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6 May 2005

Hong Kong Exchange and Clearing Limited
11/F, One International Finance Centre
1 Harbour View
Hong Kong

Attention: Ms. Kelly Wick

Dear Ms. Wick,

Post-It* Fax Note	7671	Date	6 May	# of pages	5
To	Ms. Kelly Wick	From	Joyce Wong		
Copy to	HK Exchange & Clearing Co.	Co.	The Law Society of HK		
Phone #		Phone #	2846 0533		
Fax #	2295 3180	Fax #	2845 0397		

Re: Consultation Paper on New Structure for Listing Decision-Making

I refer to the Consultation Paper and attach the Law Society's Submissions.

Yours faithfully,

Joyce Wong
Joyce Wong
Director of Practitioners Affairs
email: dpa@hklawsoc.org.hk

Encl.

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**Hong Kong Exchanges and Clearing Limited
Consultation Paper on
"New Structure for Listing Decision-Making"**

- A1Q1** This seems acceptable. Presumably the SFC would retain its present level of oversight / approval. The quality of composition of the Listing Policy Committee, including knowledge of the Listing Rules, will be all important.
- A2Q1** This seems reasonable. The quorum seems rather low but perhaps this reflects experience of difficulty in securing attendance. It would be better if the quorum could be larger.
- A3Q1** The most important point is that selected members should have a good working knowledge of the Listing Rules. This has not always been the case in the past. Subject to that, the composition looks acceptable.
- A3Q2** Yes, it should do, provided the representatives have suitable experience and knowledge - this aspect in our view is critical and careful attention should be paid to it in practice.
- A4Q1** Agree.
- A5Q1** This seems a reasonable split of responsibilities.
- A5Q2** Yes, this seems a reasonable split of responsibilities bearing in mind the practicalities of making day to day decisions.
- A6Q1** Agree.
- A6Q2** In practice, it is probably not feasible for the Listing Committee as currently constituted and as proposed to be constituted (in its revised forms) to carry out an active oversight role, hence we regard the proposals as reasonable.
- A7Q1** This seems acceptable. Some care should be taken regarding having balanced composition of the sub-pools.
- A7Q2** We are not sure of the rationale for this.
- A7Q3** This seems a reasonable arrangement, provided care is taken, with a balanced composition for each pool.
- A7Q4** This seems a reasonable number to us, and workable in practice.
- A8Q1** Yes, a review panel is obviously necessary.



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- A8Q2** We consider this is acceptable, bearing in mind that new listings at least will be considered at first instance by the Listing Decisions Panel. However, query whether the chairman should have some residual power to agree to a further review in exceptional cases.
- A9Q1** Agree.
- A9Q2** In our opinion a quorum of five members would be preferable, particularly as this is the last forum for review.
- A10Q1** Agree.
- A10Q2** Agree.
- A10Q3** It might be reasonable to have a provision that fees could be refunded if the Listing Review Panel considers the circumstances exceptional.
- A11Q1** Yes. There should be proper preparation for meetings and commensurate compensation.
- A12Q1** Agree. We are not aware of any unintended effects.
- B1Q1** We would prefer a system more akin to the present one whereby disciplinary decisions are taken in the first instance by a committee (or panel) of people who are not employees of the Exchange, and the Exchange's role is essentially that of prosecutor.
- B2Q1** No. Parties should be given the right to an oral hearing.
- B3Q1** Agree. The review procedure is limited, and it should be thorough.
- B4Q1** Agree.
- B4Q2** Agree. There are arguments either way but it will help to have members who have experience of Exchange related decision making.
- B4Q3** We think it is useful that there is a mandated number of investor and legal members. As regards membership generally, a key requirement should be some practical knowledge of the rules.
- B4Q4** Yes.
- B4Q5** Agree.
- B4Q6** Agree - subject to the comments made above regarding the adjudicator proposal.



- B5Q1** Agree, for the reasons given in the explanation.
- B5Q2** Agree.
- B5Q3** Agree. This would parallel to some extent the position of bodies such as the Market Misconduct Tribunal.
- B6Q1** Agree. This will give some flexibility, as the practical arrangements for convening meetings of these bodies can be difficult in terms of finding adequate available members.
- B7Q1** Agree, for the same reasons.
- B8Q1** Agree.
- B8Q2** Agree, subject to the comments made above regarding the adjudicator proposal.
- B9Q1** Agree. We are not aware of any unintended consequences.
- C1Q1** In the past, some Listing Decisions which overturned previous, established Stock Exchange practice were not published by the Exchange. There should be transparency and consistency as regards publication.

Query whether any of the sanctions in Rule 2B.12 including 2B.12(1) and (2) would be subject to SFC consent.

We note the proposed change in the notes to Rule 2B.11. Is a change of meaning or emphasis intended from the existing notes on this subject? We also note, and object strongly to, the inclusion of Rule 2B.12(4). The Exchange has been in correspondence with the Law Society with respect to the existing MOU with the Law Society (please refer to the Law Society's letter of 2 November 2004 on this topic), yet the inclusion and contents of this proposed rule have never been brought specifically to the attention of the Law Society (query whether they have ever been brought specifically to the attention of the Hong Kong Institute of Certified Public Accountants) nor are they even flagged or highlighted in the commentary in the consultation paper. We note the contents of proposed Rule 2B.11(5), but is it in fact the intention of the Exchange that proposed Rule 2B.12(4) should apply to solicitors, or that the contents of any such rule would set a backdrop for further discussions with the Law Society? In either case the intention would seem to be to erode the framework set out by the MOU which is an arrangement statutorily recognised in s.23(8) of the Securities and Futures Ordinance. We reject this.



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C1Q2 Please see above.

The Law Society of Hong Kong
Securities Law Committee
6 May 2005