

**JOINT CONSULTATION PAPER BY THE SECURITIES AND FUTURES COMMISSION AND THE
STOCK EXCHANGE**

**PROPOSED ENHANCEMENTS TO THE STOCK EXCHANGE OF HONG KONG LIMITED'S
DECISION-MAKING AND GOVERNANCE STRUCTURE FOR LISTING REGULATION**

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We set out our comments on the above Joint Consultation Paper published in June 2016. For ease of reading, we do not distinguish between the GEM Listing Rules and the Main Board Listing Rules (we just refer to the Listing Rules) and likewise we do not distinguish between the GEM Listing Committee and the Main Board Listing Committee (we just refer to the Listing Committee).

At the outset, we should state that we have been privileged to serve on the Listing Committee for a number of years. It has been an honour to do so and we are proud to be Listing Committee members. The views we express here, are, of course, our personal views.

Introductory Remarks

In our opinion, and we hope this will not be interpreted as self-serving, the Listing Committee performs a valuable service and includes many dedicated members who sincerely endeavour to act, in their capacity as Listing Committee members, in the best interests of the market. In addition, we believe that, on the whole, the Listing Committee does excellent work. In passing we would mention that the Board of the SFC currently includes four former members of the Listing Committee (two of whom are former Chairs of the Listing Committee). We would expect that the Board of the SFC is fully aware of the valuable role that the Listing Committee plays. Having appropriately praised the work of the Listing Committee, we wish to highlight that the question posed by the consultation

paper is not, 'does the Listing Committee perform good work?' The consultation paper poses the question, 'how should we move forward to improve upon the current system?'

Undoubtedly, there is scope for improvement in the current listing regulatory structure – just as there is scope for improvement in almost any system. It is natural for people to be hesitant to embrace change, most people become comfortable with the status quo. It is also natural for some people to wish to continue using an established and proven structure which works reasonably well rather than to take the leap to adopt a new structure even if it promises to work better. We should however, be open to change, open to new ideas and new ways of doing things – this is exactly the attitude which has made Hong Kong the international financial centre that it is today. To paraphrase Charles Darwin (entirely out of context of course), *it is not the strongest that survives, nor the most intelligent, but the one most responsive to change.*

The proposed changes are, in essence, intended to: (a) facilitate closer collaboration between the Stock Exchange and the SFC; (b) enable the SFC to provide timely and direct input on listing regulatory matters and policy issues; and (c) enhance efficiency and accountability. These are all important and worthwhile aims which it is only right that the regulators work towards and market participants should support. In considering the consultation paper, we think the substantive issue is whether the proposed changes can improve the system. We will try to set out our thoughts on this below.

The Existing Listing Regulatory Structure

Before expressing our views on the key proposals in the consultation paper, we would like to put the issues into context.

The current three-tier regulatory framework (the Government, the SFC and the Stock Exchange) introduced in 1989 owes its origins to the recommendations set out in the 1988 Hay Davison Report. Essentially, under our current three-tier system, the Government has empowered the SFC to act as the independent regulatory body for Hong Kong's securities and futures markets, which markets are operated by the Stock Exchange. The SFC is the statutory regulator of the Stock Exchange and, amongst other things, is responsible for supervising and monitoring the performance by the Stock Exchange of its listing functions and responsibilities.

The Hay Davison Report was issued in the aftermath of a number of events including a corruption scandal, which involved the approval process for new listings on the Stock Exchange. The Hay Davison Report famously stated: "... at the Stock Exchange of Hong Kong ... an inside group treated the Exchange as a private club rather than a public utility ...". We must stress, that this report was written almost 30 years ago and the Stock Exchange is, and has been for many years, a most impressive organization, with highly talented management and staff who operate with the highest standards of integrity. The reason we mention this piece of ancient history, is that the Listing Committee was established in the aftermath of these events - with the approval of new listing applications being placed in the hands of an independent body (presently 27 out of the 28 members of the Listing Committee are independent of the Stock Exchange).

Currently, the Listing Committee decides whether or not to approve new listing applications for the Main Board, with applications for listing on GEM being decided by the Listing Division (applicants have the right to appeal to the Listing Committee if the application for listing on GEM is rejected by the Listing Division). In addition, the Listing Division may refer applications for GEM to the Listing Committee (for example, borderline cases) but as a matter of routine, GEM listing applications are determined by the Listing Division. All GEM listing applications were determined by the Listing Committee until 1 July 2008; at which time this function was delegated to the Listing Division.

Obviously, to the extent that the historic scandal mentioned above may have been a reason for putting listing approval in the hands of an independent body rather than in the hands of the Stock Exchange's staff, this reason no longer exists. The Listing Division's management and staff operate to the highest standards of diligence and integrity and they operate behind a Chinese Wall from the other operations of the Stock Exchange. Further, as stated above, applications for listing on GEM are not normally presented to the Listing Committee for approval but are normally approved by staff within the Listing Division of the Stock Exchange without recourse to the Listing Committee. In addition, the Listing Division routinely rejects applications for listing on both Main Board and on GEM without prior recourse to the Listing Committee. We mention this to emphasise that the existing system works with a significant part of the listing approval functions and powers not being in the hands of the Listing Committee (a largely independent body comprising mainly market practitioners/participants) but being in the hands of the staff of the Stock Exchange.

One of the Hay Davison Report's recommendations was that a "practitioner-based system" be adopted. The Hay Davison Report explained its rationale as follows: "Market management and regulation by practitioners offers scope for flexibility and adaptability in a

rapidly changing market. Moreover, it draws on the market knowledge of practitioners ...". The Report further cited the complexity of modern securities markets and the speed of market events as being further reasons for advocating "practitioner-based regulation". The Listing Committee was established to fit into the three-tier structure and is practitioner-based in line with the relevant recommendation in the Hay Davison Report.

The next substantive review of the listing regulatory structure was in 2003 when the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure (the "Expert Group") issued its report. Amongst other things, the Expert Group identified difficulties faced by HKEX in managing its conflicts of interest in acting as the front-line regulator on listing matters and identified problems arising from having two market regulators (the SFC and HKEX) with split responsibilities in respect of the regulation of listed companies.

A key recommendation of the Expert Group was to move the listing function from the Stock Exchange to a new division to be established within the SFC (this new division was proposed to be named the 'Hong Kong Listing Authority'). This would have brought Hong Kong's listing regulatory structure more in line with international financial centres such as London. We will not go into the fiasco that ensued after the publication of the Expert Group Report, suffice to say that certain elements succeeded in killing any implementation of the proposals resulting in the existing listing regulatory structure, including the Listing Committee's powers and role, remaining by and large unchanged for many years.

The current proposals are far less radical than the recommendations made in the 2003 Expert Group Report. The current proposals clearly represent an attempt to build upon and enhance the existing listing regulatory structure rather than to create a completely new structure.

In fact, more radical reforms of the listing regulatory structure had been on the table earlier. As stated in HKEX's 'First Submission' to the Expert Group dated November 2002 (paragraphs 19 and 20):

"At the time of the merger, [i.e., the merger of the stock and derivatives markets and their respective clearing houses] it was envisaged in the Government Policy Paper of July 1999 (entitled "Reinforcing Hong Kong's Position as a Global Financial Centre") that the Listing Committee would in due course be abolished and all listing decisions would be made by the Executive of HKEx, subject to appeal to the Listing Appeals Committee. Whether for this or other reasons, a certain lack of clarity developed about the role and

expectation of this Committee. This was commented upon in the PIPSI report. Contributing to this problem was the fact that all members of the Committee are "volunteers" with many other calls on their time. This made it difficult for the Committee to "set the agenda" in a manner commensurate with the considerable responsibility which the Committee carries. The main reason cited for this is that the Committee does not fully control the resource on which it depends (the Listing Division) for the preparation of papers and policy recommendations."

"In July 2002, Government re-considered the proposal to abolish the Listing Committee and HKEx announced modifications to the proposed new listing regime."

Addressing Some Misconceptions About the Consultation Paper

Some commentators have characterized the current consultation process as a turf war between the Stock Exchange and the SFC and/or as a power grab by the SFC which will result in a concentration of power in the hands of the SFC. We do not believe that this is the correct way to view the proposals and we consider it appropriate to share some thoughts on this matter.

First, the consultation paper has been issued by the Stock Exchange and the SFC as a joint paper. That is to say, the consultation paper represents the proposals *agreed* between the Stock Exchange and the SFC. We do not profess to have any knowledge as to the discussions between the Stock Exchange and the SFC leading up to the issuance of the consultation paper. However, we would expect that there were negotiations - this would be normal in discussions between two parties leading to agreed positions on important issues. So if the Stock Exchange and the SFC have talked about how to enhance the listing regulatory structure and formulated and agreed between them the current proposals, it seems to us misguided for the consultation process to be talked about in some quarters as if it were a turf war.

Secondly, if we look at the currently stated functions of the Listing Committee and compare them with the reality of the situation, there is, at least for the first three of the four main functions of the Listing Committee listed below, no real transfer of absolute power which would result from the implementation of the proposals set out in the consultation paper.

The annual Listing Committee Report states that the Listing Committee has the following four principal functions:

1. *To oversee the Listing Division to the extent practicable given the Listing Committee's mode of operation.*

Our view is that there is in reality, very little, if any, substantive oversight of the work of the Listing Division by the Listing Committee. This is not a criticism, it is just a natural consequence of the limited role that the Listing Committee actually performs.

The consultation paper correctly states the oversight role actually played by the Listing Committee:

"While the Listing Committee retains formal oversight of the Listing Department, it performs this oversight role primarily by acting as an independent review body for decisions made by the Listing Department."

It is helpful also to consider what HKEX in its 'First Submission' dated November 2002 to the Expert Group stated (paragraph 12):

"... there is of course continuous oversight by SFC of HKEx's performance of its listing responsibilities, including monthly reporting, monthly meetings between HKEx and SFC staff and regular audits of HKEx's performance of the listing function."

In 2003, the then chairman of the Listing Committee, Dr Marvin Cheung GBS OBE JP, was interviewed by HK Accountant magazine. It is worth quoting from that article:

'But a glance at Chapter 2A of the Listing Rules would give a casual reader the distinct impression that the Listing Committee is an all-powerful body that regularly discharges all the powers and functions of the Board of HKEx. Mr Cheung is keen to dispel this illusion when outlining his key priorities for the next year or two. 'My priority is to make sure that the role of the Listing Committee is transparent and accessible to the public so that people are aware that we are not a committee that has accepted from the Board of the Exchange the full responsibility for listing matters. From time to time the chairman of the Exchange, and others, have loosely suggested that they have delegated items or functions to the Listing Committee – "If that is the case, where is my budget? Do I have the right to hire and fire people? If not how

have you delegated it to me?" We are simply a panel of people to which the Board has delegated decision-making on matters they choose to place before us. If they do not put such matters before us, the Listing Committee is powerless,' Mr Cheung is insistent. 'We do not have the power to direct the staff to investigate a particular incident. If staff of HKEx choose to investigate an incident and subsequently bring the matter before us, we have the power to make decisions and say "this party is at fault" and through the Listing Rules we can dish out punishment. We are not running the supervision or policing of listing matters.'

The point is well made. The Listing Committee, comprising members the majority of whom have high level and demanding day jobs, typically meets for a couple of hours each Thursday afternoon with the usual business being to consider whether to approve the new listing applications put before it (other matters may also be dealt with at the regular meetings such as waiver applications, withdrawals of listing, delistings, RTOs and so forth). Additional meetings to consider 'regular' business may be scheduled on an ad hoc basis as required. In addition, there are then a small number of policy meetings during the year and various ad hoc meetings to consider matters such as applications for reviews of decisions or disciplinary matters. For the regular Thursday afternoon meetings, members are split evenly into two pools with half the regular meetings being designated as primarily for one pool of Listing Committee members and the other half being designated as primarily for the other pool – thus in broad brush terms, members might be expected to attend a regular Listing Committee meeting once every two weeks. Further, for the regular weekly meetings, Listing Committee members typically receive the relevant papers two or three days prior to the day of the meeting. (As an aside, we would comment that the Listing Committee in reality has very little time to review the often voluminous draft listing documents and related papers put before it at regular meetings.)

To be fair, we should also quote a later passage from Dr Marvin Cheung's interview. This second passage is not on the same point but rather talks about the valuable role that a committee comprising market practitioners can play. (Under the proposals set out in the consultation paper, the Listing Committee will continue to play a valuable role both in policy matters and in the process of approving new listing applications.)

'While Mr Cheung may be reluctant to discuss the appropriate place for the Committee, he is adamant that participation by market practitioners acting on a

voluntary basis – is correct. ‘They understand the practicalities of the real world rather more than they would if they were employed by the Exchange, the SFC or the Government,’ he maintains. ‘Hong Kong has a strong tradition of voluntary public service, the Government has over 300 advisory bodies and committees composed of civic minded people prepared to donate their time, ours is just one of them.’

2. *To provide policy advice to the Listing Division on listing matters and to approve amendments to the Listing Rules.*

The Listing Division obtains advice and input from the SFC on listing policy. The Listing Division also often soft consults market practitioners when considering policy initiatives. That is to say, policy advice does not derive solely from the Listing Committee. Moreover, most policy initiatives do not appear to originate from the Listing Committee. When considering this function, one should also bear in mind that the SFC currently has the power to approve or reject any new Listing Rules and any amendments to existing Listing Rules. Accordingly, the Listing Committee’s power to approve new Listing Rules or amendments to existing Listing Rules is subject to such being approved by the SFC.

3. *To take decisions of material significance for listing applicants, listed companies and the individuals concerned. These include approvals of listing applications and cancellations of listing and disciplinary matters.*

The SFC currently has the power to object to any listing application – thus after a listing application has been approved by the Listing Committee, the approval for listing is subject to the SFC not exercising its right to object.

In addition, as mentioned above, currently, GEM listing applications are not normally tabled before the Listing Committee for approval (notwithstanding GEM being perceived as a higher risk market than the Main Board) but are routinely approved by the Listing Division without recourse to the Listing Committee. The Listing Division does choose to refer some GEM listing applications to the Listing Committee; for example, those applications which the Listing Division consider borderline.

Furthermore, as mentioned above, under the current system, the Listing Division routinely rejects Listing applications without recourse to the Listing Committee.

It is also the fact that the Listing Division takes decisions of material significance for listed companies in terms of how the Listing Rules are applied to particular transactions or matters on a daily basis.

Whilst there is a right to have such decisions of the Listing Division reviewed by the Listing Committee, the point we are making is that most of these types of decisions are made by the Listing Division (i.e., the staff of the Stock Exchange), not by the Listing Committee.

4. *To act as a review body (in its role as the Listing (Review) Committee) for decisions made by the Listing Division and by the Listing Committee.*

There will be a substantive change in this respect. We discuss later in this submission the proposed.

Accordingly, we consider it somewhat misguided to characterize the proposed changes as stripping power away from the Listing Committee or a power grab by the SFC. The fact is that the SFC currently has the ultimate power in many respects already. Surely it is only right that regulatory power is ultimately in the hands of a regulator. Having praised the Exchange and the Listing Committee earlier, we should state that the SFC is an institution of which Hong Kong should be justly proud. It operates to the highest standards of integrity and professionalism. The SFC is not the 'big bad wolf' or the 'bogeyman' and the market has nothing to fear from the current proposals.

Furthermore, (as pointed out by Dr Marvin Cheung) it is misguided to conceive of the Listing Committee as performing more functions than it actually does. Significant listing regulatory functions and powers are currently exercised on a day-to-day basis by the staff of the Stock Exchange (not the Listing Committee) – we are not implying any criticism in this regard, we are just putting the current role of the Listing Committee into context.

There is one last issue that we wish to address before moving on to our views on the proposals set out in the consultation paper. It has been suggested in some quarters that if the proposals in the consultation paper are implemented, it may be difficult to retain and/or attract suitable persons to sit on the Listing Committee on the assumption that the Listing Committee will be perceived to be a less important body with fewer powers and functions than currently. Personally, we find such thinking to be disappointing. Persons seeking appointment to the Listing Committee should be selfless; they should be motivated by a desire to serve the market. In any event, if the proposals in the consultation paper are

implemented, Listing Committee members will continue to be at the heart of listing regulation and policy and the Listing Committee will continue to make significant contributions to the betterment of our market.

Our Views On The Key Proposals Set Out In The Consultation Paper

We will now address the key proposals set out in the consultation paper.

A key aspect of the proposals is the redistribution of some functions from the Listing Committee to two new committees proposed to be established, namely the Listing Regulatory Committee (LRC) and the Listing Policy Committee (LPC).

The Listing Regulatory Committee

The Listing Regulatory Committee will be responsible for determining listing applications where there are: 'suitability' concerns, novel, controversial or sensitive issues or where any decision may have involve the grant of a waiver with general effect within the meaning of Rule 2.04 of the Listing Rules. This should be an enhancement to the current process as it will separate out such important cases for special consideration with the benefit of direct input from the SFC during the decision-making meeting. This should increase efficiency in terms of handling such cases.

At present, the SFC has the power to object to listing applications but it operates at one level removed from the approval process. This is clearly not an efficient structure. Under the new system the Listing Committee will continue to consider such cases (i.e., where there are 'suitability' concerns, novel, controversial or sensitive issues or where any decision may have involve the grant of a waiver with general effect) and the views of the Listing Committee will be put before the LRC. This means that the LRC will have the benefit of the collective wisdom of the Listing Committee when considering such cases.

We would suggest that this arrangement would work best if the members of the LRC were to sit in the relevant Listing Committee meetings. This would bring a number of benefits. First, the LRC members will hear first-hand the discussion held by the Listing Committee, the questions raised with the Listing Division by the Listing Committee and the views expressed by Listing Committee members. Secondly, in certain cases, one or more director(s) from the listing applicant and the listing applicant's sponsor(s) will be invited into the Listing

Committee meeting to answer questions from Listing Committee members. This can be very illuminating and it would benefit the LRC in making its decision to be present during the Listing Committee meeting and to hear any questions put to, and answers provided by, the listing applicant and its sponsor(s). Such an arrangement would bring the SFC further into the listing approval process. Further, this arrangement would enable the LRC to meet immediately after the end of the Listing Committee meeting and in this way there would be no adverse timing impact on listing timetables. Listing timetables are usually very tight by the time the application reaches the Listing Committee and if both the Listing Committee and the LRC were to consider each listing application on the same day, this would alleviate concerns in the market about how listing timetables can cope with another layer of decision-making being added to the approval process.

In any event, the Listing Committee, will remain a practitioner based committee and will continue to play an important role in the listing approval process (so continuing to fulfill this aspect of the Hay Davison Report's recommendations) and the LRC will have the benefit of, and will give due consideration to, the views of the Listing Committee when making its decisions.

As part of the proposed changes to the process for vetting and approving new listing applications, it is proposed that the SFC's Corporate Finance Division will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new listing applicants. This will undoubtedly streamline and simplify the vetting process and should be warmly welcomed.

Further, it is proposed that the LRC will assume an appellate role and replace the current Listing (Review) Committee. Currently, the Listing (Review) Committee is a committee comprising Listing Committee members who were not involved in the decision under review – that is to say an application for a review of a decision of the Listing Committee will be put before a committee comprising members of the Listing Committee (wearing different hats, they will sit as the Listing (Review) Committee), albeit different individuals from those who made the determination which is the subject of the review. Typically, six or seven Listing Committee members (out of a total pool of 27 members, excluding the CEO of HKEX who is an ex-officio Listing Committee member) sit on review hearings as members of the Listing (Review) Committee (the quorum is five members).

The members sitting as the Listing (Review) Committee will vary from case to case depending on factors such as availability and/or conflict of interest considerations (for example, a member may be conflicted if he or she works for a group which has a

professional relationship with one of the parties involved). Accordingly, the Listing (Review) Committee may sometimes have a disproportionate number of less experienced members in terms of time served on the Listing Committee.

The proposal that reviews be heard in the first instance by the LRC should help to ensure consistency in decision-making as the LRC will have a smaller group of members and will comprise the Chairman and Deputy Chairmen with a designated pool of members of the Listing Committee as their alternates. We suggest that the pool of alternates should comprise members of the Listing Committee with longer tenure. We note that our suggestion ties in with the proposal set out in paragraph 44 of Appendix B to the consultation paper; namely, if the number of Deputy Chairpersons of the Listing Committee exceeds two at any time, then the two longest serving Deputy Chairpersons will become the Deputy Chairpersons of the LRC and the LPC (subject to one of such persons at all times being an investor representative).

It is further proposed that a new Listing Regulatory (Review) Committee will replace the existing Listing Appeals Committee (which is currently composed of board members of HKEX). Whilst the current system seems to work well in practice, this new proposed structure for dealing with reviews inherently appears to be a structural improvement from a corporate governance perspective.

The proposed routine publication of decisions is a very positive step. This will better enable the market to understand how the rules are being applied (and hence comply with them) and should help facilitate increased consistency in decision-making. (As an aside, we should explain that currently, listing decisions are published by the Listing Department whenever it considers it appropriate. Draft listing decisions are not put to the Listing Committee for consideration or approval prior to being published by the Listing Division.)

The Listing Policy Committee

It is proposed that a Listing Policy Committee ("LPC") be established. The new LPC will consist of the Chairman and two Deputy Chairman of the Listing Committee, the Chief Executive of HKEX, the Chief Executive of the SFC, the Executive Director of Corporate Finance of the SFC, a senior director from the Corporate Finance Division of the SFC and the Chairman of the Takeovers Panel.

At present, the SFC does not have a formal seat at the table in terms of the current decision making process in respect of approving changes to the Listing Rules, notwithstanding that any change to the Listing Rules or any new Listing Rule needs the prior approval of the SFC and notwithstanding that the SFC has the power under the SFO to direct the Stock Exchange to make specific Listing Rules. That is to say, the SFC does not participate in the meetings when policy initiatives are discussed and approved by the Listing Committee. The power granted to the SFC under the SFO (which power the SFC may exercise after consulting the Financial Secretary and the Stock Exchange) is somewhat of a nuclear option.

Further, the Chief Executive of HKEX will participate in the LPC to promote/protect the interests of HKEX, this is better than the current regime where such person participates in policy discussions in the capacity of Listing Committee member.

The Listing Committee will still participate in policy discussions and have a say in policy decisions by virtue of the Chairman and two Deputy Chairmen of the Listing Committee being members of the LPC. In addition, the consultation paper proposes that the full Listing Committee will put forward non-binding views on the policy matters which are to be tabled before the LPC so that the LPC will have the full benefit of the expertise and views of the Listing Committee when considering policy issues – this honours the recommendation in the Hay Davison's Report for "practitioner-based regulation". In terms of having a mix of the right people around the table to formulate and decide upon policy initiatives and rule changes, the proposed establishment of the LPC seems a distinct improvement over the current system as all the relevant stakeholders will be represented.

We would like to propose, as an enhancement to the proposed working of the LPC, that the LPC participates in the discussion of policy matters at Listing Committee meetings. This would facilitate the LPC fully understanding the views expressed by Listing Committee members on policy matters and being able to engage in direct dialogue with the Listing Committee to further this understanding.

Further, the LPC will assume oversight of the Listing Department. Whilst (as mentioned above) the oversight of the Listing Division is stated to be one of the functions of the Listing Committee, this does not (in our opinion) happen in practice (this is not a criticism - it would not be reasonable to expect that the Listing Committee could perform this role to any substantive extent). Further, as mentioned above, there is currently on-going oversight by the SFC of the Exchange's performance of its listing responsibilities. Given that the Listing Department performs a regulatory function but is part of a for-profit corporation, clearly, there should be oversight of the work of the Listing Department by a body which is broadly

independent of the Stock Exchange. The proposed use of the LPC to fulfil this function can be an improvement over the current structure. However, thought should be given as to whether there are other better alternatives.

Disciplinary Matters

With regard to disciplinary matters it is proposed that the Listing Disciplinary Chairperson Group will include at least 5 practising or retired senior counsel or other individuals of equivalent qualification – the latter category may perhaps include retired judges. We appreciate that it is important that proceedings be conducted in a procedurally fair manner and in accordance with the rules of natural justice. However, we are concerned that if the Chair of disciplinary hearings is a trial lawyer, the result may be the adoption of court-like procedures in the context of listing disciplinary hearings. Should this happen, disciplinary hearings may become mini-trials which will take a long time to prepare for (with law firms and barristers being appointed by all parties) and the hearings themselves will take far longer than they currently do. Inevitably disciplinary hearings will become considerably more expensive and time-consuming for all concerned.

We believe that the chairing of disciplinary hearings by senior lawyers is in itself an acceptable proposal (there are a number of lawyers on the Listing Committee presently and lawyers have held the position of Chairman of the Listing Committee in the past). However, if the proposal will result in the appointment of trial lawyers to chair disciplinary hearings, we are concerned that this may have knock-on effects that may be disproportionate to the nature of the sanctions which are imposed in respect of disciplinary breaches under the Listing Rules.

Typically the highest sanction imposed is a public censure – i.e., naming and shaming. Technically, there are other sanctions available (under Listing Rule 2A.09 of the Main Board Listing Rules) which might be seen as heavier, such as , for example, requiring a breach to be rectified or remedial action taken or to issue a statement to the effect that in the Stock Exchange's opinion the retention of office by a specified director is prejudicial to the interests of investors (and if such a director remains in office despite this, there is power to suspend or cancel the relevant company's listing) or imposing a cold-shoulder on a specified person (including directors, members of senior management of a listed issuer and professional advisers). However, these other sanctions seem rarely, if ever, to be on the table

We would suggest that this be looked at holistically. If it is intended that the sanctions which the Stock Exchange may impose for breaches of the Listing Rules are to be significantly fortified, then court-like procedures for disciplinary hearings chaired by a senior counsel may be appropriate. Given the current sanctions, we have concern whether court-like procedures would be justified on a cost-benefit analysis. Drawing the above points together, we support disciplinary hearings being chaired by a senior lawyer but would be concerned if this were to lead to disciplinary hearings becoming expensive and time-consuming mini-trials.

Closing Remarks

To sum up, we are supportive of proposals set out in the consultation paper on the basis that they represent an improvement over the current system.

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