

**COMMENT PAPER IN RESPONSE TO  
THE JOINT CONSULTATION PAPER DATED JUNE 2016**

**18 November 2016**

**I. INTRODUCTION**

This paper is prepared and submitted by in response to the request for comments contained in the joint consultation paper (the *Joint Consultation Paper*) published by The Stock Exchange of Hong Kong Limited (the *Stock Exchange*) and the Securities and Futures Commission (the *SFC*) in June 2016.

We support the efforts of the Stock Exchange and the SFC to:

- achieve closer coordination and cooperation between the SFC and the Stock Exchange;
- provide listing applicants and listed companies with a transparent system for listing regulation and policy development;
- streamline the processes for making important or difficult listing decisions;
- simplify the IPO application process and remove inefficiencies such as the “dual filing” system of review; and
- hopefully allow Hong Kong to compete more effectively with other listing venues for quality applicants and businesses to raise funds and list on the Stock Exchange.

We must not be deceived by Hong Kong’s ranking as the top listing venue in the world in recent years. We should look beneath the top three to five IPOs which give us the ranking to see if we have the depth, breadth and quality of companies we want to attract to help our market grow in profile, quality and depth of liquidity. There are significant issues that pose challenges to Hong Kong being a dynamic and attractive listing venue.

***The current system has issues with efficiency, transparency and competitiveness.***

The Stock Exchange competes on a global basis. When speaking with potential listing applicants – both large and small, in new and established industries – we are regularly asked for comparative advice on the listing regulation regimes in a number of jurisdictions. Our clients want to know how difficult it is to get listed and operate as a listed company in Hong Kong.

Hong Kong should aim to answer that question positively and use every opportunity to make the listing process more efficient, more transparent and more user-friendly.

Hong Kong already has one of the longest listing processes among major financial markets. Listing applicants have consistently expressed frustration with the length and complexity of the current listing regime. The Proposals raise concerns not only about their potential timetable impact but also around how to explain their impact to

listing applicants. These concerns could further negatively impact the views of potential listing applicants and the appeal of the Hong Kong market as a whole.

Too often listing applicants see the listing process in Hong Kong as a difficult and painful six or 12 months period for all of the management, bankers, lawyers and accountants involved. Unfortunately, the uncertainty and unpredictability of dealing with novel or difficult issues through the existing Hong Kong listing process and regime involving two regulators and the Listing Committee – all doing their respective best – does not lead to a positive listing experience and does not help us to “sell” Hong Kong as the listing venue of choice.

*We can do much better than the status quo.*

The following perspectives and suggestions are provided with the intention of ensuring that the Proposals work in practice, without causing additional and unintended delays, costs and uncertainty for the listing process in Hong Kong.

We suggest:

- the Listing Policy Committee focus on a broader mandate including issues of market development and relevance and should include more members from the market and industries either on the committee or at the working-group level;
- any changes arising from the implementation of the Proposals should ensure that the existing timetable for vetting a listing application remains the same – if not shorter; and
- specific enhancements with respect to the treatment of pre-IPO enquiries, providing clear timetables to facilitate listing applicants making commercially binding decisions regarding listing venues and allowing the Listing Regulatory Committee (**LRC**) representatives to interact directly with market participants when discussing important issues.

The perspectives and suggestions below are arranged for convenience according to the headings outlined in paragraph 141 of the Joint Consultation Paper. Unless otherwise defined in this paper, capitalised terms have the same meanings as those defined in the Joint Consultation Paper.

## **II. PERSPECTIVES AND SUGGESTIONS**

### **(a) Policy development**

By clearly placing the policy function within the Listing Policy Committee, the Proposals integrate the SFC and the Stock Exchange into the policy-making process to allow for more collaboration between the two regulators – and hopefully much greater proactivity and collective thinking than has been demonstrated in recent years.

We welcome this increased cooperation on policy formation but encourage the Listing Policy Committee to take on a broader mandate to focus on the development of the Hong Kong market, particularly the equity market and how to attract high quality issuers – not only from Mainland China but also from across the Asia-Pacific region

and further afield internationally, to bring greater diversity and depth to our existing market.

In addition, we believe that the Listing Policy Committee would benefit from a few additional members drawn from market participants and industries so that it can be more attuned to the needs and trends of a vibrant global marketplace.

- We encourage the **expansion of the mandate of the Listing Policy Committee** (set out in paragraph 62 of the Joint Consultation Paper) to include **an explicit focus on market development and relevance**. In particular, we believe a critical area of focus is the issue of how to attract best-in-class applicants active in the new economy and new industries around the world – especially in the Asia-Pacific region – and China-based companies which have historically chosen to list on other international exchanges such as the New York Stock Exchange and NASDAQ, as well as high quality early-stage companies with limited financial track records or pre-revenue or pre-profit applicants in certain sectors.

**(b) Listing applications by new applicants**

***Avoiding a potentially longer and uncertain listing application process***

The IPO process should be streamlined and simplified. We have identified four key areas where we believe there is not enough clarity on how the operation of the LRC will simplify or streamline an already lengthy review process.

These areas are:

- (1) treatment of pre-IPO enquiries;
- (2) advanced clarity on identification of non-LRC IPO Cases and LRC IPO Cases;
- (3) channel for quality interaction with the Listing Department and senior SFC staff during the vetting process; and
- (4) minimising inefficiency and delay in the hearing process of LRC IPO Cases.

We suggest:

- a right to review pre-IPO preliminary, indicative views from the Listing Department or the LRC;
- a clear timetable and methodology for categorising IPO cases;
- direct access to the LRC and the SFC staff; and
- “one-stop shop” for difficult issues to avoid “pinballing” of issues between regulators and committees.

## **1. Treatment of pre-IPO enquiries**

Robust pre-IPO enquiries are an essential tool for all applicants (and increasingly for new economy applicants) wrestling with issues that are less standard than those of established industries and working through our listing regime which is still not entirely “disclosure-based” (which many of us would like it to be) but is currently still ‘disclosure based, subject not to a “merit” qualification but rather a “suitability” qualification’.

It is therefore absolutely vital that there is a clear and transparent path to deal with difficult or novel issues – many of them may raise questions of suitability for listing – early on in the process. The current system often results in these difficult issues being “pinballed” between the Stock Exchange, the Listing Committee and the SFC. This is suboptimal for our market.

### Process for referrals to the LRC.

The Listing Department should provide a clear system for how and when it will refer pre-IPO inquiries to the LRC and how the Listing Committee will be involved in considering these inquiries (to give its non-binding recommendation).

Market participants must have the right to:

- **request that the Listing Department refer certain pre-IPO inquiries to the LRC, and**
- present their case to the LRC directly (rather than the right of referral being solely determined by the Listing Department itself).

### Reliance on preliminary indicative views by the Listing Department and/or the Listing Committee.

Market participants are concerned that preliminary guidance for pre-IPO enquiries by the Listing Department or the Listing Committee will not provide sufficient certainty to listing applicants and sponsors unless the LRC provides concurrently its preliminary indicative position. This additional layer of potential review may lead to requests for the LRC to be involved in more pre-IPO enquiries and potentially risks timetable delays.

- We suggest that pre-IPO enquiries be heard by the Listing Committee and the LRC **on the same day** with SFC representatives sitting with the Listing Committee to benefit first-hand from the discussions of the Listing Committee.
- In any event, the **current three-week timeframe** for pre-IPO enquiries **must be preserved – if not improved** – under the new decision-making structure, even if a referral to the LRC and/or the Listing Committee is required. Any timetable delays will impact Hong Kong’s ability to compete with other listing venues.

A “second opinion” for preliminary indicative views.

Under paragraph 96 of the Joint Consultation Paper, preliminary guidance given in response to pre-IPO enquiries cannot be reviewed.

Whilst we recognise that the preliminary views of the Listing Department or the LRC are preliminary indicative views, the commercial reality is that listing applicants make binding commercial decisions on whether or not to proceed and incur management time, effort and costs with a view to listing in Hong Kong based on these preliminary indicative views.

- We suggest addressing this issue by allowing listing applicants and sponsors to seek a **“second opinion” from the Listing Regulatory (Review) Committee**. This informal process will not constitute a formal review under the Listing Rules but will provide listing applicants with an important way to move forward with a listing application during the period before the filing of the listing application.

**2. *Advanced clarity on identification of non-LRC IPO Cases and LRC IPO Cases***

A significant amount of the efficiency sought to be delivered by the proposed enhancements captured within the Proposals results from the ease of review for the majority of the listing applications that do not raise “difficult” issues. The Joint Consultation Paper states that approximately 90% of cases are not expected to raise difficult issues.

The implementation of the Proposals should provide:

- clarity regarding what constitutes suitability issues;
- a transparent timetable to identify LRC IPO Cases;
- constraints on the regulators’ ability to refer LRC IPO Cases; and
- confidence to listing applicants that early decisions are binding.

If non-LRC IPO Cases (in the view of the sponsors) are treated as LRC IPO Cases, the process and timetable for doing so should be very clear – that is, clearly subject to new material information arising.

Sponsors are “expected to assess whether an IPO involves suitability issues” under paragraph 20 of the Joint Consultation Paper. To avoid the sponsors’ determination being different from the regulators, early and thorough communication between the sponsors and the regulators is essential.

We want to be able to give listing applicants clarity and advice that their application is either a non-LRC IPO Case (i.e. a standard case) or a LRC IPO Case (i.e. a difficult case) at the earliest opportunity as this has a significant impact on the timetable for the overall listing application.

It is very important for sponsors to be able to clearly communicate to their clients when the regulators will determine that a suitability issue exists when the sponsors have not identified a suitability issue or other matter to be referred to the LRC.

- Given the public filing regime, **the Listing Department (in consultation with the SFC) should provide informal and confidential guidance on the likelihood of the regulators** concluding that a listing application will be treated as a LRC IPO Case prior to the A1 application.
- **The SFC and the Stock Exchange should clarify a timetable for making this determination.** Specifically, the Listing Department (following internal discussions among the two regulators) should communicate whether it agrees with the assessment of the sponsors as soon as practicably possible – ideally no later than by the time the first set of comments are prepared by the Listing Department and this should be set out as a number of working days following the filing of the listing application.
- While we welcome the effort to streamline the commenting process since the SFC will no longer issue a separate set of comments as part of the “dual filing” process, sponsors and the SFC have an important role to play in identifying suitability issues and other LRC matters. **The SFC and sponsors should have an express right to refer cases to the LRC.**

If new material information arises, we understand that a non-LRC IPO Case may become a LRC IPO Case. This should be made clear to the market, which will help to encourage full and frank disclosure from applicants so that all material information is included in the listing application.

- If non-LRC Cases are subsequently elevated to a LRC IPO Case, we request that the decision be subject to an appeal to the Listing Regulatory (Review) Committee.

### **3. *Direct channel for quality interaction with the Listing Department and senior SFC staff during the vetting process***

We suggest making it clear to the market that the SFC representatives on the LRC will be available for informal and confidential consultation in the same way that the Listing Department has been. The Listing Department has previously provided valuable and constructive guidance based on its experience as a front-line regulator of the market. This informal guidance has, in the view of market participants, enabled Hong Kong to react more quickly to market developments.

- We suggest that the proposals clearly **provide a commitment that the Listing Department and the SFC representatives on the LRC (so market practitioners can speak to them together to avoid miscommunication) to be easily contactable by phone for informal and confidential views on significant issues.** The decision-making structure will benefit from this informal interaction between listing applicants, sponsors and the relevant regulators.

#### **4. *Minimising inefficiency and delay in the hearing process of LRC IPO Cases***

Any significant elongation of the listing application review process will add to the already significant time and cost of a Hong Kong IPO, which will negatively affect the global competitiveness of Hong Kong as a listing venue.

*Clarifying SFC's role in the new decision-making structure and maintaining the timetable in LRC IPO Cases – same-day decisions are essential*

The Listing Committee is asked to provide a non-binding view in LRC IPO Cases in a number of circumstances that may significantly impact the timetable for listing applications. Relying on written reports to convey the discussion of the Listing Committee is a poor form of presentation of nuanced points and much may be lost in translation in addition to the regulator's time and effort involved in producing these written reports.

As much as possible, the timetable must not be extended – even for LRC IPO Cases. Otherwise, this will have a direct and negative impact on efficient marketing and the critical need to be able to transact during short market windows.

- **The SFC's representatives (in an observer role) should sit together with the Listing Committee when it meets typically on Thursday afternoons,** rather than adding an additional layer of review process (and another round of written reports) for the consideration of LRC IPO Cases. If the SFC has a full view of how the Listing Committee operates, then the LRC will be better placed to efficiently decide when LRC matters reach it for consideration.
- **The LRC should meet directly after the Listing Committee hearings, on the same day.** The SFC representatives would then benefit from having directly heard the Listing Committee's deliberations.

### **III. CONCLUSION**

We should use this consultation process as an opportunity to renew simplification and efficiency efforts across the board.

Efforts to streamline the Hong Kong IPO process have resulted in significant progress being made in the last few years, although some of the progress has been lost in the last year as multiple rounds of comments (both written and verbal) have slipped back into the IPO process, with less of a focus on real issues of materiality. Streamlining

the IPO commenting process for all cases remains an important focus to enhance efficiency and competitiveness in line with competing major financial markets.

Looking at other major international listing venues, the primary listing authority often sits directly with the authorised regulator such as the Securities and Exchange Commission in the United States or the Financial Conduct Authority in United Kingdom rather than the individual stock exchanges – which are naturally perceived to be interested in listing more companies and increasing trading. Whilst transfer of the Listing Department and the Listing Committee to the SFC would bring our structure in line with international practice, we recognise that this is not currently proposed nor under consideration. We believe that the Proposals if implemented with the suggestions contained in this paper should help to tackle some of the inefficiencies, lack of transparency and lack of communication between regulators which exist in the current structure.

The willingness expressed by the Stock Exchange and the SFC to work together to enhance our existing regime is a positive step in the right direction to promote Hong Kong as a competitive listing venue for high quality and diverse issuers to fund raise and increase the depth, breadth and liquidity of our equity market.

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**18 November 2016**