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Dear Sirs

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation (the "Paper")

We refer to the Paper and enclose our submission in relation to certain proposals raised in the Paper.

Yours faithfully,

Encl.

SUBMISSION BY SLAUGHTER AND MAY

ON

**CONSULTATION PAPER ON PROPOSED ENHANCEMENTS TO THE EXCHANGE'S
DECISION-MAKING AND GOVERNANCE STRUCTURE FOR LISTING REGULATION**

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1. Introduction

- 1.1 We refer to the joint consultation paper of the Securities and Futures Commission (the "SFC") and The Stock Exchange of Hong Kong Limited (the "Exchange") on Proposed Enhancements To The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation issued in June this year (the "Paper") and are making this submission as an international law firm with an active practice in listing regulated transactions.
- 1.2 We welcome the continuous efforts of the SFC and the Exchange in reviewing and improving Hong Kong's listing regulatory regime and fully agree with the Paper's stated aim of ensuring that the "regulatory system evolves with the market to ensure that quality is maintained and that all participants can have confidence in a system which is fair, efficient, orderly, transparent and competitive."¹
- 1.3 Developing the above themes, we submit that it is important that:
- (A) the regulatory system evolves with the market – it needs to be sensitive to the rapid development, and reflects the realities, of the market;
 - (B) the quality of the market is maintained through a regulatory system which should be:
 - (i) fair to all stakeholders - achieving a balance between shareholder protection and market demands;
 - (ii) efficient - the regulatory process should be applied efficiently in terms of time and resources;
 - (iii) transparent - regulatory interpretation should be predictable, not arbitrary, based on clear stated policies and its application carried out in an open manner; and
 - (iv) competitive - over-regulation will decrease the competitiveness of Hong Kong as a leading financial centre.
- 1.4 Our comments on the proposals contained in the Paper (the "Proposals") are made against the above principles, and where appropriate we have provided suggestions on how the principles might be further implemented. As a general observation, we believe that the regulatory regime should strike an appropriate balance between shareholder protection and market competitiveness..
- 1.5 Terms used herein bear the same definitions as in the Paper, unless otherwise indicated.

¹ Paragraph 3 of the Paper,

2. Policy development

- 2.1 We note that the Proposals are intended to enable the SFC and the Exchange to “closely coordinate” on policy and “adopt a more proactive approach” towards identifying and addressing potential public interest issues relating to new and prospective developments in the market², and that policy determination will be made through the new platform - the Listing Policy Committee.
- 2.2 We understand that the proposed composition of the Listing Policy Committee is designed to “represent the different bodies within the current listing regulatory system that make policy-related decisions - namely, the Listing Committee (as the de facto decision making body within the Exchange on listing policy), the Exchange, the Takeovers Panel and the SFC”³ (the “**Four Bodies**”). We further note that the Listing Policy Committee would provide a forum to enable “representatives of the different regulatory bodies” to “exchange views” on listing policy-related matters and facilitate and “foster closer cooperation” on policy among the relevant regulatory bodies.⁴
- 2.3 However, we query whether the Four Bodies would all be able to fully exchange views and work in close cooperation for the following reasons:
- (A) we note that the Listing Policy Committee only has a small number of members (eight in number), and thus query if there is sufficiently broad and direct representation and discussion of views of the Four Bodies they are meant to represent;
 - (B) only four members are from the financial community (three from the Listing Committee and one from the Takeovers Panel); apart from named alternates for the three members from the Listing Committee there is no rotation arrangement for other members of either the Listing Committee or the Takeovers Panel to participate on the Listing Policy Committee;
 - (C) it is unclear from the Paper whether the four members from the financial community are there to express their own personal views, not the collective views of the Listing Committee and the Takeovers Panel, respectively, which bodies represent a far wider spectrum of the financial community. The Listing Committee may only provide non-binding views to the Listing Policy Committee, which may result in the views of only a handful of individuals being taken into consideration in connection with the determination of important policy decisions;
 - (D) it appears that there will be no direct interaction between the Listing Policy Committee and the full members of the Listing Committee or the Takeovers Panel:

² Paragraph 47 of the Paper.

³ Paragraph 57 of the Paper.

⁴ Paragraph 58 of the Paper.

- (i) while the Paper refers to the Listing Department presenting to the Listing Committee in advance of any Listing Policy Committee meeting and the views given by Listing Committee being disseminated by the Listing Department to the Listing Policy Committee members prior to or at the relevant Listing Policy Committee meeting⁵, it seems that no meetings or direct discussions between the other members of the Listing Policy Committee and the members of the Listing Committee will take place; and
- (ii) the position of the views of the Takeovers Panel has not been addressed in the Paper. There are no arrangements at least to tap the Panel's collective views such as those referred to in sub-paragraph (i) above for the Listing Committee.

2.4 The following may be considered to help address the above:

- (A) the membership of the Listing Policy Committee to be increased in number to enable a broader representation of views. For example, should the Head of Listing become an ex-officio member of the Listing Policy Committee? This may enable the experience of front line regulation of listed companies to be directly included in the decision making process;
- (B) the representatives of the Listing Committee (or at least one of them, such as the Chairman) to be representing the collective views of the Listing Committee;
- (C) the Chairperson of the Takeovers Panel to be representing the collective views of the Takeovers Panel;
- (D) meetings between the Listing Policy Committee and each of the Listing Committee and the Takeovers Panel to be held prior to any decisions being made by the Listing Policy Committee so that an interactive exchange of views with a wide spectrum of financial industry representatives can take place; and
- (E) as with current practice, where a policy decision has a material impact on the market, prior public consultation should be made and public views should be considered by the Listing Policy Committee before any decision is to be made.

2.5 The above may enhance policy making to be more sensitive to the market, foster greater fairness to all stakeholders and increase transparency and predictability through decision making involving a broad spectrum of interests, which in turn should help to maintain the competitiveness of the regime.

2.6 As an alternative, a simpler solution may be to include additional SFC representatives to the existing Listing Committee. Such representatives could be added as either

⁵ To ensure equal access to information, and because certain Listing Policy Committee members will participate in the Listing Committee's discussions as members, the MOU Addendum will provide that the Listing Department will endeavour to disseminate the views given by the Listing Committee to all members of the Listing Policy Committee as soon as possible after the relevant Listing Committee meeting.

observers, who could articulate the views of the SFC during Listing Committee deliberations, or as regular Listing Committee members, who could participate in the Listing Committee decision making process. The Listing Committee would continue with its current functions, and the SFC would retain its existing statutory veto power. We believe that such arrangement would be consistent with the principles set out in paragraph 1.3 above and would continue to strike the appropriate balance between various stakeholders (as mentioned in paragraph 1.3(B)(i) above).

3. Listing applications by new applicants

3.1 Fairness, Transparency and Competitiveness

Under the Paper, all LRC IPO cases will be decided upon by the Listing Regulatory Committee. The Paper provides that, to align important listing decisions with the policy direction set by the Listing Policy Committee, the Listing Regulatory Committee preferably should replicate the composition of the Listing Policy Committee to the extent practicable. We have similar concerns as with the Listing Policy Committee as discussed in paragraph 2.3 above:

- (A) the Listing Regulatory Committee has an even smaller number of members (six in number), thus query if there is sufficiently broad and direct representation and discussion of views;
- (B) only three members are from the financial community (the Listing Committee); while alternates for such members are available by rotation from other members of the Listing Committee, the representation is still limited to three in number;
- (C) it is unclear from the Paper whether the three members from the Listing Committee are there to express their own personal views, not the collective views of the Listing Committee, which represents a far wider spectrum of the financial community. This may result in the views of only a handful of individuals being taken into consideration in connection with the determination of important suitability questions or broader policy considerations; and
- (D) there will be no direct interaction between the Listing Regulatory Committee and the full members of the Listing Committee. While the Listing Committee will be asked to provide non-binding views, there will be no direct discussions between the other members of the Listing Regulatory Committee and the members of the Listing Committee.

The following may be considered to help address the above:

- (A) the membership of the Listing Regulatory Committee to be increased in number to enable a broader representation of views; and
- (B) the representatives of the Listing Committee (or at least one of them, such as the Chairman) to be representing the collective views of the Listing Committee.

The above may again enhance decision making on suitability or broader policy considerations to be more sensitive to the market, foster greater fairness to all stakeholders and increase transparency and predictability through decision making involving a broad spectrum of interests, which in turn should help to maintain the competitiveness of the regime.

- 3.2 Similar to the alternative described in paragraph 2.6 above and for the same reasons explained in that paragraph, an alternate simpler solution may be to include additional SFC representatives to the existing Listing Committee and allow the Listing Committee to continue with its existing functions without the implementation of the Listing Regulatory Committee.

3.3 Efficiency of the vetting process:

- (A) The creation of the Listing Regulatory Committee will introduce a further stage in the vetting process and result in a much longer vetting period for LRC IPO cases – this may mean at least an additional 3 - 4 weeks under the Proposals – *i.e.*, a possible 50% or more extension of the vetting time. This is because the Listing Department will present an LRC IPO case to the Listing Regulatory Committee only after the Listing Committee has given its comments on the case, and the applicant will also be given the opportunity to consider those comments and provide written responses before the Listing Regulatory Committee meets.
- (B) We suggest that the consideration of a suitability case be made in one go at a joint meeting of the Listing Regulatory Committee and the Listing Committee, where the applicant may also attend to provide its comments on any views expressed by either committee. Having heard the views of the Listing Committee and the applicant, the Listing Regulatory Committee may retire to decide on the case immediately. This will enable the current vetting timing not to be materially extended. Otherwise, in today's volatile markets, an unduly long listing timetable will reduce the competitiveness of listing in Hong Kong.

3.4 Rejection of an applicant on the grounds of suitability:

- (A) The Paper provides that the Listing Department will continue to be able to reject an applicant on the grounds of suitability without reference to the Listing Regulatory Committee or the Listing Committee⁶, but it seems that the Listing Committee will not have the discretion to reject (or approve) any IPO application if it is an LRC IPO case⁷.
- (B) As suitability is now something for consideration by the Listing Regulatory Committee, to ensure consistency in treatment and transparency, we suggest that the Listing Department should not have the power to reject an applicant on

⁶ Paragraph 91 of the Paper.

⁷ Paragraph 92 of the Paper.

the grounds of suitability and it should instead refer the case to the Listing Regulatory Committee.

3.5 SFC's veto right:

We welcome the proposal that the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made in connection with IPO applications (regardless of whether the case is to be considered by the Listing Regulatory Committee)⁸, as this would reduce duplication of resources and increase the efficiency of the vetting process. However, we wish to understand further as to whether the SFC's veto right may still be exercised and, if so, in what circumstances and manner. Further clarification on this issue would enhance transparency and predictability of the vetting process.

3.6 Pre-IPO enquiries:

- (A) The Paper proposes that the Listing Department may seek the views of the Listing Regulatory Committee on any pre-IPO enquiry that involves an LRC Matter.
- (B) As in the case of an LRC IPO case, the enquiry process will be significantly lengthened as a result of the introduction of the two stage process, with the Listing Regulatory Committee meeting after the Listing Committee has provided comments. Our concerns on fairness, efficiency and competitiveness and suggestions stated for LRC IPO cases contained in paragraphs 3.1 and 3.2 above are also applicable to pre-IPO enquiries.
- (C) The applicant should also have the ability to request the Listing Department to seek the views of the Listing Regulatory Committee on a pre-IPO enquiry that involves an LRC Matter.

4. Matters involving listed issuers

4.1 Efficiency of the vetting process:

Our concerns and comments on the vetting process for post-IPO LRC Matters are similar to those for IPO LRC Matters as discussed in paragraphs 3.1 and 3.2 above. In terms of process, we again suggest that the consideration of an LRC issue be made in one go at a joint meeting of the Listing Regulatory Committee and the Listing Committee, where the issuer may also attend to provide its comments on any views expressed by either committee. Having heard the views of the Listing Committee and the issuer, the Listing Regulatory Committee may retire to decide on the case immediately. This will enable the vetting timing not to be duly long and increase the competitiveness of the listing regime in Hong Kong.

⁸ Paragraph 89 of the Paper.

5. Reviews of listing decisions

5.1 Review of decision to designate or refer an LRC IPO case or post-IPO LRC Matter

- (A) We understand that the designation of any listing application as an LRC IPO case and any post IPO matter as a Post-IPO LRC Matter, and the referral of an LRC IPO case or a Post-IPO LRC Matter to the Listing Regulatory Committee, whether by the Listing Department or the Listing Committee, is proposed not be subject to review under Chapter 2B of the Listing Rules⁹.
- (B) In borderline cases or cases of doubt, it would be useful for there to be a mechanism whereby the Listing Regulatory Committee may consider a case not to really constitute an LRC IPO case or a Post-IPO LRC Matter and allow the Listing Committee to continue its normal vetting. This could be done as part of the ability for the Listing Department to resolve such questions with the staff of the SFC per current practice, but again it would be helpful for the process to be made clearer.

5.2 Listing Regulatory Committee as a review body of decisions of the Listing Committee

The Paper proposes that the Listing Regulatory Committee will replace the Listing (Review) Committee to review a decision of the Listing Committee¹⁰. The Listing Committee represents a wide spectrum of interests from the financial community. It would be important for the composition of the Listing Regulatory Committee to similarly reflect a broad spectrum of interests as per our submission in paragraph 3.1 above, as otherwise the review may bring in uncertainties due to the views of a differently composed committee which is far smaller in number and narrower in the views that it represents.

6. Disciplinary matters

We have no comments on this aspect of the Paper.

7. Oversight of the listing function

- 7.1 We understand the rationale behind the proposal for the Listing Policy Committee to replace the Listing Committee as the body responsible for oversight of the listing function and the Listing Department's performance within the Exchange.
- 7.2 However, as the Listing Department works closely with the Listing Committee, the feedback of the Listing Committee on the performance of the Listing Department should be included as part of the assessment process by the Listing Policy Committee and the

⁹ Paragraphs 21 and 29 of Appendix B to the Paper.

¹⁰ Paragraph 110 of the Paper.

Exchange's Remuneration Committee. This will enhance fairness and accountability of the assessment.

8. Publication of decisions

8.1 Under the Proposals, decisions of the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, will routinely be published on a named basis, and a decision will be published on a "no-names" basis only under exceptional circumstances if disclosure of the applicant's identity would unduly prejudice its interests or in other cases where the decision is price sensitive or otherwise subject to confidentiality considerations of a commercial nature.¹¹

8.2 We submit that the above approach may make it unattractive for potential issuers to seek a listing in Hong Kong. For market guidance and transparency, it would be sufficient to follow the current approach of publishing listing decisions on a no-names basis. Such decisions should only be published on a named basis in exceptional circumstances where the identity of the issuer is material for investors – in pre-IPO consultations and IPO applications this is unlikely to be the case and for post-IPO matters the issuer would otherwise itself be obliged to publish an announcement on any material development. This should be contrasted against the policy of publishing Takeovers Panel decisions on a named basis as those invariably concern companies that are already listed in relation to a Takeover Code related matter, which is therefore material to investors vis-à-vis their investments in the listed company.

9. Composition and Procedures of the Listing Policy Committee

Please see our comments in section 2 above.

10. Composition and Procedures of the Listing Regulatory Committee

Please see our comments in paragraphs 3.3 and 3.4 above.

11. Composition and Procedures of the Listing Regulatory (Review) Committee

We have no comments on this aspect of the Paper.

12. Composition and Procedures of the Listing (Disciplinary) Committee, the Listing (Disciplinary Review) Committee and the Listing Disciplinary Chairperson Group

12.1 We welcome the appointment of senior counsels to chair disciplinary hearings, as these involve breaches of the Listing Rules and normally involve heightened legal representation. Hence having a senior counsel chairing the process may help deal with any questions of procedural fairness. However, we suggest that such senior counsel should have substantial experience in listing regulation to ensure that appropriate judgments are applied to the case being considered.

¹¹ Paragraph 31 of the Paper.

12.2 The Paper proposes that members of the Listing Disciplinary Chairperson Group will be appointed special members of the Listing Committee solely for the purpose of chairing, and “acting as members of”, any Listing (Disciplinary) Committee or Listing (Disciplinary Review) Committee¹².

12.3 It is not clear when the members of the Listing Disciplinary Chairperson Group will, in addition to their chairing disciplinary hearings, become a normal member of either of the above committees. We submit that the other four members of each such committee should only be selected from the members of the Listing Committee who are industry participants to ensure a wide representation of interests from the financial community.

13. Other matters

13.1 We are available to discuss any aspect of our submission further and hope that our submission provides useful suggestions that will assist in the enhancement of Hong Kong's listing regulatory regime.

¹² Paragraph 119 of the Paper.