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16 November 2016

Corporate Finance Division
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
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and

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Hand

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 "Joint Consultation Paper")

1. Introduction

We refer to the Joint Consultation Paper issued by the Securities and Futures Commission (the "**SFC**") and The Stock Exchange of Hong Kong Limited (the "**Exchange**") in June 2016.

We set out below some general comments and observations in response to the Joint Consultation Paper in respect of (i) policy development, (ii) listing applications by new applicants, (iii) matters involving listed issuers, (iv) publication of decisions, (v) composition and procedures of the Listing Policy Committee ("**LPC**"), the Listing Regulatory Committee ("**LRC**") and the Listing Regulatory (Review) Committee and (vi) composition and procedures of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee.

While we agree that setting up of the LPC and the LRC should streamline the existing regulatory regime, and may increase efficiency for most cases, there are certain points we would like the SFC and the Exchange to clarify.

2. Policy development

We welcome the setting up of the LPC. Under the current regime, the SFC is the final gatekeeper in respect of the policy matters and the amendments to Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**"). We believe that the proposed regime will simplify the reporting structure between the regulators and enable the SFC to provide a more direct input to the policy matters and the Listing Rules amendments.

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It is stated in paragraph 11 under the section headed "Executive Summary" and paragraph 47 under the section headed "Reasons for the Proposals" that the LPC will be proactive in identifying and addressing public interest issues relating to new and prospective market developments, and in related areas such as corporate and intermediaries' conduct. We believe this objective of the LPC would enable the policy and the Listing Rules amendments to cater for the needs of the listed issuers and the market practitioners and to reflect the market trend.

While we agree with the objective of the LPC, it is not clear from the Joint Consultation Paper how the LPC will proactively identify and address public interest issues. It would be more helpful if the regulators can shed more light on how the LPC will proactively gather views and opinions from the market practitioners in areas where they have concerns, and how the Listing Department will interact with the LPC on policy and Listing Rules amendment proposals.

We also believe that the LPC should be provided with sufficient resources and support to initiate policy changes to enable the LPC to carry out its objectives as stated in the Joint Consultation Paper.

3. Listing applications by new applicants

We welcome the setting up of the LRC. We believe that the proposed regime will provide a direct and clear structure to the listing applicants, eliminate possible duplication in vetting process and increase transparency of the decision process for most initial public offering ("IPO") cases. As a market practitioner, we are concerned with how the regulators will ensure efficiency under the proposed regime for the IPO applications that require the in-principle approval of the LRC (the "LRC IPO Cases").

Under the existing regime, both the SFC and the Exchange review and give separate sets of comments on the listing applications. We believe that there are areas under the existing regime that could be improved:

- (a) Although the listing applicants and the sponsors have to address the SFC's comments on the listing applications, the sponsors may not communicate directly with the SFC to clarify their comments in case of doubt or to initiate discussion on points where the sponsors continue to have views contrary to those of the SFC.
- (b) It is not transparent to the listing applicants or the market practitioners with respect to the communication between the SFC and the Exchange, the respective views of each entity or whether there is a significant minority view on any issue.
- (c) Since the listing applications have to be reviewed and vetted by both the SFC and the Exchange, there may be duplication of work and effort of the SFC and the Exchange in the vetting process.

We support the proposal to streamline the IPO vetting process and thereby increase the overall efficiency of the listing process. Since the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by the new applicants under the proposed regime, we believe that the proposed regime may be able to achieve the objective of simplifying the decision-making process between the regulators and be more straightforward and efficient for non-LRC IPO Cases. We have doubt whether this can be achieved for LRC IPO Cases.

Pursuant to paragraph 93 under the section headed "Listing of Equity Securities by New Applicants", under the proposed regime, the Listing Department will present an LRC IPO Case to the LRC after the Listing Committee has given its comments on the case. The view of the Listing Committee will be made known to the applicant and its sponsor(s). Any representations made by the applicant or its sponsor(s) in response to the Listing Committee's comments will be considered by the LRC before making its decision on the case.

Since the LRC IPO Cases will be considered by both the Listing Committee and the LRC, it is very likely that such arrangement will duplicate the efforts of both the Listing Committee and the LRC, take a longer processing time and therefore the listing process will be longer as compared to that under the current regime. This process is obviously redundant and may create uncertainty. For example, it is not clear how the LRC will deal with an LRC IPO Case if the Listing Committee recommends rejecting such case on issues that are not related to LRC Matters (as defined in the Joint Consultation Paper). Since some of the LRC members are also members of the Listing Committee, the LRC should be in a position to decide the LRC IPO Cases without having to go through the Listing Committee.

According to paragraphs 91 and 92 under the section headed "Listing of Equity Securities by New Applicants", under the proposed regime, the Listing Department will be responsible for deciding whether to designate an IPO application as an LRC IPO Case. The Listing Committee will also have the discretion to designate any IPO application presented to it as an LRC IPO Case. It seems that the LRC does not have any power to request to review any listing application if the listing application is not referred to it by the Listing Department or the Listing Committee. It is not clear how the conflict can be solved if the SFC and the Listing Department/the Listing Committee hold different views on whether a listing application is an LRC IPO Case. The regulators should consider clarifying this issue.

The Listing Department would need to have clear guidance for itself and for the market practitioners to assess what LRC IPO Cases are. Although there are guidance letters and listing decisions to assist the market practitioners to understand how the Listing Department and the Listing Committee interpret and apply the eligibility and suitability requirements under the Listing Rules for new listing applications, the guidance letters are non-exhaustive and not all cases are reported on. It will be helpful to the market practitioners if detailed and regular guidance on suitability issues and broader policy implications could be issued. Please also refer to our response to "Publication of decisions" below.

The LRC IPO Cases should be the most challenging cases that require more attention and input from the relevant committees' members. Although the Listing Committee members are able to express their views on the LRC IPO Cases, their views will be non-binding and therefore their input would become indirect. It is unclear whether the role of the Listing Committee members would become less attractive to the market practitioners as a result of the proposed change of regulatory structure. If it does lose attractiveness, there could be a follow-on negative result on the quality of Listing Committee applicants.

4. Matters involving listed issuers

Our concern on the possible delay in vetting process for the Post-IPO LRC Matters (as defined in the Joint Consultation Paper) as a result of having one more level of regulatory approval process and the inability of the LRC to request for review of the Post-IPO LRC Matters (as defined in the Joint Consultation Paper) is analogous to our concern on these areas in respect of the LRC IPO Cases as stated under paragraph 3 above.

5. Publication of decisions

According to paragraph 134 under the section headed "Oversight of the Listing Function", the decisions (and reasons for those decisions) of the LRC, the Listing Regulatory (Review) Committee, the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee will be routinely published after the relevant hearings to assist the market practitioners to understand the views and practices of the Listing Department and the respective committees. We agree with such proposal and believe that it will enhance transparency and accountability for regulatory decision-making.

Given the complexity of the issues involved in the LRC IPO Cases and the Post-IPO LRC Matters (as defined in the Joint Consultation Paper), it would be helpful for the market practitioners to understand the LRC's practice and view if all the decisions for the LRC IPO Cases and the Post-IPO LRC Matters (as defined in the Joint Consultation Paper) could be published. We suggest that the decisions should include dissenting views, if any, of the relevant committee members in order to enable the market practitioners to understand the basis (and strength) of the decisions.

6. Composition and procedures of the LPC, the LRC and the Listing Regulatory (Review) Committee

We note that the LPC members and the LRC members overlap to a significant extent. This may not serve the purpose of separating the LPC and the LRC.

The SFC and the Exchange are of equal representation in the LPC, the LRC and the Listing Regulatory (Review) Committee, and the chairperson of each of the LPC, the LRC and the Listing Regulatory (Review) Committee does not have a casting vote. Where no consensus can be reached among the members of the respective committees, a majority vote in support by the members present at a meeting shall be required for any decision to be taken by the LPC, the LRC and the Listing Regulatory (Review) Committee. It is unclear how the matter can move forward if the SFC representatives and the Exchange representatives cannot reach a consensus on a particular matter and no majority vote can be achieved. The SFC and the Exchange should consider whether and how to deal with standstill situations.

7. Composition and procedures of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee

According to paragraphs 123 and 126 under the section headed "Disciplinary Matters", the chairperson of each of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee will, with the assistance of the Secretary and subject to applicable provisions regarding conflicts of interest, arrange for at least four members of the Listing Committee to act as members of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee, respectively, for the relevant proceedings.

The proposed regime does not clearly set out whether there is any cap for the number of Listing Committee members to be invited to act as members of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee. We suggest that a limit should be set for the number of Listing Committee members to act as members of the Listing (Disciplinary) Committee so that a sufficient number of Listing Committee members are reserved for the Listing (Disciplinary Review) Committee, given only Listing Committee members who do not participate in the first instance can act as members of the Listing (Disciplinary Review) Committee for the relevant proceedings.

8. Conclusion

We are supportive of the principles of the proposed regime as set out in the Joint Consultation Paper in general. We suggest that there are areas that need further clarification and consideration for the purpose of enhancing efficiency and transparency of the proposed regime.

We would be happy to discuss any part of this response with the SFC and the Exchange, or answer any questions that the SFC or the Exchange may have.

Yours faithfully,

Simmons & Simmons