

Weil, Gotshal & Manges
威嘉國際律師事務所

29/F Alexandra House
18 Chater Road, Central, Hong Kong
+852 3476 9000 tel
+852 3015 9354 fax

November 28, 2016

By Fax: 2810 5385 / 2524 0149

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

and

Corporate Communications Department
c/o Hong Kong Exchange and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

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

Dear Sirs:

We attach our response to the Joint Consultation Paper. We regret the delay in submitting this to you, but a number of our partners have been traveling in advance of and for our global partners' meeting. We hope the attached will be accepted and considered by you despite this delay.

Yours faithfully,

Weil, Gotshal & Manges

RESPONSE

To the Joint Consultation Paper issued by The Securities and Futures Commissions and The Stock Exchange of Hong Kong Limited on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation (of June 2016)

Introduction

Weil, Gotshal & Manges is recognized internationally for its leading role in the field of corporate governance. Our partners include well-respected authorities on securities regulation, corporate governance and compliance. Columbia Law School's Millstein Center for Global Market and Corporate Ownership is named in honor of Mr. Ira Millstein, a senior partner of this firm¹.

Weil in Asia specializes in Mergers & Acquisitions, Private Equity, Leveraged Finance and Fund Formation. While we regularly represent financial sponsors and strategic investors in their investments and exits in publicly listed companies, we do not focus on initial public offerings in this market.

Our Observations

1. We believe that the goal of our market should be to serve global investors by providing a well-regulated environment with the highest governance standards together with effective means of redress for investor complaints. With this goal in mind, we are not persuaded that the current proposals represent the most effective way to address the complex and multifaceted issues that our market has been facing.
2. We believe that the road to meaningful reform should lead to a regulatory structure that speaks with a single voice while mobilizing the role of both regulators and market professionals. In this context, we are concerned that the current proposals run the risk of diminishing the ability of the Listing Committee to provide the talent, experience and judgment of its members as a leading voice on wider policy matters and strategy.
3. The role of the Listing Committee is unique among the world's leading stock markets where the general norm is for each market to be led by a single regulator. The role of the Listing Committee has developed over many years as an instrument of reviewing and vetting individual listing applications, through to policy and rule-making. As the number and complexity of listings have grown, the burden of this role has grown on the individual members of the Listing Committee, who serve on a voluntary basis. The SFC, on the other

¹ Mr. Millstein is also Adjunct Professor at Columbia Law School and Columbia Business School and was formerly the senior associate dean for corporate governance and the Theodore Nierenberg adjunct professor of Corporate Governance at the Yale School of Management. Mr. Millstein has served as chairman of the Organisation for Economic Co-operation and Development's Business Sector Advisory Group on Corporate Governance, where he was instrumental in the development of the OECD Principles of Corporate Governance.

hand, has increasingly taken the lead role in not just enforcement but also in establishing policy for the market.

4. Against the backdrop of the rapidly developing regional market that Hong Kong has served and covered since the 1990's, our stock and financial markets have successfully leveraged and benefitted from such growth through a combination of adaptability, commercial acumen, and prudent but agile regulation. We share the belief of other commentators that the Listing Committee has, in large part, served Hong Kong well. We reiterate our concern that, on the one hand, the current proposals run the risk of impairing the Listing Committee and the value it can continue to offer going forward and, on the other hand, the proposals make little headway in tackling the bigger and deeper challenges that this market faces.
5. We suggest that a more effective mode of operation would be to have the industry professionals who comprise the Listing Committee reduce their role in more routine matters while playing a correspondingly more meaningful and influential role than that contemplated in the joint proposals in overall policy and strategy for the market. This structure would place responsibility for routine matters with dedicated HKEx staff while allowing market professionals to contribute effectively to the larger policy issues where their experience would be most valuable. As part of the above, the Listing Committee's appointment and governance processes should be further reviewed and improved upon – these are important details that go beyond the scope of this paper but which Weil is happy to comment on separately.
6. Neither the SFC and HKEx's joint proposals nor our suggestions as set forth above address in an effective manner the real challenge to our regulatory structure, that is the fact that our legal system and regulatory framework do not provide effective redress for investor complaints. Although great strides have been made in the past few years, the SFC and the HKEx inevitably lack the resources to pursue all violations by listed companies, and it remains extremely difficult for investors themselves to seek redress for unlawful or illegal conduct of listed companies. Moreover, even if the Hong Kong legal system and court processes can better enable investors themselves to help police the conduct of listed companies (by introducing a form of collective action regime for example), challenges would remain in enforcement against persons resident and assets located outside Hong Kong.

Weil, Gotshal & Manges

November 28, 2016