

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

22 APR 2005

Listing Division
Hong Kong Exchanges and Clearing Limited
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Central
Hong Kong

Attention: Ms. Kelly Wick, Assistant Vice President

20th April 2005

Dear Sir/Madam,

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

We refer to the Consultation Paper published by Hong Kong Exchanges and Clearing Limited (the "Exchange") in February 2005. We have considered the issues for consultation and would like to 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 in principle, 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, has doubts as to whether these proposals for a new structure serve to effectively achieve these objectives.

1.2 We note that the Consultation Paper makes extensive references to the May and July Releases made in 2002 and states that the proposals so put forth are consistent with the proposals listed out there. In our view, market conditions change so often that they are definitely different from 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 Upon 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 question 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, when comparing the new structure 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 simplifying the new structure over the present structure. On the contrary, it can be said that the present structure be made slightly more complicated when, rather than a single Listing Committee, 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 detailed re-allocation of responsibilities between the LPC, the 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 be "simpler" - at least one can imagine that whenever an issue is brought 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 an historical analysis and then proceeds to outline what the new structure will be like, but without identifying what the shortcomings of the present structure are and the reasons for such changes in view of such shortcomings. In general, paragraphs 55 to 62 purport to set out the current arrangements, but they are simply a plain introduction of what the present set up is, and is hardly 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 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, this paragraph simply means that there are too many cases brought 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 like to make two points:

- (a) Does the problem lie in the increased amount of workload which the Listing Committee cannot cope with? If so, then the point is how can the formation of the three panels serve to address this problem. Alternatively, should there be a significant increase in the size of the LPC so that the workload can be more evenly spread out by the LDP? As rightly pointed out in paragraph 57, the Listing Committee should not be, and is not expected to get, involved in an executive role directing the day-to-day work of the LD so that its independence will be jeopardized; and
- (b) If justified by facts, should the LD be expanded to cope with the increased workload?

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"! It is of the view that the market will not welcome changes made in this way unless there are 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 put forth by the Exchange for market consultation without explaining the rationale or thinking behind as to why the changes are made in this way. Without knowing what are the issues and concerns behind, the respondents are left in a difficult position.

2.8 Further, rather than setting out the reasons for the changes, the Consultation Paper instead takes a convenient way of handling 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 are 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 are proposed in the first place. Perhaps it should be the Exchange which should "explain their views" first!

In comparison, is it a better structure?

2.9 We would look at this by referring the two stated objectives for such change, 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 Exchange.

In regard to (a), in comparison and for reasons discussed above, we have doubts as to whether the new structure will be simpler. In regard to (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 say that the more layers of work level will in most cases mean more bureaucratic red-tape and longer administrative time.

3. Specific Comments

- 3.1 To begin with, we can see from the format of this consultation that 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 structured it may be, it is not necessarily that we have to follow the format 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. The Exchange should have taken the opportunity to explain in more details 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 in fact 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 committee should as far as possible serve not more than six years. This warrants a strong need for a greater degree of transparency in this area 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 period of time.

Term of office of members

- 3.3 This point has not been 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 each member of the LPC serving a maximum of two consecutive terms, appears reasonable.

Creation of "Investor representatives"

- 3.4 This is seemingly a good idea to involve representatives from the investors' group who comprises a very important facet of the whole market mechanism. But again, this idea has not been discussed or explained in details 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 work out 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, apart from forming panels for particular areas of responsibilities, it is also a brand new idea. However, regrettably, it has not been explained in sufficient details in the Consultation Paper on how exactly it can be implemented so that the work of the LDP can 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 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 in place to ensure that a particular case 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, 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 and supported by some objective criteria, that there should be very efficient coordination among LPC, LDP and LD 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 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 supports in principle the suggestion of giving compensation to the members as long as the amount is calculated on the basis of disbursing 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 to be rewards for their work done.

Review fee

- 3.9 also supports in principle this suggestion, provided that such amount be calculated fairly and reasonably, with the criteria of setting the review fee being objectively and clearly set out. However, for reasons to be discussed below, we withhold support for the review fee 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 a detailed explanation, once again the following concerns easily come up to our minds:
- (a) How can a full-time staff in the LD appointed by the Exchange's Head of Listing be totally independent of the LD in discharging his/her duties? 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 how many years of experience is 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 of work?
 - (d) Where an additional "layer" is added in this process, 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, has reservations on the proposed establishment of this position in the LD as we do not see any apparent advantage in doing so. Pending this, the existence of an adjudicator is very likely, directly or indirectly, increase the amount of the review fee and investigation costs of the Listing Review Panel and we would therefore withhold support on this for the time being.

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

Lastly, please note that we do not wish to have our name published in connection with our submission.

Yours faithfully,
For and on behalf of