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香港證券業協會  
HONG KONG SECURITIES ASSOCIATION



18 November 2016

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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 "Consultation Paper")**

The Hong Kong Securities Association ("HKSA") welcomes the opportunity to respond to the Consultation Paper issued by The Securities and Futures Commission ("SFC") and The Stock Exchange of Hong Kong Limited ("Exchange"). HKSA is a non-profit making industry association founded in 1978 to represent the interests of the Hong Kong securities industry. All our members are under the SFC supervision for different regulated activities. We worked closely with the Government of HKSAR, SFC, Hong Kong Exchanges & Clearing Limited and related authorities like the HKP and ICAC etc. for the betterment of the industry and the public interests as a whole.

**1. General**

We share the view of the SFC and the Exchange that under the proposed structural and procedural enhancement (the "Proposal"), it will bring the SFC and the Exchange together at an earlier stage to discuss on listing policy matters and listing regulations which will in turn



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increase the transparency and efficiency of the listing regulatory decision-making process of the SFC and the Exchange. Besides, we agree that closer coordination between the SFC, the statutory regulator, and the Exchange on policy matters and in regulatory decision-making will facilitate Hong Kong's ability to interact with Mainland China and other overseas securities authorities. The Consultation Paper suggests that vetting and approval process for IPO applications that do not present suitability concerns or give rise to broader policy implications is expected to be streamlined and the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. In general, we appreciate the streamlined process and are of the view that the proposed listing reform will generally enhance the efficiency of vetting and approval process for IPO applications which will benefit the securities industry in Hong Kong as a whole.

The Exchange on one hand being a for-profit stock exchange operator and on the other hand acting as a frontline regulator in listing regime has a potential conflict of interest. Pursuant to the Exchanges and Clearing Houses (Merger) Ordinance, the Exchange has obligations to ensure an orderly and fair market and/or ensure that risks are managed prudently and is required to act in the best interests of the public. We believed that the Proposal is moving in the right direction as this will further minimize such potential conflict of interest by the SFC taking a more proactive role in the listing policies making.

On the other hand, the SFC should review the principles, rules and regulations periodically according to the global market/environmental change so as to increase competitiveness and face the challenge from different area of the world. However, the reform cannot avoid certain stakeholders interests may be affected (either directly or indirectly). Recently, certain stakeholders of the securities industry in Hong Kong have also expressed concerns that the reform might impose a negative impact on Hong Kong's IPO market with the increased involvement of the SFC at an earlier stage. While we appreciate the benefits of the Proposal, we would suggest the SFC and the Exchange to balance the interest of different stakeholders of the industry. We have also noted certain areas of the Proposal which are set out in the comment section below.

## 2. Composition and Procedures of the Listing Regulatory Committee

We noted from the Consultation Paper that the composition of the Listing Regulatory Committee will consist of three members from the Listing Committee and three members from the SFC while Chairperson of the Listing Committee shall be the Chairperson of the Listing Regulatory Committee and the chairperson of a meeting will not have a casting vote. It is



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expected that all decisions of the Listing Regulatory Committee will be reached on a consensus basis. It appears that in the proposed composition the Listing Regulatory Committee might result in a dead lock situation whereby representatives from Listing Committee and SFC effectively granted a veto right.

In order to balance the voting right of the Listing Regulatory Committee, we would suggest to amend the paragraph 81 of Consultation Paper where the chairperson of the meeting shall have a casting vote in case a consensus cannot be made during the meeting. And that the chairperson should be subject to rotation between SFC and the Listing Committee. In any case, the SFC still maintains its power to veto any listing applications under the Securities and Futures (stock Market Listing) Rules.

### 3. Listing applications by new applicants

Paragraph 87 of the Consultation Paper suggests IPO applications that involve suitability concerns or broader policy implications will be decided by the Listing Regulatory Committee. We generally do not oppose against the proposal that in-principle approval of LRC IPO cases can only be granted by Listing Regulatory Committee. However, paragraph 91 of the Consultation Paper suggests the Listing Department will be responsible for deciding whether to designate an IPO application as an LRC IPO case. For any LRC IPO cases Listing Committee will only be able to put forward their non-binding views to the Listing Regulatory Committee on matters reserved for their decision. Listing Regulatory Committee's final decision on LRC IPO cases may or may not align with Listing Committee's non-binding views.

IPO applications which involve major suitability will be referred by Listing Department to the Listing Regulatory Committee, while the Listing Committee will then review the substantial non-LRC IPO cases includes case of disclosure issues, waiver applications and other issues. The present Listing Committee comprises mostly market practitioners such as investment bankers, accountants, lawyers, investment managers and listed issuers. Even though, members of the Listing Committee may have directly or indirectly vested interests, their views are still valuable. We are of the view that Listing Department are also recommended to disclose those cases which involve suitability issues to the Listing Committee.

Listing Committee may call for a meeting discuss LRC Cases and reflect its collective views through its representatives in the LRC based on the existing suitability requirements of Listing Rules, guidance letters or listing decisions.



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

Paragraph 26 of Appendix B suggests for LRC IPO cases, where the Listing Regulatory Committee rejected an application, the new applicant would have the right to have the decision referred to the Listing Regulatory (Review) Committee for a review. Under paragraph 77 and 112 of the Consultation Paper, SFC's representatives of Listing Regulatory Committee and Listing Regulatory (Review) Committee consist of the following:

##### Listing Regulatory Committee

1. the Executive Director of the Corporate Finance Division, SFC as an ex officio member;  
and
2. two Senior Directors of the Corporate Finance Division, SFC.

##### Listing Regulatory (Review) Committee

1. the Chairperson of the SFC as an ex officio member;
2. the Chief Executive Officer of the SFC as an ex officio member;
3. a Non-Executive Director of the SFC as nominated by the SFC Board; and

The composition of the Listing Regulatory (Review) Committee members (3 from SFC and 3 non SFC market practitioners with Listing Committee experience) can maintain an equitable balance but still occur a dead lock situation. Although independent from members of Listing Regulatory Committee, Non-Executive Director of the SFC may not be well experienced. So we would recommend to have a new member appointed by the Hong Kong Government if the LRRC composition remain unchanged.

#### 5, Conclusion

Whilst the proposed reform may not be a perfect solution, we firmly believe that it is an proper and decent direction. Investor interests and conflict of interests between stakeholders were our first consideration and cannot be ignored. Being an International Financial Centre, investor interest and market confidence should not be compromised. Market confidence can only be maintained with appropriate regulatory structure for better investor protection. We believe the proposed reform is a right step to enhance Hong Kong's existing listing regime and help to maintain and strengthen market confidence. The existing Hong Kong IPO "Dual Filing" mechanism is a legacy system and is very unique in the Global Market. We can see that the Issuers' improper, abnormal activities are still flooding over the market after the penny stock incident in 2002. So we are of the view that it is the time to review this legacy so as to enhance



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market integrity, as well as the rights and responsibilities between SFC, Exchange and Listing Committee. In the long run, we strongly suggest Hong Kong should follow “The recommendations from the Expert Report in 2003” step by step and look forward to have the statutory functions of prospectus vetting, securities offering go back to the SFC.

We appreciate the opportunity to provide our comments on the Consultation Paper issued by the SFC and the Exchange and we hope to continue to work closely with the SFC and the Exchange. Please do not hesitate to contact the undersigned if you would like to further discuss any of the matters raised in this letter.

Yours faithfully,

Benny MAU  
Chairman