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

21 April 2005

Listing Division
Hong Kong Exchanges and Clearing Limited
11th Floor, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Attention: Ms. Kelly Wick, Assistant Vice President

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 We, in principle, support the objective to put 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 serve to effectively achieve these objectives.

1.2 We noted 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 Our first reaction to the Consultation paper is that we do not see any significant improvement in simplifying the present structure, save the review procedure which will be reduced to one level. On the contrary, we see that the present single Listing Committee has been replaced by several panels with different responsibilities. 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.

- 2.2 The Consultation Paper has not clearly explained the shortcomings of the present structure and thus the reasons for the changes. Paragraphs 55 to 62 simply give a plain introduction of the present set up, and are hardly a critical structural or procedural analysis or in any way an attempt to identify any shortcomings or inadequacies. We do not think that it is fair for the market to comment on the new structure meaningfully and sensibly without such analysis.

In this connection, we noted that paragraph 57 of the Consultation Paper 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 conveys the message that the Listing Committee is too busy to cope with all the cases brought before them. Further, it is perplexing to note that if the Listing Committee is not possible to make "formal" decision, then, is it the practice that it has to make "informal" decisions instead?

- 2.3 In regard to paragraph 2.2 above, we would like to ask two questions:

- (a) Is the increased amount of workload faced by the Listing Committee the real problem? If so, then the point is how the formation of the three panels can serve to address this problem. Alternatively, should there be a significant increase in the size of the Listing Policy Committee so that the workload can be more evenly spread out? 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 Listing Division so that its independence will be jeopardized; and
- (b) If justified by facts, should the Listing Division be expanded to cope with the increased workload?

- 2.4 As discussed above, the Consultation Paper fails to explain the rationale or thinking behind as to why the changes are made in way they are proposed. Instead, it takes a convenient way by setting very specific questions and in each of them, asking the respondents to "explain their views". We do not feel that one can agree to the proposals without knowing, for example:

- Why 28 members are now proposed for the Listing Policy Committee and why the quorum of 12 (which is more than one third but less than half)?
- Why 8 investor representatives in the Listing Policy Committee and under what criteria are they selected?
- Why creating an adjudicator in the Listing Division 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?

2.5 In conclusion, we would look at this by referring to the two stated objectives for such change, i.e.

- (a) in comparison and for reasons discussed above, we have doubts as to whether the new structure will be simpler; 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, 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 We noted that response are expected to be made to the specific questions set out in the Consultation Paper. However, we have not followed the format strictly in order to better present our responses.

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 Listing Policy Committee "originates" the whole process. The Exchange should explain in more details in the Consultation Paper on how, through what process and under what criteria are the members of the Listing Policy Committee (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 Listing Policy Committee serving a maximum of two consecutive terms, appears reasonable.

Creation of "Investor representatives"

- 3.4 It is 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, there are questions like how they will be identified and selected, what kind of "investors" they will be - institutional, fund managers, high net worth individuals, or even man-in-the-street day-traders, and 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.

Listing Decision Panel 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 Listing Decision Panel can be done more efficiently and effectively. In the absence of such details, the following concerns 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 Listing Decision Panel 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 Listing Decision Panel 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, we wish 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 Listing Policy Committee ("LPC"), Listing Decision Panel ("LDP") and Listing Division ("LD") as follows:

Matter

Responsible party

Approval of significant policies and proposed Listing Rule amendments

LPC

<u>Matter</u>	<u>Responsible party</u>
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. For example, 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 We support 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 We also support 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 Listing Division appointed by the Exchange's Head of Listing be totally independent of the Listing Division in discharging his/her duties? The notion of "Chinese 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, we have reservations on the proposed establishment of this position in the Listing Division 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.

Yours faithfully,
For and on behalf of