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Listing Division  
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Hong Kong

BY HAND AND  
BY FAX (Fax No : 2295 3180)

Attention: Ms. Kelly Wick, Assistant Vice President

Dear Sir/Madam,

**Response to the Consultation Paper (the "Consultation Paper")  
on New Structure For Listing Decision-making**

We refer to the Consultation Paper published by Hong Kong Exchanges and Clearing Limited ("HKEx") in February 2005. We, The Chamber of Hong Kong Listed Companies (the "Chamber"), have considered the issues for consultation raised therein and would respond as follows. Please note that words and expressions used in this letter shall have the same meaning as defined in the Consultation Paper.

**1. Overall Position**

1.1 First, the Chamber wishes to note that in principle, it supports the proposals contained in the Consultation Paper of putting in place a "simpler administration framework for listing decision-making whilst also ensuring the checks and balances necessary to minimise and manage regulatory risk .." (paragraphs 3 and 36 of the Consultation Paper). However, as discussed below, we have doubts as to whether these proposals for a new structure as now presented in the Consultation Paper will serve to effectively achieve these objectives.

1.2 We note that the Consultation Paper makes extensive references to the May and July Releases made by the Exchange in 2002 and state that the proposals put forth in the Consultation Paper are consistent with the proposals listed out there. In our view, market conditions change every so often and they are definitely not quite the same as what they were in 2002. Therefore in making our comments, the emphasis has been placed on addressing issues which we believe the market is facing now, not then.

**2. General Comments**

2.1 In reviewing the proposals, we have four very fundamental questions:

- (a) Is the new structure simpler?
- (b) Why the changes?
- (c) Why change in this way?
- (d) In comparison, is it a better structure?

Our comments to these questions are as follows.

*Is the new structure simpler?*

- 2.2 This is the biggest questions that we keep asking when reviewing the Consultation Paper, as it is one of the two stated objectives for putting in place this new structure (re: paragraphs 3 and 36). However, in comparison with the present listing decision-making structure, save the review procedure which will be reduced to one level, we do not see any significant improvement in terms of simplifying the present structure. In fact, it can be said that the present structure be made slightly more complicated when, rather than a single Listing Committee that we now have, there will be a Listing Policy Committee ("LPC") plus three duty-specific panels! Further, as explained in paragraph 66 of the Consultation Paper, there will be a more sophisticated re-allocation of responsibilities between the LPC, the proposed Listing Decision Panel ("LDP") and the Listing Division ("LD"). Leaving aside the merits, if any, of such a re-allocation, one can hardly say that the new structure will become "simpler" - as at least one can imagine that whenever an issue comes before the Exchange, the first thing it needs to do is to spend time to look into the nature of this issue, and to take a view to see if it has "general effect". It is yet to be seen if it will, as wished, make listing-making process simpler or conversely, more complicated and susceptible to bureaucratic red-tape.

*Why the changes?*

- 2.3 It is noted with surprise that the Consultation Paper simply starts by going into considerable depth in making a historical analysis and then proceeding to outline what the new structure will be like, without first identifying what are the shortcomings of the present structure and the reasons for such changes in view of such shortcomings. In general, paragraphs 55 to 62 only purport to set out the current arrangements, and they are simply a plain introduction of what the present set up is. They hardly stand for a critical structural or procedural analysis or in any way an attempt to identify any shortcomings or inadequacies. The market is therefore simply unable to form a view as to what kind of changes and improvements are in fact being called for. Without such background knowledge, the market is unable to comment on the new structure meaningfully and sensibly.
- 2.4 That said, some clues can however be found in paragraph 57 of the Consultation Paper, which recites the Listing Committee's annual report (paragraphs 16 and 17 thereof) as follows:

*"the arrangements currently in place recognize as a practical matter that it is not possible for formal decision-making to be taken by the Listing Committee on the very substantial number of matters arising from the day-to-day administration of the Rules",*

and therefore

*"accordingly, the Listing Committee has reserved the power to take those decisions that are of material significance for listed companies, sponsor firms and individual concerned."*

To us, in simple language, this paragraph simply means that there are too much work before the Listing Committee and it is too busy to cope with all of them. The Listing Committee should, of course, not bother with the "day-to-day" administration of the Listing Rules, as this is plainly the function of the full-time staff of the LD. Further, it is perplexing to note that if it is not possible to make "formal" decision, then, is it the practice that the Listing Committee have to make "informal" decisions instead?

2.5 In this connection, we would make two points:

- (a) Does the problem lie in the increased amount of workload with which the Listing Committee cannot cope? If so, then the point will be how can the formation of the three panels serve to address this workload problem. Alternatively, should there be a significant increase in the size of the LPC so that the workload be more evenly spread out among LDP members? Definitely as rightly pointed out in paragraph 57, the Listing Committee should not be, and is not expected by the market to get, involved in the day-to-day work of the LD; and/or
- (b) Does the problem lie in the growing tendency of the LD to refer cases to the Listing Committee for decisions coupled with the increased amount of workload with which the LD also cannot cope? If justified by facts and good reasons, should the LD be expanded to cope with the increased workload? The fact is issuers are paying fees to the Exchange and it is therefore fair for them to expect good and efficient services to be provided by the LD.

2.6 In the absence of answers to these questions, the Consultation Paper may unwittingly give the reader an impression that it is a "change for the sake of changing, no matter what"! The Chamber is of the view that the market will not welcome changes made in this way, and there should be good reasons for so doing, and the reasons, if available, should be made known at the outset in unequivocal terms.

*Why change in this way?*

2.7 As already discussed above, the proposals for a new structure are simply exposed for market consultation without explaining the rationale or thinking behind as to why the changes are so made. Without knowing what are the issues and concerns behind, the respondents are left in an awkward position.

2.8 Further, rather than making known the reasons for the changes, the Consultation Paper instead takes a convenient way of conducting this consultation by setting very specific questions and in each of them, asking the respondents to "explain their views". Thus, it is still yet to be seen:

- Why 28 members is now proposed for the LPC and why the quorum of 12 (which is more than one third but less than half)?
- Why 8 investor representatives in the LPC and under what criteria are they selected?
- Why creating an adjudicator in the LD and, with him/her on board, in what way can disciplinary matters be handled more fairly and reasonably?
- Why a minimum of 20 members for the Disciplinary Review Panel?
- Overall, what significant improvements will it make?

The point therefore is - how can one answer a question like "do you agree with the proposed size of the LPC?" without first knowing why 28 members is proposed in the first place. Are they proposed arbitrarily? Perhaps it is the Exchange which should "explain their views" first!

*In comparison, is it a better structure?*

- 2.9 We would look at this by referring back to the two stated objectives for such changes, i.e.
- (a) For a simpler administrative framework; and
  - (b) For ensuring the checks and balances necessary to minimize and manage regulatory risk, including real and potential conflicts of interests within the HKEx.

As regards (a), in comparison and for reasons discussed above, we have doubts as to whether the new structure will be simpler. As regards (b), we are yet to see how the establishment of three panels and the change in membership size of the LPC will thereby help "minimizing" and "managing" regulatory risks, including conflicts (especially, we do not see how such risks be thereby minimized). Regrettably, there is not a comparative analysis in the Consultation Paper, and the fair view that can be taken is that there will be a re-shuffle of work by the creation of three panels and that there will be some eight investor representatives to be added. We hope it will turn out a better structure, although it is also common sense to raise the doubts that whenever more layers of work level is involved, more bureaucratic red-tape and longer administrative time will entail.

3. **Specific Comments**

- 3.1 To begin with, we can see from the format of this consultation that a long list of specific questions are set out in the Consultation Paper and it is therefore expected that responses be made to such questions one by one. However, we are of the view that though well-structured it turn out, it is not necessarily that we need to follow this strictly as it will inevitably mean a high degree of overlapping (with remarks like "please see the above" etc.).

Nomination of LPC members

- 3.2 This is admittedly one of the most important aspects of the whole listing decision-making process, and nomination of members of the LPC "originates" the whole process. Thus, the opportunity should have been taken to explain in more detail in the Consultation Paper on how, through what process and under what criteria are the members of the LPC (who will also be members of the three panels to be set up) are to be identified and selected. It is also worth noting that for the present Listing Committee, there are already up to two members who have been serving it since 1996, two since 1998 and one since 1999 - whilst it is the Government's policy that a member of a statutory body should as far as possible serve not more than six years. This points to a strong need for a greater degree of transparency in this aspect to enable the market to have a better understanding on how nomination is to be done. It is therefore proposed that the Listing Rules be amended accordingly, with some objective criteria included, to ensure that the Listing Nomination Committee be able to nominate a suitable balance of issuers and market practitioners and moreover, to serve for a suitable length of time.

Term of office of members

- 3.3 This point is not raised but should be considered now given the length of term of some existing Listing Committee members (see paragraph 3.2 above). Prima facie, it is suggested that a five-year term with a maximum of two consecutive terms for each member of the LPC, appears reasonable.

Creation of "Investor representatives"

- 3.4 This is seemingly a good idea to involve representatives from investors who comprise a very important facet of the whole market mechanism. But again, with regrets this idea has not been well discussed or explained in detail in the Consultation Paper. Thus, questions like how will they be identified and selected, what kind of "investors" will they be - institutional, fund managers, high net worth individuals, or even man-in-the-street day-traders? Why 8 of them? It is unfair just to sound out this idea and let the market guess the answers to these very obvious questions.

LDP members - Rotation basis

- 3.5 It is perceivably one of the prominent features in the new structure as, in addition to forming panels for particular areas of responsibilities, it is also a brand new idea. However, regrettably, it has not been explained in sufficient detail in the Consultation Paper on how exactly it can be implemented and its practicality so that the work of the LDP be done more efficiently and effectively. In the absence of such details, the following concerns easily come up to our minds:

- (a) What is/are the main purpose(s) of this arrangement - to achieve flexibility in manpower deployment, and/or to share out the workload among LDP members?
- (b) Rather than being made by a full Listing Committee, listing decision will be made by a LDP of, we believe, only around 8 members. Will this be done at the expense of the "quality" of the decisions?
- (c) Will safeguards be put in place to ensure that a particular case will always be handled by the same LDP which first handles that case? If yes, will the advantage of flexibility that it should have be lost? If not, will the continuity of that case be affected and interests of issuers/listing applicants then prejudiced?

That said, the Chamber wishes to stress that this should be a good idea but definitely needs to be thought out and with detailed work arrangements worked out very carefully.

Demarcation of responsibilities

- 3.6 Paragraph 66 of the Consultation Paper attempts to set out the demarcation of responsibilities among the LPC, LDP and LD as follows:

<u>Matter</u>	<u>Responsible party</u>
Approval of significant policies and proposed Listing Rule amendments	LPC
Granting approval for the listing of new equity applicants	LDP
Approvals of the cancellation of listing (except cancellation of listing of securities with an expiry date or event specified at the time of listing upon their expiry)	LDP

Approval of waivers -

- material waivers that are intended to have general effect LPC
- waivers relating to new listing applications by new equity and new non-structured product issuers LDP
- other waivers LD

Approval and the periodic review of GEM Sponsor firms and their supervisory staff (including annual reviews) LD

However, as mentioned above, it is easy to set them out on paper but it may not be that easy, as it appears to be, to implement it. Thus, the meaning of "general effect" is important and should be defined clearly supported by some objective criteria, that there should be very efficient coordination among the three of them so that there will not be any bureaucratic red-tape or "passing-around" and more importantly, it should not result in longer processing time.

- 3.7 It is also suggested that, like what some Government departments have been doing, upon implementing this, the Exchange should show its confidence in the new structure by giving performance pledge to the issuers/listing applicants with the time need for each step specified.

Compensation to members of LPC/Panels

- 3.8 The Chamber supports in principle the suggestion of giving compensation to the members as long as the amount is calculated on the basis of reimbursing traveling and meal expenses reasonably incurred in performing their duties. It should not be set at high levels so as to give the market a wrong impression that the compensation is meant as rewards for the work done.

Review fees

- 3.9 The Chamber also supports in principle the suggestion of paying review fees, provided that the amount of which be calculated fairly and reasonably, with the criteria of which being objective and clearly set out. However, for reasons to be discussed below, we withhold support for paying review fees and investigation costs for disciplinary review matters.

Adjudicator

- 3.10 It is perceivably another prominent feature in the new structure as it is a completely brand new idea. However, though well-intended it appears to be, in the absence of detailed explanation, once again the following concerns easily come up to our minds:

- (a) How can a full-time staff in the LD to be appointed by the Exchange's Head of Listing be totally independent of the LD in discharging his/her duties? What are the safeguards to make sure that he/she will discharge duties without fear or favour? The notion of "China wall" is noted but it is hardly a convincing one, especially when disciplinary matters are concerned.
- (b) What kind of qualifications are required of for this position and what profession and how many years of experience are expected?



- (c) Is he/she supposed to work under the Exchange's Head of Listing, who is to supervise him/her and to control his/her quality as well as performance of work?
- (d) Where an additional "layer" of work procedure to be added, as a result, will the new structure be simpler and will processing time be longer and costs for review be more expensive?

3.11 Given the above, on balance, we have reservations on the proposed establishment of this position in the LD as we do not see any apparent and imminent merit in doing this. Pending this, the existence of an adjudicator is very likely, directly or indirectly, increase the amount of the review fees and investigation costs of the Listing Review Panel and we would therefore withhold support on this for the time being.

Lastly, we wish to note that the Chamber now has more than 90 members who are Hong Kong listed companies. While the views contained in this letter represent those of the Chamber, they do not necessarily represent the views of individual members, who may respond separately to the HKEx with their own viewpoints with due regard to their own circumstances.

We would appreciate it if you would duly consider the above views.

Yours faithfully,  
For and on behalf of  
The Chamber of Hong Kong Listed Companies

Jay Chun  
Chairman