

November 18, 2016

BY HAND & BY FAX (2810 5385)

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

Dear Sirs

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

1. INTRODUCTION

- 1.1 This is a submission by Latham & Watkins in response to the joint consultation paper issued by The Stock Exchange of Hong Kong Limited (the "**Exchange**") and the Securities and Futures Commission ("**SFC**") regarding the "Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation" in June 2016 (the "**Consultation**").
- 1.2 Unless otherwise defined, capitalized terms used in this submission are used as defined in the Consultation.

2. LISTING APPLICATIONS BY NEW APPLICANTS

The Listing Regulatory Committee

- 2.1 The Consultation indicates that a large majority of IPO applications will be Non-LRC IPO cases. For these cases, the SFC will no longer issue a separate set of comments on the statutory filings made by new applicants. We commend the streamlining of the vetting process as it minimises possible discrepancies between the comments issued by the Exchange and the SFC, and expedites the execution timeline for IPOs.

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- 2.2 However, recent market developments and the tightening of the suitability requirements under the Guidance Letter on suitability for listing (HKEX-GL68-13) and the Guidance Letter on IPO vetting and suitability for listing (HKEX-GL68-13A) may lead to an increase in the classification of IPO cases as LRC IPO cases at the outset. These cases will be initially reviewed by the Listing Committee and then passed on to the Listing Regulatory Committee for further review. Against this backdrop, an increasing number of IPO applicants may not enjoy the benefits of a streamlined vetting process.
- 2.3 We believe that an additional Listing Regulatory Committee may not necessarily achieve greater efficiency or better coordination in the regulatory process. The creation of a "third body" will require listing applicants and market practitioners to spend more resources and time to obtain the necessary approval for LRC IPO cases. Instead, we propose that the SFC nominates members to the Listing Committee and that the quorum for each Listing Committee hearing for a LRC IPO case comprise a SFC nominee, who can provide direct input or views during the deliberations on the application. We believe this enhancement to the existing regulatory structure can also help foster a closer and more effective working relationship among the SFC, the Exchange and the Listing Committee.
- 2.4 If the SFC and Exchange are still minded to establish a Listing Regulatory Committee, we would suggest that the Listing Department refer any LRC IPO cases directly to the Listing Regulatory Committee for vetting and approval. Removing the requirement that LRC IPO cases must first be considered by the Listing Committee would allow listing applicants to benefit from an earlier feedback from the Listing Regulatory Committee and address any concerns of the Listing Regulatory Committee in their applications. This direct referral to the Listing Regulatory Committee should also apply to any pre-IPO enquiries involving a LRC IPO case as it is in the interests of IPO applicants and market practitioners to have a reasonable assurance of an applicant's listing suitability before committing significant resources and time to the listing application process. Under the existing structure, the views provided by the Listing Department in relation to pre-IPO enquiries are non-binding and may be altered or contradicted by the Listing Committee. Such uncertainty is not in the interests of the stakeholders in the IPO process and we would highly recommend that the SFC and the Exchange consider allowing the Listing Department to directly refer cases or issues to the Listing Regulatory Committee for review and approval. It is of paramount importance that any regulatory process be sufficiently precise and yield predictable outcomes so as to afford a high level of execution certainty to listing applicants and market practitioners.
- 2.5 We also invite the SFC to consider disclosing to market practitioners the names and contact details of the relevant vetting team members in the spirit of transparency so as to allow stakeholders direct access to the regulators for better and efficient coordination. Furthermore, direct access to the members of the SFC, if needed, will facilitate the timely and efficient resolution of issues concerning a listing application.

3. MATTERS INVOLVING LISTED ISSUERS

- 3.1 We agree that a majority of post-listing matters will consist of Post-IPO non-LRC Matters, which will be mainly reviewed and decided upon by the Listing Department. However, we believe that our suggestion and reasoning set out in paragraph 2.4 above also apply to Post-IPO LRC Matters, and the Listing Department should be able refer all Post-IPO LRC Matters directly to the Listing Regulatory Committee.

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4. PUBLICATION OF DECISIONS

- 4.1 We agree that decisions of the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee (collective, the “Committees”) (including the reasons for such decisions) should be routinely published for the purpose of guiding the market. This will not only enhance transparency but more importantly, allow listed issuers and listing applicants to understand better how the relevant rules are interpreted and applied. Whilst we note that the Committees will reach their decisions by consensus as set out in the Consultation, we are of the view that it would be helpful for any dissenting views of the members of the Committees to be presented and included in the published decisions. This would increase the level of transparency, as well as provide additional information, regarding the decision making process to the market. This proposal is not dissimilar to the practice adopted in court judgements where the views of dissenting judges are also disclosed for the consideration by the parties concerned and the public.
- 4.2 However, we respectfully disagree with the proposal that the applicant be identified in published decisions relating to an IPO application except in cases where:
- (a) the applicant’s identity would unduly prejudice its interests;
 - (b) where the decision is price sensitive; or
 - (c) otherwise subject to confidentiality considerations of a commercial nature.
- 4.3 Under the current regime, all listing decisions are published by the Exchange on a “no-names” basis, including those relating to the suitability of listing of a potential applicant.
- 4.4 Publication of relevant listing decisions on a named basis may lead to serious commercial ramifications, especially for a potential listing applicant that the Listing Regulatory Committee regards as having suitability concerns or broader policy implications from a Hong Kong regulatory perspective that may not necessarily be applicable or relevant in other comparable markets. This will inevitably create a negative market perception of an applicant’s listing potential and will adversely and materially impact its ability to seek future fund raising opportunities in other parts of the world. These consequences may not be fair or justified.

Yours faithfully,

Latham & Watkins