸ Stock Market and Futures (Stock Market Listing) Rules, link [here](#)

²⁹ SFC website, “Dual filing”, link [here](#)

³⁰ “Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure” (March 2003)

³¹ Financial Services and the Treasury Bureau, “Conclusions on Proposals to Enhance the Regulation of Listing”, (26 March 2004) paragraph 12, link [here](#)

APPENDIX 1

- (b) changing its composition to ensure the inclusion of at least eight investor representatives;
 - (c) increasing the maximum term for Listing Committee members from three to six years, in recognition of the fact that members may become more effective as they gain experience on the Listing Committee; and
 - (d) changing the composition of the Listing Nominating Committee to specify that it must comprise three *non-executive* members of the Exchange Board (rather than two members of the Exchange Board and the Chief Executive of the HKEX).³²
61. On 1 July 2008, the Listing Committee delegated its power to approve or reject GEM listing applications to the Listing Divisions, with GEM listing applicants retaining a right of appeal to the Listing Committee.³³
62. On 1 January 2013, listed companies' obligation to publicly disclose any inside information that has come to their knowledge, as soon as reasonably practicable, received statutory backing.³⁴ This statutory obligation is regulated by the SFC which can bring proceedings before the Market Misconduct Tribunal who can impose a range of civil sanctions, including a fine of up to HK\$8 million.
63. In November 2014, the Listing Nominating Committee announced that it would, for the first time, interview short-listed candidates before appointing Listing Committee members.³⁵

³² HKEX Press Release entitled "Composition Changes to Listing Committee" dated 3 February 2006, [link here](#)

³³ HKEX, "Consultation Conclusions on the Growth Enterprise Market" (May 2008), paragraph 45, [link here](#)

³⁴ Part XIVA of the Securities and Futures Ordinance, [link here](#)

³⁵ HKEX Press Release entitled "Listing Nominating Committee Seeks Listing Committee Candidates dated 4 November 2014, [link here](#)

APPENDIX 2

ACHIEVEMENTS OF THE “THREE TIER” REGULATORY STRUCTURE

(a) Past and Recent Successes

64. Since its establishment, and particularly recently, Hong Kong’s current regime has achieved considerable economic and regulatory success against world standards.
65. In terms of the Exchange’s performance as an equity-raising platform, Hong Kong was ranked number one in the world, in 2015, for IPO funds raised (following a second place ranking in 2014 and third place in 2013).³⁶
66. Of equal significance, in terms of the Exchange’s regulatory role, Hong Kong was ranked number one in the world (out of 189 other economies including the US and the UK) for “protecting minority investors” by the World Bank’s “Doing Business Report 2016”.³⁷
67. This regulatory strength has also been demonstrated against home-grown standards. As part of its oversight role, the SFC conducts an annual survey of the Exchange’s performance of its regulation of listing matters. For this purpose the SFC asks investors, listed companies, professional advisers (investment bankers, legal advisers and accountants) and Listing Committee members to score the Exchange out of five.³⁸ In 2014 and 2015, the Exchange achieved an overall average score of four out of five, the highest score the Exchange has achieved since the survey began in 2006.³⁹
68. In addition to its recent success, the current regime has achieved much over its twenty five year existence (see Appendix 2). The diverse experience, expertise and perspectives of the Listing Committee have been key elements of these achievements. In addition, the Exchange has benefited from the SFC’s valuable comments and advice throughout on all listing matters.

³⁶ Source : World Federation of Exchange (WFE) website link [here](#)

³⁷ World Bank Group, “*Doing Business 2016 - Measuring Regulatory Quality and Efficiency*” link [here](#)

³⁸ “5” being wholly satisfied and “1” being wholly dissatisfied.

³⁹ SFC, “*Report on the Securities and Futures Commission’s 2015 annual review of the Exchange’s performance in its regulation of listing matters*”, (June 2016), Appendix A, link [here](#)

APPENDIX 2

(b) Most Notable Achievements

69. Some of the most notable achievements of the “three tier” regulatory structure, over its twenty five year existence, are set out below:

- Implementation of Listing Rules for H-share issuers (1993);
- New Listing Rule chapter for listing derivative warrants (1996);
- Establishment of the Growth Enterprise Market (1999);
- Implementation of the Corporate Governance Code (2005);
- Joint policy statement regarding the listing of overseas companies (2007);
- Requirement to publish announcements on HKEX’s website and abolition of paid announcements in newspapers (2007);
- Publication of near-final prospectuses as “Web Proof Information Pack” (2007);
- Introduction of HDR framework (2008);
- Acceptance of Mainland Accounting and Auditing Standards (2010);
- Implementation of regime for mineral companies (2010);
- Implementation of Mixed Media Offers for prospectuses (2011);
- Reform of property valuation requirements (2012);
- Publication of guidance on the Exchange’s approach to listing business trusts and stapled securities (2012);
- Establishment of Environmental, Social and Governance Guide (2013);
- Requirement to disclose board diversity policy (2013);
- Implementation of new sponsor regime (2013); and
- Consultation on weighted voting rights (2014-15).⁴⁰

⁴⁰ The date in brackets indicates the date of implementation. Each item may have been subject to subsequent updates.

APPENDIX 3

SFC INVOLVEMENT IN CURRENT REGIME

(a) Policy development

70. The agenda for policy development by the Listing Committee is currently set by the Listing Liaison Forum. This body comprises the Chairman and Deputy Chairmen of the Listing Committee and the HKEX Chief Executive, with the Head of Listing as secretary. The Listing Liaison Forum generally meets on a monthly basis. In addition to setting the policy agenda, the Listing Liaison Forum also monitors the performance of the Listing Department and deals with Listing Committee operational issues.
71. A log of policy items is presented to the Listing Liaison Forum each month ("policy log") for its consideration. Situations which may give rise to new policy items on the policy log include:
- (a) market comments and feedback that policy should be changed in the light of market developments;
 - (b) policy issues raised by Listing Committee members at regular or policy meetings or at informal Listing Committee lunches;
 - (c) developments in other leading securities markets, international trends and best practice;
 - (d) issues identified in administering the Listing Rules by the Listing Department;
 - (e) policy development suggestions from the SFC; and
 - (f) policy development suggestions from the HKEX or Exchange boards.
72. The Listing Liaison Forum takes into account the items on the policy log when setting the Listing Committee's policy agenda. The Listing Committee then subsequently meets on a quarterly basis to consider items on that agenda.
73. The SFC has the power to comment on all policy matters that are considered by the Listing Committee. Based on our understanding and experience:
- the Listing Department circulates papers regarding a policy matter to the SFC at the same time the papers are circulated to the Listing Committee, normally at least two weeks prior to a policy meeting at which the papers will be discussed;
 - the SFC comments on all policy papers that are presented to the Listing Committee and these comments are usually circulated to the Listing

APPENDIX 3

Committee prior to, or at, the relevant policy meeting;

- the Listing Department draws Listing Committee members' attention to the SFC's comments at the policy meeting and seeks the Listing Committee's response to them and subsequently sends such feedback to the SFC; and
- a new policy or policy change would be implemented only after all of the Listing Committee's comments and those of the SFC are addressed to our own and the SFC's respective satisfaction.

74. It is our understanding that the Listing Department and the SFC staff have regular dialogue at a working level on all policy matters. In the case of novel or controversial matters, this dialogue between the Exchange and the SFC may also take place at senior levels and include the Listing Committee Chairman and Deputy Chairmen, as was the case during the Exchange's consultation on weighted voting rights.

75. The SFC Board has the power to approve any new Listing Rule or Listing Rule change proposed by the Exchange.⁴¹ It is our understanding that the Listing Department will seek approval of the proposed change from the Exchange Board, and the Exchange will subsequently submit papers (together with a statement on how the process of proposing the Listing Rule amendments satisfies SFO requirements) to the SFC Board seeking its approval.

76. In addition to Listing Rules changes, the Exchange is required under the Listing MOU to forward any policy decision it intends to implement that will have mandatory effect or general application, including practice notes, guidance notes and waivers from requirements. The Exchange will not publish, rely upon or impose such a policy decision upon any person until the SFC has approved it in writing.⁴²

(b) Listing applications

77. It is our understanding, and stated in the Consultation Paper⁴³, that the SFC also routinely comments on all individual listing applications. These comments are sent with the Listing Department's own comments to the listing

⁴¹ Sections 23 and 24 of the SFO, link [here](#)

⁴² Paragraph 6.5 of the Listing MOU, link [here](#) and Listing Rule 2.04, link [here](#)

⁴³ Consultation Paper, paragraph 1(c)

APPENDIX 3

applicant and its representatives. Upon receipt, the Listing Department forwards responses to all comments to the SFC.

78. The SFC has the power to object to a listing application on several grounds including "public interest".⁴⁴ We understand that, to enable the SFC to exercise this power, the Listing Department seeks clearance from the SFC for all listing applications before they present them to the Listing Committee for its consideration.⁴⁵

(c) Reviews of decisions

79. If the SFC is not satisfied, for whatever reason, with a particular decision made by the Listing Committee, it can and has in the past, asked the Listing Committee to review its decision.⁴⁶

(d) Suspensions

80. The SFC can suspend, and has suspended, listed companies' securities from trading under its statutory powers to regulate the disclosure of inside information.

(e) Meetings/Discussions

81. We understand that the SFC participates in meetings and discussions with the Exchange at a working level on live cases and policy matters. These include informal phone discussions to clarify the SFC's concerns on listing applications and cases regarding listed issuers' ongoing compliance with the Listing Rules and to clarify the SFC's views on policy matters.

82. Senior members of the Exchange and the SFC also meet at scheduled meetings, namely:

- (a) on a monthly basis at a liaison meeting between the Listing Department and the SFC's Corporate Finance Division;⁴⁷ and
- (b) on an ad-hoc basis, as circumstances require, particularly on issues that are novel, controversial or have public policy implications etc.

⁴⁴ Paragraph 6 of the Stock Market and Futures (Stock Market Listing) Rules link [here](#)

⁴⁵ Paragraph 7.8(f) of the Listing MOU, link [here](#)

⁴⁶ Paragraphs 10.6 to 10.7 of the Listing MOU, link [here](#)

⁴⁷ Paragraph 10.3 of the Listing MOU, link [here](#)

APPENDIX 3

(f) Annual audit

83. On an annual basis, the SFC will conduct an audit of the Exchange's performance in the regulation of listing-related matters.⁴⁸ It is our understanding that, as part of this exercise, the SFC will review the Listing Department's internal procedures and processes as a whole, supplemented by reviews of sample cases in order to understand how the Listing Department's policies work in practice and to verify whether the Listing Department's practices adhered to its policies.
84. In previous years as part of its review process, the SFC interviewed members of the Listing Committee. We understand that the SFC also interviews each of the heads of the operational teams of the Listing Department, including the Head of Listing, to obtain an understanding of their assessment of the effectiveness and efficiency of their respective team's decision-making processes and operational procedures.⁴⁹

(g) Reporting

85. We understand that the SFC receives the following materials and reports from the Exchange:
- (a) all listing application materials and ongoing disclosure materials as soon as reasonably practicable after receipt;⁵⁰
 - (b) all Listing Department papers sent to the Listing Committee for our consideration at the same time they are circulated to us;⁵¹
 - (c) minutes of all Listing Committee meetings; and
 - (d) monthly Listing Department reports containing such information as would enable the SFC to understand the activities of the Exchange in relation to its responsibilities in all listing-related matters for the preceding month.⁵²

⁴⁸ Paragraph 10.4 of the Listing MOU, link [here](#)

⁴⁹ SFC, "Report on the SFC's 2015 annual review of the Exchange's performance in its regulation of listing matters", paragraphs 17 and 18 link [here](#)

⁵⁰ Paragraphs 5 & 7 of the Stock Market and Futures (Stock Market Listing) Rules and paragraphs 7.3 and 7.5(a) of the Listing MOU, link [here](#)

⁵¹ Paragraph 7.3(b) of the Listing MOU, link [here](#)

⁵² Paragraph 10.1 of the Listing MOU, link [here](#)

APPENDIX 4

OVERSEAS REGULATORY MODELS

86. As background to our response, we considered the listing regulatory models of other jurisdictions (those referred to below) to determine how they compare to our own.
87. At one end of the spectrum is the UK model which gives almost total authority over listing matters to a statutory regulator, the Financial Conduct Authority (operating under the name of the UK Listing Authority).⁵³
88. At the other extreme, jurisdictions such as New Zealand give a high degree of authority to an exchange to regulate its own markets with the statutory regulator having a “risk-based” monitoring and supervisory role with investigation and enforcement powers but otherwise minimal involvement.⁵⁴
89. Other jurisdictions lie somewhere in the middle of this spectrum dividing powers to differing degrees between the statutory regulator and exchanges. In the US, for instance, the Securities and Exchange Commission has extensive powers under law to govern compliance with disclosure requirements.⁵⁵ However large exchanges such as NYSE and NASDAQ (known as self-regulatory organisations) conceive of and administer the eligibility and ongoing financial requirements of their own markets and are responsible for monitoring and ensuring compliance with their listing standards such as corporate governance requirements (e.g. independent director membership on boards and the establishment of nomination, compensation and audit committees) and shareholder approval thresholds for material transactions.⁵⁶
90. Hong Kong too seems to lie in this middle ground. Hong Kong has a strong statutory regulator in the SFC with powers of a “public interest” veto over listing applications, veto power regarding changes to the Listing Rules and an extensive oversight role and enforcement powers, but the Exchange has been entrusted with “front-line” regulation.

⁵³ UK Financial Conduct Authority website – UK Listing Authority (UKLA) homepage, [link here](#)

⁵⁴ New Zealand Financial Markets Authority website – “How we regulate”, [link here](#) and NZX website – “NZX Regulatory Model”, [link here](#)

⁵⁵ Securities and Exchange Commission website – “The Laws That Govern the Securities Industry”, [link here](#) and “What We Do” (in particular “Division of Corporation Finance” and “Division of Trading and Markets”) [link here](#)

⁵⁶ NYSE Regulation homepage, [link here](#)

APPENDIX 4

91. Based on our review, the trend in listing regulation appears to be towards the middle of this spectrum rather than to its extremes:

- On 27 December 2015, on the Mainland, the Standing Committee of the National People's Congress authorised the State Council to implement a US-style "registration-based vetting system" for the public offering of stocks on the Shanghai Stock Exchange and the Shenzhen Stock Exchange. This was for the purpose of transferring authority for IPO approval from the CSRC, its powerful statutory regulator, to the exchanges;⁵⁷ and
- Singapore appears to have moved towards the centre from the opposite end of the spectrum. In September 2015 its exchange, SGX, set up three independent listing committees, similar to our own, to advise on the most important listing decisions. Prior to this SGX had relatively few checks and balances on its authority over listing matters.⁵⁸

⁵⁷ State Council webpage, link [here](#) and CSRC statement, link [here](#)

⁵⁸ A Listings Advisory Committee, a Listings Disciplinary Committee and a Listings Appeals Committee. SGX, Regulatory Announcement, link [here](#)