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Hong Kong

19 April 2005

Dear Ms Wick

**Consultation Paper on New Structure for Listing Decision-Making**

On behalf of ACCA (The Association of Chartered Certified Accountants) Hong Kong, we are writing to submit our comments regarding the above consultation paper for your consideration.

We agree in principle to the proposed new structure in general, apart from our comments submitted below.

**A2** The Listing Policy Committee would have up to 28 members.

Under the proposed new structure for listing decision-making, the proposed membership of the Listing Policy Committee will consist of the Chief Executive of HKEx, 8 investor representatives and 19 other members representing issuers and market practitioners such as investment bankers, lawyers and accountants. Members of the Listing Decisions Panel and the Listing Review Panel will then be drawn from this pool of members.

We consider that only a total of 28 members in the Listing Policy Committee may not be adequate to ensure each panel is truly representative by comprising an appropriate mix of stakeholders.

We also note that there is a current concern of overloading the members of the Listing Committee. We therefore suggest expanding the membership of the Listing Policy Committee.

**A3** The Listing Nomination Committee's mandate would be to ensure the non-prescribed members of the Listing Policy Committee are a suitable balance of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and brokers.

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According to the Draft Rule 2A.18 (3), apart from the 8 investor representatives, the 19 other external members will represent issuers and market practitioners such as investment bankers, lawyers and accountants. We agree that the Listing Policy Committee should be a suitable balance of listed issuers and market practitioners. We therefore propose that the number of members from each particular segment of market practitioners should be specified in order to avoid the membership being dominated by a particular segment.

We also consider that the criteria of selecting candidates to be nominated into the Listing Policy Committee should be set out in the new Rules.

**A4** The Listing Nomination Committee would consist of the Chief Executive of the Exchange; two members of the HKEx Board; the *Chairman of the SFC*; and two Executive Directors of the SFC.

Under the current proposal, 50% of the membership of the Listing Nomination Committee comes from HKEx. We are of the view that any real or perceived conflict of interests in HKEx's role as both the primary regulator of issuers and a for-profit listed company should be eliminated in order to enhance the integrity of the regulatory structure governing listing functions. Accordingly, in order to be perceived to be independent, we recommend that majority of the Listing Nomination Committee should be independent of HKEx.

We also recommend that the Listing Nomination Committee should consist of representatives from the legal and accounting professional bodies in order to ensure appropriate nomination into the Listing Policy Committee.

**A6** It is proposed that the Rules be amended so that the Board delegates decision-making power directly to the Listing Division.

We recommend that the Listing Division should be totally independent of the Board of HKEx and be monitored by and accountable to the Listing Policy Committee. As such, we do not agree to the proposal that the Board of HKEx delegates the decision-making power directly to the Listing Division. In addition, the Board, being accountable to the interests of the shareholders of HKEx, should not perform any monitoring role over the Listing Division. This is to avoid any real or perceived conflict of interest.

It is proposed that the Listing Policy Committee may, on its own initiative, request that the *Listing Division* prepare and present to the Committee, analysis or other information in relation to its exercise of decision-making power. We strongly recommend that, in addition to such power to request information from the Listing Division, regular reporting should be made by the Listing Division to the Listing Policy Committee to monitor the day-to-day affairs of the Listing Division.

**A7** The Listing Decisions Panel pool would be divided into three sub-pools. A quorum of five members would be required for each matter discussed at Listing Decisions Panel meetings.

As mentioned above under **A2**, we consider that each panel should consist of an appropriate mix of stakeholders to ensure that the panel is representative. As members of the Listing Decisions Panel are drawn from the Listing Policy Committee, we believe that the membership of the Listing Policy Committee should be expanded so that each Listing Decisions Panel shall include an appropriate mix of representatives from various stakeholder groups.

**A10** A review of decisions should incur payment of a review fee, and each party should bear its own costs in preparation for the review hearing. The Listing Review Panel should have discretion to refund a review fee in certain limited circumstances.

While we agree that a fee is necessary to cover certain administrative work, we consider that the existing level of review fee at HK\$60,000 is too high which constitutes a nature of penalty.

As a matter of fairness, we consider that the review fee should be refunded if the issuer succeeds in the case of review. As such, it should not be at the discretion of the Listing Review Panel to refund a review fee. Further, the Listing Review Panel should have the discretion to award the party who succeeded in the case the right to recover from the other party a reasonable amount of the costs incurred.

**A11** All members of the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel would be eligible for a daily allowance for time spent, for example, preparing for and in the conduct of meetings or hearings.

We agree to a per diem allowance for attending meetings, but not a scale rate for the time spent.

**A12** Any application for listing or other non-disciplinary matter commenced prior to commencement of the amend Rules would be dealt with under the current Rules unless the affected person, for example, new applicant, elects otherwise.

We doubt that the transitional arrangement as proposed is practical as it will result in the existing Listing Committee to co-exist with the new Listing Policy Committee for a pro-longed period given that some review cases could last for a lengthy period. The situation will be complicated by the fact that the existing Listing Committee has a specified term of two years, and it may not have any delegated power under the new Rules.



**B7** All members of the Disciplinary Review Panel would be eligible for a daily (or per diem) allowance for time spent, for example, preparing for and in the contact of hearings.

We agree to a per diem allowance for attending meetings, but not a scale rate for the time spent.

Under the proposal, the Chairman of the Disciplinary Review Panel would be responsible for writing up the Disciplinary Review Panel's decision and reasons for decision. We therefore suggest that the Chairman should be remunerated by a higher daily allowance to justify the work required to write up the decisions.

**B8** The Adjudicator and the Disciplinary Review Panel have the option of ordering recovery of the Exchange's reasonable investigation costs.

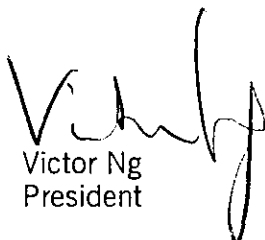
We agree that HKEx could recover its reasonable investigation costs only if wrongdoings of the issuer are confirmed. Based on the principle of fairness, where the decision is in favour of the issuer, we consider that the issuer should also have the right to recover from HKEx a reasonable amount of costs incurred.

**B9** The Disciplinary Review Panel would only review decisions made under the amended Rules. Consequently, any disciplinary decisions made by the Listing Committee under the current Rules would be subject to the review procedures under the current Rules.

We note that some review case could last for a pro-longed period, and hence the existing Listing Committee may need to co-exist with the Listing Policy Committee until the case is finalized. The proposed transitional arrangement could therefore create unnecessary administrative complications.

Should you wish to clarify any of the above issues, please do not hesitate to contact myself or Sonia Khao, Head of Technical Services of ACCA Hong Kong at 2524 4988.

Yours faithfully

  
Victor Ng  
President