



公共專業聯盟

The Professional Commons

Corporate Finance Division
Securities and Futures Commission
35th Floor, Cheung Kong Center,
2 Queens' Road Central,
Hong Kong.

By email : ListingRegulation@sfc.hk

18 November, 2016

Dear Sirs,

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

We enclose our response to the Consultation Paper in the enclosed addendum.

Yours faithfully,
For and on behalf of
The Professional Commons

Frankie Yan

**Joint Consultation Paper by the Securities and Futures Commission and Hong Kong
Stock Exchange on proposed enhancements to the Stock Exchange of Hong Kong
Limited's decision-making and governance structure for listing regulation
("Consultation Paper")**

We refer to the Consultation Paper and submit our views as below.

1. In principle, we support the ideas as elaborated in the Consultation Paper that drive the motive in proposing the said enhancements : That the Exchange is not a statutory regulator and the Exchange does not have the standing to enter into formal arrangements with Mainland and other overseas securities authorities. As a majority of Hong Kong listed companies conduct business in Mainland and in overseas, a closer coordination between the SFC and the Exchange on policy matters and in regulatory decision-making will facilitate Hong Kong's ability to interact with Mainland and other overseas securities authorities (para. 21 of the Consultation Paper).
2. In the last 3 years, we note that the Exchange issued a series of Guidance Letters and Listing Decisions trying to cover any loopholes in the regulatory system which provided an environment allowing issuers, or their advisors, in circumventing the rules. Moreover, there were many critical enforcement actions taken by the SFC in the last 10 years. It shows that the commercial world has been become more complex that the current regulatory system has to be substantially changed, rather than merely publishing guidance materials.
3. After the Consultation Paper was released in June 2016, we note there have been heated debates in the market as to what extent the SFC should be empowered, and the Listing Committee has been doing their job properly. We, however, as a think tank looking after public policies, would ask : Who is the regulator of the financial services in Hong Kong, the SFC or the Exchange ? If it is the SFC, then, why not follow the regulatory system as adopted in the US and UK? Why part of the regulatory function is delegated to a profit making entity ?
4. Hong Kong has been named as one of the few countries in the world which have a high corruption perceptions index (the higher the index, the cleaner, per <http://www.transparency.org/cpi2015#results-table>). The success of this, to a large extent, was attributed to the formation of ICAC in the 1970s and the self awareness and self discipline of the Hong Kong public. Without a strong regulator, the public cannot be self-disciplined. The Exchange is not a regulator and lacks statutory power. It is

essential that an effective regulatory framework is in place before market players would behave themselves. The power to regulate conducts of market players should be shifted back to the SFC. The Consultation Paper is the first step to put in place such regulatory framework. The key to an orderly market is two-fold: an effective regulator and the awareness of top management to be law abiding.

5. The market knows well that in about 2003, the Government appointed an expert group which recommended transferring the listing function to the SFC. Due to certain political influence, the proposal was dropped. What the market was not fully aware was that the SFC did subsequently propose giving statutory backing to Chapters 13, 14 and 14A of the Listing Rules. It was again not implemented (reasons not published) except legalizing the Inside Information into the Securities and Futures Ordinance (S.307A etc). We appreciate that the administration was aware of the obstacles in carrying out corporate governances in Hong Kong and tried every efforts in improving the governance structure, but the opposing forces from the business sectors are too strong.
6. However, we do share the concern of certain market commentators on (a) sharing of work between the existing Listing Committee and the Listing Regulatory Committee; and (b) the Listing Policy Committee, having a substantial influence from the SFC, overseeing the listing function and the Listing Department on listing regulation. The combined effect is that the Listing Department will tend to refer most of the cases to the Listing Regulatory Committee. The market should be informed of the exact parameters in referring cases to the Listing Regulatory Committee. It is naturally to assume that a higher rejection rates will be experienced in the Listing Regulatory Committee.

In conclusion, we would submit that the proposed enhancements be adopted in principle, in a pragmatic approach, say in different stages, given diverse stakeholders' interests involved, subject to the override principle to uphold the integrity of the Hong Kong capital market.

Submitted by the Professional Commons on 18 November 2016