8<sup>th</sup> November, 2016

Securities and Futures Commission 35/F, Cheung Kong Center,

2 Queen's Road Central, Hong Kong

Mr Ashley Alder Chief Executive Officer Hong Kong Exchanges and Clearing Limited

12/F,

One International Finance Centre,

1 Harbour View Street, Central, Hong Kong

Mr Charles Li Chief Executive

Dear Sirs.

#### Petition

Re: Against all the proposals set out in the consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation

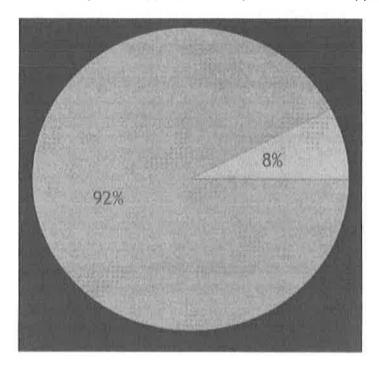
Maintain the Existing Checks and Balances on the Hong Kong's Listing Regulatory Regime

The Securities and Futures Commission (SFC) and The Stock Exchange of Hong Kong Limited (SEHK) issued a public consultation in June 2016 on "Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation" (Consultation), claiming that the proposal will make the listing regulatory regime more straightforward and efficient from the market's perspective.

We, as market participants, have grave concerns that the proposal, if adopted, effectively eliminate the existing checks and balances on the Hong Kong's listing regulatory regime, give rise to uncertainty for both listing applicants and listed companies in their respective listing applications and day-to-day handling of corporate affairs, and affect Hong Kong's status as a premier international financial center and its positioning as an international IPO center of choice.

Since its formation in Aug 2016, wakeuphk has received 24,803 votes against the Proposal under the Consultation (Proposal) which is overwhelming.

As of today, 92% oppose the Proposal and 8% support the Proposal



#### Why is this important?

The Proposal will erode Hong Kong's status as a leading international financial center due to the concentration of power in one institution without the necessary checks and balances and affect the livelihood of those involved in or connected to the finance industry.

What are the concerns of the Proposal under the Consultation?

#### The Proposal

- undermines the well-established two-tiered regulatory structure per the Hay-Davison report the essence of this structure is that the operation of the market should rest with a market operator (SEHK) close to the market under the watchful eyes of an independent regulator (SFC).
- substantially reduced the power of the Listing Committee which consists of 27 independent members and HKEX Chief Executive as an ex-officio member, and currently acts both as an independent administrative decision maker and an advisory body for SEHK, oversees the Listing Division; provides policy advice to the Exchange on listing matters; takes decisions of material significance for listing applicants, listed issuers and the individuals concerned; and acts as a review body; and
- have the effect of taking over the entire Listing Division ("LD"), an operational division of SEHK, as the SFC will provide performance appraisal on LD staff thereby affecting their compensation and will therefore "control" LD staff and the day-to-day operation of the LD.

#### What would be the potential impact on Hong Kong if the Proposal was adopted?

The Hong Kong finance industry and the livelihood of those involved in or connected thereto will be most affected as the Proposal:

- will create uncertainties for potential listing applicants (listing applications) and also listed issuers (corporate actions and transactions) as what constitutes "suitability" or "policy" related matters is wide and subjective;
- move from a largely disclosure-based regime to a more merit-based regime;
- loss of good calibre candidates applying to join the listing committee which currently has the powers mentioned above this robust committee currently comprises very senior and experienced professionals who are independent and from a diverse background and represent a broad spectrum of constituents including listed company representatives and brokers;
- will unlikely result in a simplified and efficient listing application process due to the aforementioned uncertainties\*:
- as alluded to by the SFC CEO, there is no "Plan B" to the Consultation implying that the SFC is determined to push the Proposal forward regardless of market feedback. In the future, for listing rules change, say reintroducing blackout period for listed companies, the same approach could well be adopted; and
- concentrate power in a few persons which could lead to opportunity for corruption; no market development due to regulator protection (as opposed to investor protection).

We request that the SFC and SEHK respect the opinion of the market participants, and abandon the Proposal if public opinion falls in favour of our petition against the Consultation.

Yours faithfully,

Wakeuphk

From:

Sent:

2016年9月7日星期三 8:49

response

Subject: Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong

Kong Limited's Decision-Making and Governance Structure for Listing Regulation

Submitted by Organization

**Attachments:** 

image.png

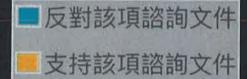
Dear Sirs,

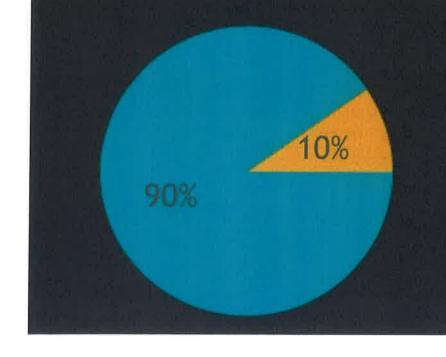
As shown below, we have over 13000 people voted at our website <u>wakeuphk.com</u> and about 90 per cent has voted against the consultation paper.

Yours faithfully, Wake up HK 支持該項諮詢文件

已投票人數13254 (上次更新12:00 6.9.2016)

已收到您的投票,謝謝!我們會統計您的投票,並會每24小時在主 頁更新。





From:

Sent:

2016年9月7日星期三 23:46

To:

response

Subject:

Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation

Submitted by Organization

Attachments:

PETITION eng.pdf; vote.PNG; PETITION chi.pdf

**Follow Up Flag:** 

Follow up Flagged

Flag Status:

Dear Sirs,

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# Maintain the Existing Checks and Balances on the Hong Kong's Listing Regulatory Regime

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The Proposal under the Consultation (Proposal) will erode Hong Kong's status as a leading international financial center due to the concentration of power in one institution without the necessary checks and balances and affect the livelihood of those involved in or connected to the finance industry.

What are the concerns of the Proposal under the Consultation?

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- undermines the well-established <u>two-tiered regulatory</u> <u>structure</u> per the Hay-Davison report - the essence of this structure is that the operation of the market should rest with a market

operator (SEHK) close to the market under the watchful eyes of an independent regulator (SFC).

- substantially reduced the power of the Listing Committee which consists of 27 independent members and HKEX Chief Executive as an ex-officio member, and currently acts both as an independent administrative decision maker and an advisory body for SEHK, oversees the Listing Division; provides policy advice to the Exchange on listing matters; takes decisions of material significance for listing applicants, listed issuers and the individuals concerned; and acts as a review body; and
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- move from a largely disclosure-based regime to a more merit-based regime;
- loss of good calibre candidates applying to join the listing committee which currently has the powers mentioned above this robust committee currently comprises very senior and experienced

professionals who are independent and from a diverse background and represent a broad spectrum of constituents including listed company representatives and brokers;

- will unlikely result in a simplified and efficient listing application process due to the aforementioned uncertainties\*;
- as alluded to by the SFC CEO, there is no "Plan B" to the Consultation implying that the SFC is determined to push the Proposal forward regardless of market feedback. In the future, for listing rules change, say reintroducing blackout period for listed companies, the same approach could well be adopted; and
- concentrate power in a few persons which could lead to opportunity for corruption; no market development due to regulator protection (as opposed to investor protection).

We request that the SFC and SEHK respect the opinion of the market participants, and abandon the Proposal if public opinion falls in favour of our petition against the Consultation.

\*Note: SEHK is one of the fastest globally in terms of processing IPO applications averaging 120 days in 2015.

\*\*\*

For background information on the existing listing regulatory regime: It has been long established that the SFC and SEHK are two independent organizations with the following regulatory objectives as set out in the SFC website: "The SEHK is the front-line regulator of listing activities in Hong Kong. Operating the Main Board and Growth Enterprise Market, the SEHK allows companies to be listed and has the regulatory duty to ensure listed companies' compliance with the Listing Rules." thttp://www.sfc.hk/web/EN/about-the-sfc/quick-guide-lc.html)

As an independent statutory body which regulates Hong Kong's securities and futures markets, the SFC supervises and monitors the SEHK's performance of its listing-related functions and responsibilities.... and shares the regulation of listed companies by monitoring announcements and vetting listing application materials under the Dual Filing Regime....."

For details about the existing division of work between SFC and SEHK in the regulation of listed companies at various stages from the initial public offering to on-going monitoring, including whether and how the regulatory regime in question will ensure no regulatory overlaps/gaps between SFC and HKEX, please see section B of this LegCo document and the Memorandum of Understanding dated 28 January 2003.

Currently, the SEHK's regulatory function in relation to other listed issuers as assumed by HKEX's Listing Division is separate from and independent of HKEX's income-generating business operations. In order to uphold impartiality, such function is supervised by the Listing Committee and the GEM Listing Committee, both of which are totally independent of the Board of SEHK.

# 維持香港上市監管制度的制衡性質

香港證券及期貨事務監察委員會(證監會)和香港聯合交易所有限公司(港交所)於2016年6月共同發表了一份"建議改善香港聯合交易所有限公司的上市監管決策及管制架構"(諮詢文件),聲稱內容裡的提議會使上市監管流程從市場的角度變得更加簡單,快速,而且有效率。

我們作為市場參與者,對此諮詢文件抱有<u>嚴重的保留意見</u>。如果實行,香港上市監管流程中的制衡效應將會被實質性廢除,公司的上市申請過程和已上市公司的日常運作將會加大不確定性,這將撼動香港作為國際金融中心和全球 IPO 冠軍的地位。

#### 為什麼這個諮詢文件很重要?

諮詢文件裡的提議("提議")會讓監管權利集中在一個機構中,而失去了制衡機制,導致沒有人能監管監管者。這會影響香港國際金融中心的地位,從而影響所有金融從業者的生計。

## 我們就以下幾點對諮詢文件持反對態度:

- 提議嚴重破壞現有的雙層監管架構: 戴維森報告書裡設計的 監管架構精髓在於金融市場的運作需要一個貼近市場的營運 機構(港交所),同時也需要一個性質獨立的監管機構(證 監會),隨時緊盯著市場中的變化。
- 上市委員會的監管力度將被嚴重削減。上市委員會的成員由 27 名獨立成員組成,香港交易所集團行政總裁為當然委員。 上市委員會是獨立的行政決策組織,也是聯交所的諮詢組 織,職責包括監察上市部、向聯交所提供有關上市事宜的政

策意見、對上市申請人、上市發行人及有關個別人士有重大 影響的事宜作出決策以及作為覆核機關。

- 上市科從聯交所的職能部門變為由證監會掌控。若證監會對上市科表現進行評估,而且評估影響到人員薪酬,證監會則會控制整個上市科的員工,以及上市科的日常運營工作。

# 如果諮詢文件通過,會對香港造成怎樣的影響?

# 香港金融界及其從業者會受到最大的打擊:

- 上市申請過程中的不確定性將會增加,上市公司的企業行為和收購中的"合適性"與"政策性"問題影響範圍會變寬,決策會變得更加主觀。
- 香港將從一個主要以披露為本的監管架構變成按素質審核, 以監管機構評審為本的架構。
- 希望加入上市委員會的優質候選人將會減少: 現在上市委員會的成員都是俱有豐富經驗,來自不同金融服務領域(包括上市公司和股票經紀代表)的獨立的業界人士。
- 提議不會造成一個更簡單而高效率的效果,反而會讓監管造成的不確定因素擴大。\*
- 如像證監會 CEO 所說,諮詢文件勢在必行,"沒有第二套方案",這次市場諮詢不會採納任何業界反饋,那麼未來證監會便可以用同樣的手法和態度推出各種新的監管條例(例如業界曾經聯名反對的上市公司禁售期問題)。
- 如將監管權利集中在幾個人手中,會製造出更多腐敗的機會,監管機構的自我保護(而不是投資者保護)將會造成市場發展的滯後。

我們請求證監會和港交所尊重業界的意見,假如大部份人都反對諮詢文件,請放棄諮詢文件中的提議。

\*備註: 香港已經是全球 IPO 審批速度最快的地區之一, 2015 年平均審批天數為 120 天

\*\*\*

更多關於港交所和證監會現有監管架構的歷史:"證監會是一個負責監管香港證券期貨市場的獨立法定團體,證監會監督觀察港交所在上市功能上的功能和責任…在雙層監管的架構下,共同監管上市公司的披露和新公司的上市申請…"想了解現有架構下證監會和港交所在上市和持續監管過程中的詳細分工,請參考以下文獻: http://www.sfc.hk/web/TC/about-the-sfc/faq-lc.html

現在港交所負責上市事務和持續監管的部門一上市科一是獨立 於港交所其他的創收業務部門。為了保證中立性,上市科是由上 市委員會和創業板上市委員會監督管理,這兩個委員會都獨立於 港交所的董事會。請查閱該立法會文件的 Section B

(http://www.legco.gov.hk/vr13-

14/english/panels/fa/papers/fa0207cb1-1039-2-e.pdf) 以及於 2003 年 1 月 28 日發布的諒解備忘錄

(http://www.sfc.hk/web/doc/TC/aboutsfc/arrangements/localorg/hkex\_sfc\_mou.pdf) 。

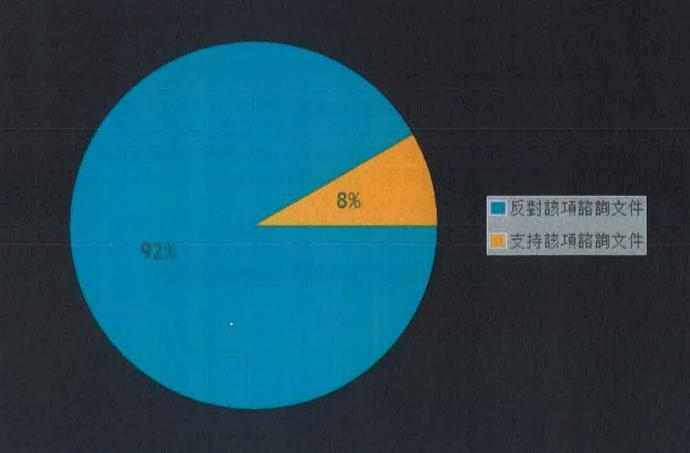
# 幫助我們維持香港金融市場活躍性——為我們投票

在2016年6月17日,香港證監會與港交所聯合發佈關於改革上市監管架構的諮詢文件,文件提出將由證監會和港交所成立新機構"上市監管委員會"和"上市政策委員會"對上市監管架構以及IPO和已上市公司重大收購監管流程進行改革。(可查看諮詢文件原文)您對於此諮詢文件的意見是?

\*◎ 反對該項諮詢文件 ◎ 支持該項諮詢文件

己投票人數13254(上次更新12:00 6.9.2016)

已收到您的投票,謝謝! 我們會統計您的投票,並會每24小時在主頁更新。



From:

Sent:

12 October 2016 14:34

To:

letters.editor@ft.com

Cc:

response

Subject:

Against the HK listing reform

Attachments:

Hayek's Dilemma.doc

#### Dear Editor,

My name is Gabriel Chung, the convenor of <a href="www.wakeuphk.com">www.wakeuphk.com</a>. We are a group of market participants who have come together to voice our concerns on HK Stock Exchange and SFC's joint consultation paper regarding the decision-making and governance structure for Hong Kong's listing regime. Since the launch of our website, we have received numerous submission and votes mostly against the consultation.

In this email, I attached my response to the FT article by Ms Jennifer Hughes on "Hong Kong's Clubby atmosphere rattled by shakeup of IPOs". We believe that more people should be aware of the proposals under the joint consultation paper which, if adopted, will create a major regulatory set back for Hong Kong.

You can find more details in my article. Thank you so much.

Best,

Gabriel Chung

Convenor of wakeuphk (www.wakeuphk.com)

Hayek's Dilemma - Gabriel Chung

Jennifer Hughes article on "Hong Kong's Clubby atmosphere rattled by shakeup of IPOs" shows a level of optimism about the future potential of regulatory reform that is borderline naïve.

"Democracy is the worst form of government, except all the others." - Winston S. Churchill

Hong Kong's existing "colonial" set up of the 28-member Listing Committee that is designed to deliberate on listing policies, listing rule changes and material listing matters such as suitability of listing applicants and cancellation of listing does seem "clubby", but it is still much better than the proposed new system in the joint consultation paper. Under the proposed new system, there will be a Listing Policy Committee (LPC) and a Listing Regulatory Committee (LRC) of 8 and 6 members respectively (with equal number of representatives from SFC and HKEx and no casting vote to the chair) instead of 28-member Listing Committee who would be left to decide on non-controversial or routine matters thereby substantially marginalizing the Listing Committee. It should be noted that no one could become a Committee member unless the SFC endorses his/her appointment. By the same token, being a regulatee of the SFC, HKEx cannot say no to whom SFC wants to nominate to the Committee. If we were to compare the current listing committee set up to an "oligarchy" which Ms Hughes implies it is, then the proposed new system of Listing Policy Committee and Listing Regulatory Committee would be a thinly veiled dictatorship.

In the new proposed set up, instead of the 28-member listing committee which would decide on listing policies, and deliberates cases on rotation (so there is at least some level of randomness plus it is conceivably impossible to be on good social terms with all 28 members, unless you are extremely popular and in that case you probably wouldn't have ended up in finance), there will be a LRC and a LPC, whose names and responsibilities are no doubt designed to confuse or bore everyone into oblivion. Both committees will have the majority of its members nominated by a single person, in other words, North Korean style democracy. SFC would also get additional powers via LRC (e.g. SFC can object a listing application via LRC instead of using its power under the SFO, thereby without allowing IPO applicants a fair chance to appeal under the SFO court process, which could go all the way to the court of final appeal). In addition, the Listing Division which previously was acting independently of both of the listing committee and the SFC as a first point of contact for companies seeking a listing will also have their salaries reviewed by the SFC. There is a Chinese saying "where you sit will decide what you think", there's enough logic and ancient wisdom to predict that the Listing Division will be a lot more tentative to the SFC's requests on every listing matter.

Regulators in HK, and the Mainland have a tendency to believe that people (and by default market participants) always act in their own self-interest, and therefore it is their duty to nip the next Hanergy in the bud in order to prevent guileless investors from jumping on the train of no return. Had the SFC been

taking a comprehensive and relentless enforcement of market misconduct under the SFO, the market would be very different today. While the Enrons of the world exists in every continent, US regulators are still confident enough, even after their fair share of market manipuators, to believe that market participants are innocent until proven guilty; as long as there is sufficient disclosure. If the regulators don't trust people who are practicing in its market, are they supposed to trust the regulators? Few have questioned whether the SFC, seeking a hugely concentrated power under the new proposal (review, deliberation, and veto rights on important listing matters) are acting as humans do, and dare we say it, acting in their self-interest.

SFC is tasked with the role of protecting investors, and as Ms Hughes rightly pointed out, have always done a poor job of detecting frauds and preventing stock bubbles. Giving them more power and more control is clearly not the answer - just search for number of prosecutions or conviction over the past few years. If the person sitting at its realm (which is up for renewal every 4/5 years) is someone, as Hayek assumed most people are, acting in his/ or her best interest. Oligarchy may be the worst system, except for dictatorship.

Dispelling some mis-information:

Firstly, "Bubble stocks" as I would like to call them, such as Hanergy Thin Film and Dining Concept are indeed compromising the integrity of Hong Kong's market; taking some investors down at the point of its inevitably burst. Their existence is not due to a lack of disclosure, but the concentration of stocks and market manipulation. These are actually not the Exchange's responsibilities, but the SFC. They are not impossible to spot with a little bit of market experience, and the SFC should be harsher on these bad apples.

Secondly, for a regulator who purportedly dislikes cash shells, their actions indicate a total lack of understanding of how the shell market works. Less difficulty for a company to list actually means a decrease of shell prices. Shell prices will only increase with more unpredictable and concentrated decision making at the listing committee level. And the only way to lower its price or make it disappear all together is to move towards a more disclosure based regulatory framework. There are no cash shells in the US, because it is very easy to list, and cash shells in the mainland are worth 10 times as much as HK because it is a lot harder to list.

Thirdly, why anyone would prefer to have a corporate lawyer/ accountant who is on the listing committee is beyond me. Being on the committee doesn't imply any technical competence, but only the fact that they have to waste an enormous amount of time each week on cases other than the ones they are paid to work on. Also if their client's case does reach the listing committee the relevant listing committee member would be "conflicted out". The value of "knowing how to

navigate the regulatory system" is limited because quite frankly if you don't know then you should not be charging 1000 USD per hour.

Finally, Ms Hughes also seemed to have conveniently missed out the fact that one third of the Listing Committee members are investor representatives, (i.e., not just company executives, bankers, lawyers and accountants who rely on listing advisory fees). I think it is fair to assume that investors have related policy self-interests too. If one were to assume individuals always act in their self-interest then that rule should at least be applied unilaterally.

From:

Sent:

12 October 2016 16:52

To:

letters.editor@ft.com

Cc:

response

Subject:

Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making

and Governance Structure for Listing Regulation

**Attachments:** 

Hayek's Dilemma.doc

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Hong Kong's existing "colonial" set up of the 28-member Listing Committee that is designed to deliberate on listing policies, listing rule changes and material listing matters such as suitability of listing applicants and cancellation of listing does seem "clubby", but it is still much better than the proposed new system in the joint consultation paper. Under the proposed new system, there will be a Listing Policy Committee (LPC) and a Listing Regulatory Committee (LRC) of 8 and 6 members respectively (with equal number of representatives from SFC and HKEx and no casting vote to the chair) instead of 28-member Listing Committee who would be left to decide on non-controversial or routine matters thereby substantially marginalizing the Listing Committee. It should be noted that no one could become a Committee member unless the SFC endorses his/her appointment. By the same token, being a regulatee of the SFC, HKEx cannot say no to whom SFC wants to nominate to the Committee. If we were to compare the current listing committee set up to an "oligarchy" which Ms Hughes implies it is, then the proposed new system of Listing Policy Committee and Listing Regulatory Committee would be a thinly veiled dictatorship.

In the new proposed set up, instead of the 28-member listing committee which would decide on listing policies, and deliberates cases on rotation (so there is at least some level of randomness plus it is conceivably impossible to be on good social terms with all 28 members, unless you are extremely popular and in that case you probably wouldn't have ended up in finance), there will be a LRC and a LPC, whose names and responsibilities are no doubt designed to confuse or bore everyone into oblivion. Both committees will have the majority of its members nominated by a single person, in other words, North Korean style democracy. SFC would also get additional powers via LRC (e.g. SFC can object a listing application via LRC instead of using its power under the SFO, thereby without allowing IPO applicants a fair chance to appeal under the SFO court process, which could go all the way to the court of final appeal). In addition, the Listing Division which previously was acting independently of both of the listing committee and the SFC as a first point of contact for companies seeking a listing will also have their salaries reviewed by the SFC. There is a Chinese saying "where you sit will decide what you think", there's enough logic and ancient wisdom to predict that the Listing Division will be a lot more tentative to the SFC's requests on every listing matter.

Regulators in HK, and the Mainland have a tendency to believe that people (and by default market participants) always act in their own self-interest, and therefore it is their duty to nip the next Hanergy in the bud in order to prevent guileless investors from jumping on the train of no return. Had the SFC been

taking a comprehensive and relentless enforcement of market misconduct under the SFO, the market would be very different today. While the Enrons of the world exists in every continent, US regulators are still confident enough, even after their fair share of market manipuators, to believe that market participants are innocent until proven guilty; as long as there is sufficient disclosure. If the regulators don't trust people who are practicing in its market, are they supposed to trust the regulators? Few have questioned whether the SFC, seeking a hugely concentrated power under the new proposal (review, deliberation, and veto rights on important listing matters) are acting as humans do, and dare we say it, acting in their self-interest.

SFC is tasked with the role of protecting investors, and as Ms Hughes rightly pointed out, have always done a poor job of detecting frauds and preventing stock bubbles. Giving them more power and more control is clearly not the answer - just search for number of prosecutions or conviction over the past few years. If the person sitting at its realm (which is up for renewal every 4/5 years) is someone, as Hayek assumed most people are, acting in his/ or her best interest. Oligarchy may be the worst system, except for dictatorship.

Dispelling some mis-information:

Firstly, "Bubble stocks" as I would like to call them, such as Hanergy Thin Film and Dining Concept are indeed compromising the integrity of Hong Kong's market; taking some investors down at the point of its inevitably burst. Their existence is not due to a lack of disclosure, but the concentration of stocks and market manipulation. These are actually not the Exchange's responsibilities, but the SFC. They are not impossible to spot with a little bit of market experience, and the SFC should be harsher on these bad apples.

Secondly, for a regulator who purportedly dislikes cash shells, their actions indicate a total lack of understanding of how the shell market works. Less difficulty for a company to list actually means a decrease of shell prices. Shell prices will only increase with more unpredictable and concentrated decision making at the listing committee level. And the only way to lower its price or make it disappear all together is to move towards a more disclosure based regulatory framework. There are no cash shells in the US, because it is very easy to list, and cash shells in the mainland are worth 10 times as much as HK because it is a lot harder to list.

Thirdly, why anyone would prefer to have a corporate lawyer/ accountant who is on the listing committee is beyond me. Being on the committee doesn't imply any technical competence, but only the fact that they have to waste an enormous amount of time each week on cases other than the ones they are paid to work on. Also if their client's case does reach the listing committee the relevant listing committee member would be "conflicted out". The value of "knowing how to

navigate the regulatory system" is limited because quite frankly if you don't know then you should not be charging 1000 USD per hour.

Finally, Ms Hughes also seemed to have conveniently missed out the fact that one third of the Listing Committee members are investor representatives, (i.e., not just company executives, bankers, lawyers and accountants who rely on listing advisory fees). I think it is fair to assume that investors have related policy self-interests too. If one were to assume individuals always act in their self-interest then that rule should at least be applied unilaterally.