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Our Ref.: C/CFC, M34500

Ms. Kelly Wick,
Assistant Vice President,
Listing Division,
Hong Kong Exchanges and Clearing Limited,
11/F., One International Finance Centre,
1 Harbour View Street,
Central, Hong Kong.

Dear Ms. Wick,

Consultation Paper on New Structure for Listing Decision-making

The Hong Kong Institute of Certified Public Accountants has considered the above-referenced consultation paper, which seeks comments on proposals to implement a new decision-making structure for listing matters, and the draft amendments to the Listing Rules that would implement the proposed structure.

The Institute's comments on the issues raised in the consultation paper are set out in the Appendix to this letter.

We hope that you find our comments to be helpful. If you have any questions on our submission or wish to discuss it further, please contact me at the Institute on 2287 7084.

Yours sincerely,

Peter Tisman
Director, Faculties and Advocacy
Hong Kong Institute of CPAs

PMT/ML/ay
Encl.

**Comments from Hong Kong Institute of CPAs in response to the
Consultation Paper on New Structure for Listing Decision-making**

Part A: Non-Disciplinary Matters

A1Q1 *Do you agree with the proposed establishment of the Listing Policy Committee including the scope of its role? Please explain your views.*

Answer: Agree.

A2Q1 *Do you agree with the proposed size of the Listing Policy Committee? Please explain your views.*

Answer: Agree.

A2Q2 *Do you agree with the proposed quorum of the Listing Policy Committee? Please explain your views.*

Answer: No. It is noted that the Listing Policy Committee (LPC) is proposed to be responsible for advising on and approving policy concerning listing matters, and considering and approving Listing Rule amendments and material Listing Rule waivers or modifications that are intended to have general effect. Given the importance of its role, we consider that the quorum of the LPC meetings should be, as a minimum, a majority of the total membership, i.e. above 50%.

A3Q1 *Do you agree with the proposed composition of the Listing Policy Committee? Please explain your views.*

Answer: Agree.

A3Q2 *Do you think eight investor representatives ensures appropriate investor representation on the Listing Policy Committee? Please explain your views.*

Answer: Agree.

A4Q1 *Do you agree with the proposal to retain the current composition of the Listing Nomination Committee (currently called the Listing Nominating Committee)? Please explain your views.*

Answer: We have no strong views.

- A5Q1 *Do you agree with the proposed role of the Listing Decisions Panel? Please explain your views.*
- A5Q2 *Do you agree with the proposed role of the Listing Division including that it should make certain first instance listing decisions? Please explain your views.*
- A5Q3 *To the extent you have not already answered this, do you agree with the proposed division of responsibilities between the Listing Decisions Panel and the Listing Division? Please explain your views.*

Answer: We are supportive of the principle that more responsibility should be delegated to the Listing Division. However, it is noted in the consultation paper that there are overlaps in the remit of matters to be handled by the Listing Decisions Panel (LDP) and the Listing Division. In our view, it is important, firstly, that the criteria to be adopted for matters to be subject to the decisions of the LDP or the Listing Division, respectively, should be clearly-defined and transparent at the outset and, secondly, that, in practice, all significant matters are heard by the LDP.

- A6Q1 *Do you agree the Rules should be amended as proposed with respect to delegation of decision-making power from the Board directly to the Listing Division? Please explain your views.*
- A6Q2 *Do you agree the Rules should be amended as proposed with respect to the Listing Committee's oversight of the Listing Division? Please explain your views.*

Answer: Agree. This is in line with the principle that more responsibility be delegated to the Listing Division.

- A7Q1 *Do you agree each Listing Decisions Panel should be drawn from the pool of members of the Listing Policy Committee excluding the chairman and two deputy chairmen of the Listing Policy Committee and the HKEx Chief Executive? Please explain your views.*

Answer: Agree, on condition that the composition of each LDP would consist of a reasonable balance of representatives from different sectors. However, to encourage greater consistency of decision-making between different panels, we would suggest that the proposal to exclude from the LDP the chairman and two deputy chairmen of the LPC should be reconsidered; although clearly the same individual should not be involved in a specific case at both the LDP stage and at the stage of the Listing Review Panel (LRP), in the event of a subsequent appeal to the LRP.

- A7Q2 *Do you agree it is appropriate for the HKEx Chief Executive to be entitled to attend every Listing Decisions Panel meeting? Please explain your views.*

Answer: Agree. This would encourage more consistency in decision-making.

- A7Q3 *Do you agree the Listing Decisions Panel pool should be divided into three sub-pools, which would form Listing Decisions Panels on a rotating basis? Please explain your views.*

Answer: We agree with the principle of dividing the Listing Decisions Panel into different sub-pools, as this would increase efficacy and reduce the burden on individual members. Nevertheless, it is important to establish the right balance of members within each sub-pool, and also a clear and transparent process with respect to the basis of rotation of sub-pools. Consideration should also be given to

reviewing, and possibly changing the composition, of sub-pools from time to time so as to minimise the risk of individual panels being perceived by the market as having specifically identifiable characteristics.

A7Q4 *Do you consider the quorum for the Listing Decisions Panel is set at an appropriate level? Please explain your views.*

Answer: Agree, on the basis that this is more than 50% of the membership of any given sub-pool.

A8Q1 *Do you agree with the establishment of the new Listing Review Panel to decide on the reviews of all first instance non-disciplinary decisions? Please explain your views.*

A8Q2 *Do you agree there should be only one review of any first instance non-disciplinary decision? Please explain your views.*

Answer: In our view, a procedure that ensures equity and fairness is critical for a review system. In order to uphold the principle of natural justice and to ensure objectivity, any matters of importance and significance should be eligible for consideration by independent parties at two reviews.

A9Q1 *Do you agree with the size and composition of the Listing Review Panel including that the members should be drawn from the Listing Policy Committee? Please explain your views.*

A9Q2 *Do you consider the quorum for the Listing Review Panel is set at an appropriate level? Please explain your views.*

Answer: No. Given the important role to be played by the Listing Review Panel and the need for a balanced membership, we consider that both the size and the quorum for the panel should be expanded.

A10Q1 *Do you agree a review of decisions should incur payment of a review fee? Please explain your views.*

Answer: No. We are of the view that review of decisions should form part of the regulatory function of the Exchange within the proposed structure. In addition, imposing a review fee could create an inherent conflict of interest and be perceived as discouraging applications for a review of decisions.

A10Q2 *Do you agree each party should otherwise bear its own costs, for example, in preparation for the review hearing? Please explain your views.*

Answer: Agree.

A10Q3 *Do you consider the Listing Review Panel should have discretion to refund a review fee in certain limited circumstances? If so, then what should be those circumstances? Please explain your views.*

Answer: Not applicable, since we do not agree that review of decisions should be subject to a payment of a review fee.

A11Q1 *Do you agree the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel members should be compensated on a per diem basis? Please explain your views.*

Answer: No. In our view, serving as a member of these committee/panels should be regarded as providing a voluntary public service. Moreover, in some instances, compensating people on a per diem basis may put them into a difficult position, in particular, in the circumstance where receiving compensation may infringe their terms of employment.

A12Q1 *Do you agree with the proposed transitional arrangements and consider they will not give rise to any unintended effects? Please explain your views.*

Answer: We agree, in principle, with the proposed transitional arrangements. However, the Exchange should clarify how in practice, subsequent to the introduction of the amended Rules and the new structure, cases that were started prior to the commencement of the new Rules could continue to be handled under the current Rules and structure, particularly in view of the fact that some cases may carry on for a long period. Under the circumstance, we would suggest that the Exchange should expedite completion of the cases that are to be handled under the current regime.

Part B: Disciplinary Matters

B1Q1 *Do you support the proposals for the handling of first instance decisions for disciplinary matters by an adjudicator retained by the Exchange? Please explain your views.*

Answer: While, in principle, we would not object to the concept of first instance decisions on disciplinary matters being handled by an adjudicator, we are concerned that an inherent conflict could be created if the adjudicator were to be, as proposed, a full-time staff member of the Exchange, whose appointment would be at the recommendation of the Exchange's Head of Listing.

From the standpoint of natural justice and fairness, an adjudicator handling the disciplinary function should be independent of the Exchange. In practice, therefore, although the Exchange may have to fund the fees of the adjudicator, he/she should not be a staff member of the Exchange.

B2Q1 *Do you support the proposal that, save for exceptional circumstances, the Adjudicator's processes would only be in writing? Please explain your views.*

Answer: Agree.

B3Q1 *Do you agree the review should be a de novo review? Please explain your views.*

Answer: Agree. We consider that it would be useful for a review of a first instance disciplinary decision to have access to the complete background and all relevant materials in relation to the case under consideration and not to be limited to considering specific factual or legal issues.

B4Q1 *Do you agree with the establishment of the new Disciplinary Review Panel to decide on the review of all first instance disciplinary decisions? Please explain your views.*

Answer: Agree.

B4Q2 *Do you agree with the size and composition of the Disciplinary Review Panel pool including that there should be no restriction on the number of members of the Disciplinary Review Panel who may also be members of the Listing Policy Committee? Please explain your views.*

Answer: Agree.

B4Q3 *Do you think it is better to forsake some flexibility by prescribing the number of representatives of each market category, rather than just the investor representatives? Please explain your views.*

Answer: We do not have any strong view on this matter, provided that the Disciplinary Review Panel pool consists of a good mix of members with market experience and from different professional backgrounds.

B4Q4 *Do you think seven investor representatives ensure appropriate investor representation in the Disciplinary Review Panel pool? Please explain your views.*

Answer: It is not entirely clear what is meant by the term "investor representatives". Depending upon how the investor representatives are selected, their qualifications and experience could vary considerably and they might not have any experience in handling disciplinary matters or knowledge of review procedures and processes. Under the circumstances, we would suggest that seven investor representatives could be a disproportionate number out of a pool of 20 members.

B4Q5 *Do you agree it is appropriate for the Listing Nomination Committee to appoint Disciplinary Review Panel pool members? Please explain your views.*

Answer: Agree.

B4Q6 *Do you agree it is sufficient for the Disciplinary Review Panel to be the sole Exchange review body for all disciplinary decisions? Please explain your views.*

Answer: We are of the view that, to uphold the principle of natural justice and ensure objectivity, the structure should be designed to enable all disciplinary decisions to be eligible for two reviews by independent parties.

B5Q1 *Do you agree with the size of each Disciplinary Review Panel? Please explain your views.*

B5Q2 *Do you consider the quorum for all meetings of the Disciplinary Review Panel is set at an appropriate level? Please explain your views.*

Answer: No. We consider that each Disciplinary Review Panel should have a quorum of five members and, consequently, that the size of the panel may need to be further enlarged.

B5Q3 *Do you support the proposal that the chairman of every Disciplinary Review Panel would be legally qualified and responsible for writing up the Disciplinary Review Panel's decisions and reasons for its decision? Please explain your views.*

Answer: We believe it should be sufficient that at least one member of the Disciplinary Review Panel should be legally qualified, although that person need not be the chairman of the panel.

B6Q1 *Do you agree it is appropriate that the Committee Secretary be able to co-opt members from the Listing Policy Committee to the Disciplinary Review Panel if necessary? Please explain your views.*

Answer: Agree.

B7Q1 *Do you agree the Disciplinary Review Panel members should be compensated on a per diem basis (as with the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel)? Please explain your views.*

Answer: No. Please see our answer to A11Q1 above.

B8Q1 *Do you agree a review of decisions should incur payment of a review fee? Please explain your views.*

Answer: No. Please see our answer to A10Q1 above.

B8Q2 *Do you agree it is appropriate for the Adjudicator and the Disciplinary Review Panel to have the option of ordering recovery of the Exchange's reasonable investigation costs? Please explain your views.*

Answer: As regards the option of ordering recovery of the Exchange's reasonable investigation costs, the basis on which this option would be taken up in any given circumstances should be made clear. In any event, it would be useful to have more statistical information on the number of disciplinary cases heard, the number taken to appeal, the outcomes, the extent of investigation costs incurred by the Exchange, etc., in order to be able to make a more informed assessment of the proposal.

Notwithstanding the above, we believe that, in principle, investigating into alleged/suspected breaches of the Listing Rules is part and parcel of the Exchange's regulatory function to maintain an orderly market. On this basis, it should not be distinguished from other tasks performed by the Exchange in discharging its responsibilities as a market regulator, which are already funded by levies received from the market. We note that the proposed order to pay reasonable investigation costs is referred to as a "sanction". As we indicate above, therefore, if it were to be introduced at all, and we have considerable reservations about this, the circumstances in which the Adjudicator or the Disciplinary Review Panel would be able to impose it must be clearly defined and, in our view, it should be available as an option only in the most extreme and flagrant cases of abuse.

B9Q1 *Do you agree with the proposed transitional arrangements for disciplinary matters and consider they will not give rise to any unintended effects? Please explain your views.*

Answer: Agree in principle, but please see our answer to A12Q1 above.

General comment on disciplinary matters

1. With reference to paragraph 64 of the consultation paper, it is noted that, under the current procedures, only the affected persons (usually the directors and so references below are only to "director", to simplify matters) are allowed to make oral submissions at the Listing Committee meeting when the alleged/suspected breaches of the Listing Rules are being considered. Although a director may apply for his lawyer or adviser to be allowed to speak, such applications are commonly rejected. While we appreciate that the Listing Committee, or its successor committees/panels, may wish to hear what the director has to say, we also consider that this policy may act in a way that is unfair to the director concerned. He will usually be facing qualified legal practitioners from the Exchange and will often be at a disadvantage from the outset because of his lack of experience and detailed knowledge of procedures in such situations and in relation to technical, legal and compliance issues. This may be exacerbated by linguistic considerations, in particular, a limited ability to represent himself clearly and effectively in English.
2. We are of the view that, while a director may be required to speak for some part of a hearing, he should also have the right to appoint a representative to make oral submissions on his behalf at the meeting of Listing Committee (or its successor bodies) when the alleged/suspected breaches of the Listing Rules are being considered.

Part C: Rule Amendments

C1Q1 *Do you support the proposed Rule amendments? Please explain any comment you have on any of the proposed amendments including any unintended effect you consider the amendments may give rise to.*

Answer: Our support for amendments to the Rules is subject to our comments on the proposals set out in Parts A and B above.

C2Q1 *Do you support the proposed approach to amending the GEM Rules? If not, please explain your views.*

Answer: In principle, we would support the proposed approach to amending the GEM Rules. As indicated in the answer to C1Q1 above, this is subject to our comments provided under Parts A and B.