

By email and by post

18 November 2016

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Securities and Futures Commission
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2 Queen's Road Central
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Corporate Communications Department
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Dear Sirs

Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

We are pleased to have the opportunity to comment on the consultation paper jointly issued by the Securities and Futures Commission (the "SFC") and the Hong Kong Exchanges and Clearing Limited (the "Exchange") in relation to the proposals to enhance the Exchange's decision-making and governance structure for listing regulation in Hong Kong (hereinafter referred to as the "Consultation Proposals").

We agree on the importance of having in place the right regulatory platform to ensure that Hong Kong continues to be a leading international financial centre and premier capital formation centre for Mainland China and other overseas companies. Specifically, we agree: that the current governance structure for listing regulation reflects a time when the market was smaller and there were different standards of governance and public expectations; and that many of the regulatory issues that the SFC and the Exchange deal with today can be better addressed by adopting a more coordinated and holistic approach to listing regulation.

We are generally supportive of the Consultation Proposals. There are, however, certain points which in our view merit further consideration by the SFC and the Exchange before these reforms are finalised.

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From an organisational and structural perspective: there is the question of whether the Exchange should have the ability to exercise control over the decision-making of its new Committees (including the Listing Policy Committee and the Listing Regulatory Committee); and there is the question of whether the extent of SFC representation on the new Exchange Committees is fully compatible with the SFC's supervision and monitoring role. It follows that the composition of the new Exchange Committees should be reconsidered together with the associated decision-making arrangements.

In relation to the division of responsibilities between the Listing Regulatory Committee and the Listing Committee: there is a case that the Listing Committee should retain responsibility for all listing decisions (perhaps with an explicit mandate to exercise heightened scrutiny on listing matters presenting "suitability concerns"); and also it would be helpful if the proposed responsibilities of the Listing Regulatory Committee for post-IPO regulatory matters could be more clearly articulated.

Our detailed comments in respect of the Consultation Proposals are set out in the Appendix.

Yours faithfully

The comments set out below follow the headings suggested in paragraph 141 of the Consultation Proposals:

(1) Listing applications by new applicants

In the Consultation Proposals, IPO applications that involve "suitability concerns" or broader policy implications will be decided by the Listing Regulatory Committee ("LRC"). IPO applications requiring the in-principle approval of the LRC are regarded as "LRC IPO cases". In our view, care will need to be taken with the precise articulation of the guidance as to what constitutes an LRC IPO case to ensure that in practice the Listing Department can be held accountable for the completeness of identification of all such cases.

(2) Oversight of the listing function

We agree with the observations made in paragraphs 27 and 51 that the current governance structure for listing regulation reflects a time when the market was smaller and there were different standards of governance and public expectations. We agree that the regulatory structure should be revised to establish a clearer reporting structure for decision-making, and to enhance the oversight of the listing function. We also agree that there is a clear case for updating the governance model in relation to the Listing Department and that the proposed Listing Policy Committee ("LPC") could exercise such governance oversight. We would go further to say that we see an opportunity here to secure tangible benefits from a more formal oversight model which can stimulate not only more comprehensive and proactive interaction on the operational agenda promoting quality and efficiency but also engender a more strategic focus.

One question. Is it contemplated that the Exchange (whether through the LPC or otherwise) will exercise oversight in relation to the work of the Listing Committee and, to the extent that it is involved in making decisions on listing matters, the LRC?

(3) Composition and Procedures of the LPC

Composition: Under the proposals, the LPC will comprise senior and experienced leaders from the SFC and the Exchange and that is to be welcomed. However, as the LPC will be an Exchange Committee, we find the expectation that matters will be decided on the basis of consensus to be unusual. With reference to paragraph 11 of the Consultation Proposals, clearly, in informing policy formulation and decisions, the SFC members of the LPC can bring vital insights in relation to emerging public interest issues and corporate and intermediary behaviour. But, it seems to us appropriate that the Exchange should continue to have the power to make policy decisions about new Listing

Rules and changes to the Listing Rules; in other words power over its own rules. It follows that the composition of the LPC should be reconsidered together with the associated decision-making arrangements.

Procedures: We are supportive of the establishment of this new Exchange Committee to proactively pursue the critically important policy agenda articulated in paragraph 11 of the Consultation Proposals. The establishment of the LPC can fulfil the expressed intentions to achieve closer coordination and cooperation between the SFC and the Exchange on policy formulation and to promote greater consistency and efficiency in policy and related rule making.

(4) Composition and Procedures of the LRC

Composition: The seniority of the proposed members of the LRC is to be welcomed. However, on the basis that the Exchange remains the frontline regulator for listing matters, it would seem to us that the Exchange should have the ability to exercise control over the decision-making of the LRC. It follows that the composition of the LRC should be reconsidered together with the associated decision-making arrangements.

We presume that the SFC would retain in the Amended Listing MOU, the power of veto over listing decisions. And through its representation on the LRC, the SFC should have the necessary visibility to exercise its regulatory role efficiently and effectively.

Procedures: The observation in paragraph 46 of the Consultation Proposals that regulatory considerations relating to listing in Hong Kong are increasingly complex and involve new risks resonates with us. Accordingly, we can understand the wish to bring enhanced regulatory attention to cases where there are "suitability concerns" or which present other issues which need to be aligned with the overall direction of listing policy.

However, reserving for the LRC approval powers in relation to listing matters presenting suitability and other defined concerns has the effect of curtailing the mandate of the Listing Committee. It seems to us that there is a case that the Listing Committee should retain responsibility for all listing decisions. This has the advantage of clarity. More importantly, it puts accountability full square on the Listing Committee for the quality of their decisions. The requirement to subject a heightened scrutiny on the "top slice" of listing matters identified by the Listing Department can still be imposed on the Listing Committee.

More generally, it would be helpful if the proposed responsibilities of the LRC for post-IPO regulatory matters could be more clearly articulated.

(5) Supervision and monitoring of the Exchange by the SFC

We understand that in setting out respective roles and responsibilities in relation to listing matters and the framework and procedures for regulatory cooperation, the Listing MOU effectively articulates the model by which the SFC supervises and monitors the Exchange in the performance of its listing function.

Careful consideration should be given to ensuring that the proposals in the Consultation Proposals, and in particular those relating to SFC representation on the LPC, the LRC and the Listing Regulatory (Review) Committee (all of which are Committees of the Exchange and in the case of the LRC effectively an operating Committee), do not mean there will be an extent of SFC involvement that goes beyond supervision and monitoring activities.

Clearly, getting the right supervision and monitoring model as between the SFC and the Exchange will be crucial to the success of the enhancements. The measure of a good supervision and monitoring model is that it promotes just the sort of quality and efficiency that are at the heart of the proposed enhancement. And a good supervision and monitoring model should certainly not act as an impediment to the more coordinated and holistic approach to listing regulation which we agree is needed. However, we suggest that careful consideration be given to how in their final form the reforms can achieve this critically important objective whilst continuing to be compatible with the SFC's supervision and monitoring role.