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香港證券經紀業協會有限公司  
HONG KONG STOCKBROKERS ASSOCIATION LIMITED

香港中環永吉街 6-12 號誠利商業大廈 6 樓 C 座 電: 2541 8832 2541 0322 Fax: 2541 1368  
Flat C, 6<sup>th</sup> Floor, Shing Lcc Comm. Bldg., 6-12 Wing Kut Street, Central, H.K. E-mail: info@hkss.com.hk

**RESPONSE TO  
CONSULTATION PAPER ON  
NEW STRUCTURE FOR  
LISTING DECISION MAKING**

**Hong Kong Stockbrokers Association  
22 April 2005**

*Comments on the Consultation Paper on New Structure for Listing Decision Making  
22 April 2005*



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*General*

1. The Consultation Paper sets out a new structure for decision making in listing matters. The structure now proposed is based on proposals put forward in various government policy papers and incorporates public comments in response to previous consultations.
2. Specifically, this Consultation Paper is the HKEx's response to the government's suggestions for improving the listing process, and re-structuring the Listing Committee.
3. In general, we support the proposed new structure and re-affirm our support for the HKEx's role as front-line regulator of listing matters. The government's general direction to give statutory backing to some of the Listing Rules would not affect the HKEx's role as first instance decision maker in listing matters, and the proposed new structure would allow the HKEx to carry out this function.

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### *Area of Concerns*

4. In general we are in agreement with the approach to segregation of duties, the composition of the Listing Policy Committee, the new Listing Decisions Panels and the Listing Review Panels.
5. The approach to non-disciplinary matters appears sensible and provides appropriate checks and balances. We do have some concerns in the proposed handling of disciplinary matters, in particular the appointment of an Adjudicator:
  - a) Independence of the Adjudicator;
  - b) Sanctions available to the Adjudicator and the Disciplinary Review Panel.
6. Under the proposed structure, the Listing Division is responsible for investigating breaches in disciplinary matters, referring the matters to the Adjudicator, and acting as the prosecutor. However, it is currently proposed that the Adjudicator be appointed by the HKEx Board on the recommendation of the HKEx Head of Listing. We believe that this would present an unavoidable conflict of interest in that the Adjudicator may be beholden to the Head of Listing who recommended his appointment. The paper states that the Adjudicator is appointed by the HKEx Board but does not make clear who he reports to.
7. The current proposals also provide for the Adjudicator and the Disciplinary Review Panel to order offending parties to pay reasonable investigation costs of the HKEx. While we do not object to recovery of costs, we believe that there should be transparency as to the calculation of reasonable costs. We would also point out that the financial implications on the issuer being investigated can be substantial given that some investigations may go on over a long period of time.

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