

BY EMAIL AND BY FAX

18 November 2016

Mr Ashley Alder
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Ashley,

SFC/HKEx Joint Consultation paper on proposed enhancements to
Stock Exchange decision-making and governance structures for listing regulation

I attach the response of Quam Capital Limited to the above consultation paper.

Yours sincerely,

Richard Winter
Chief Executive Officer

cc: Mr Charles Li - The Stock Exchange of Hong Kong Limited

SFC/HKEx Joint Consultation on Proposed Enhancements to Exchange Listing Regulation:
Response by Quam Capital Limited

The Proposals represent a far-reaching change to the current structure governing the listing of new companies on the Exchange. It is right therefore that they should be subject to a thorough consultation and examination process. We welcome initiatives to enhance the quality and development of our capital markets. However, we don't believe these proposals will achieve such results.

The current listing arrangements have been in place for many years. During this period Hong Kong's role as a listing centre has grown significantly. While, inevitably for any major financial centre, there has been controversy and mal practice, the evidence is that the market has broadly operated successfully and continues to command the confidence of investors, including international investors. Given this, and the far-reaching nature of the changes proposed, it is important that full explanation and analysis of the failures or weaknesses seen in the current arrangements is provided, so as to set out a full justification for the proposed changes.

In particular we would note the following:

- (a) Paragraph 6 of the Consultation Paper observes that "... the market has become increasingly large and complex and carries a greater variety of risks." It concludes that "... it is now the right time to revisit the decision-making structure and adopt enhancements that would better enable the SFC and the Exchange to better coordinate and address future regulatory needs". However, the reason for the current high level of practitioner engagement in the regulatory process is precisely because of the complexity of the markets. Specifically, the Hay Davison Report (the Report of the Securities Review Committee on the Operation and Regulation of the Hong Kong Securities Industry) that resulted in the current structure, concluded that a practitioner-based regulatory system was best suited to Hong Kong as it should "avoid the danger of straight-jacketing the securities market by a strict regulatory regime which might all too easily lead to insensitive or heavy handed over-regulation". It was also observed that "market management and regulation by practitioners offers scope for flexibility and adaptability in a rapidly changing market" and that "statutory regulators will not always have the necessary knowledge and expertise". As a result it was concluded that there was no better alternative to practitioner-based regulation. In the absence of convincing counter-arguments, the ever more complex markets of today would seem to benefit from maintaining, not reducing, the role in the regulatory process currently performed by practitioners with up-to-the minute hands-on experience of those markets.
- (b) Rather than the major structural changes proposed, closer cooperation and coordination generally between the SFC and HKEx could be achieved by making greater use of existing structures, such as the monthly Listing Matters Liaison Meetings. Also, the SFC could appoint staff to those Listing Committee meetings (a)

at which policy matters are discussed and (b) which will hear listing applications/ listed issuer matters involving LRC Matters. Attending Listing Committee hearings of applications involving LRC matters would give the SFC the earlier and more direct input it requires on listings involving suitability issues, while the application would benefit from the input of the LC's market practitioners. Non-LRC Matter listing applications would still be determined by the Listing Committee as at present - subject to the SFC's right to object to the listing under the Stock Market Listing Rules as under the current regime. Alternatively, in order to preserve the integrity of the SFC's statutory veto right, it could send observers with a right to speak but not vote at such meetings of the Listing Committee. This would only require an amendment to the MOU to implement.

- (c) As regards the extent of practitioner involvement under the Proposals, we note (i) there is no Sponsor representation on the new committees, and (ii) one of the deputy chairs, and consequently one of the three representatives of the Listing Committee on the Listing Regulatory Committees and on the Listing Policy Committee, must be a representative of investors. However, a primary statutory function of the SFC itself is investor protection.
- (d) If one of the objectives of the proposals is to streamline and simplify, there should be fewer, not more, committees. Further, there is an inherent and significant level of subjective judgement involved in determining whether an issue goes to the "suitability" of an applicant for listing. More committees, where there are more chances of differing views, will lead to uncertainty and a drawn-out process, making executing IPO more challenging, lengthier and lead to an inevitable increase in costs. This will disadvantage Hong Kong relative to other markets.
- (e) It is proposed that the SFC will cease to provide comments on listing applications. However, given that, in 2015, the SFC had comments on 216 out of the 218 listing applications filed under the dual filing system there would clearly seem to be a demonstrable need from the perspective of market protection for the SFC to continue to provide its input as part of the vetting process.
- (f) Following the introduction of the requirements that all listing applications must be "substantially complete" when they are filed and that listing application proofs be published publicly, the obtaining of informal and confidential pre-filing guidance has become of even greater importance to applicants. It is proposed that the ability to obtain this will be continued, which we welcome. However, it is also proposed that it will not be possible to seek a review of the guidance, which would seem to deny due process to unsuccessful applicants.
- (g) It is proposed that the Listing Policy Committee will have primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities. Furthermore HKEx's Remuneration Committee will take

into account the assessment from the Committee in considering the remuneration of the executives. This seems highly susceptible to unduly influencing the way the executives will perform their roles, and accordingly there is a real risk that the individuals involved may find themselves in conflicts of interest.

- (h) The proposed Listing Policy Committee should be renamed 'Listing Policy and Market Development Committee (LPMDC)' to evidence its key role in initiating new policy and developing our capital markets; and its terms of reference and composition amended accordingly.
- (i) There is a conflict between the SFC's primary function of regulating the market and protecting investors and the very real need to further develop the Hong Kong securities market, which requires an innovative and pragmatic approach to regulation. If adopted, the proposed new LPMDC should include practitioners with real knowledge of the markets, and not be primarily staffed by SFC Regulators and SFC Nominees.
- (j) In the interests of transparency and to reduce the risk of referring all difficult and controversial decisions to the LRC, clear policy guidelines should be established to determine which issues should be so referred. These should be publicly available.

In conclusion we do not support these proposals, but rather urge SFC and HKEx to ensure that any changes adopted must be driven by market development and better efficiencies. Furthermore, we urge that further consultation is undertaken so as to ensure any structural changes receive broad market acceptance prior to adoption.