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March 18, 2025

By email (response@hkex.com.hk)

The Stock Exchange of Hong Kong Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Re: Consultation Paper – Proposals to Optimize IPO Price Discovery and Open Market Requirements

Dear Sirs / Madams:

We are making this submission in response to the consultation paper issued by The Stock Exchange of Hong Kong Limited (the “**Exchange**”) in December 2024 regarding the “**Proposals to Optimize IPO Price Discovery and Open Market Requirements**” (the “**Consultation Paper**”). Unless otherwise defined, terms used in this letter have the same meanings as used in the Consultation Paper.

As a general observation, we appreciate and welcome the Exchange’s initiatives and proposals set forth in the Consultation Paper. We have a few suggestions in relation to certain of the Exchange’s proposals. We believe in the saying, “the simpler, the better” and have made some of our suggestions with that in mind. We set out forth our suggestions in Appendix I attached hereto.

If you have any questions on any aspect of our submission, please do not hesitate to contact

Thank you for your attention.

Yours faithfully,

Sullivan & Cromwell (Hong Kong) LLP

APPENDIX I

I. OPEN MARKET REQUIREMENTS

1. Initial Public Float Thresholds

- 1.1. The Exchange's Initial Public Float Thresholds Proposal. We agree with the Exchange's proposal to replace the existing initial public float thresholds as the size and quality of issuers listing on the Exchange have progressed significantly since the 25% minimum public float threshold was put in place in the 1980s. Nevertheless, the Hong Kong capital markets in the 2020s have transformed from the early 2000s when mega size state-owned issuers sought their listings in Hong Kong to the current market environment where quality issuers are seeking listings on the Exchange at an earlier stage of their development and the capital markets are bracing the challenges of geopolitical tensions. We believe that the Exchange's proposed Initial Public Float Thresholds may be too conservative to accommodate the evolving capital market circumstances in Hong Kong. We have set out below the number of issuers who listed on the Exchange between 2022 to the present who will fit within the tiers proposed by the Exchange in the Consultation Paper. These thresholds remain very high and potentially inhibitive.

Tier (Expected market value of the relevant class of securities at the time of listing)	Min prescribed public float	No. of Issuers from 2022 until present
A. ≤HK\$6 billion	25%	127
B. >HK\$6 billion ≤HK\$30 billion	15%	90
C. >HK\$30 billion ≤HK\$70 billion	10%	9
D. >HK\$70 billion	5%	6 (of which 4 are already A share listed)

- 1.2. S&C Proposal. We like the Exchange's formulation for A+H issuers in paragraph 162(a) of the Consultation Paper, which focuses on whether there is a "critical mass" of investor interests. Building on this concept, we believe that so long as an issuer has a critical mass of securities in public hands, it should be deemed to have maintained sufficient public float, subject to a "floor" percentage that is applied across the spectrum. Given the Exchange's intention to afford issuers, post-listing, a lower public float requirement on an ongoing basis if they meet the relevant criteria, we believe this mechanism affords (i) greater flexibility but gives certainty to issuers; and (ii) simplicity in compliance by the issuer. With this in mind, we have developed the following alternative formulation for the Exchange's consideration.

- *S&C's Initial Public Float Thresholds Proposal.* At the time of listing, an issuer seeking a listing on the Exchange must demonstrate that it could meet **either** (i) the minimum percentage of the class of securities to be held in public hands in Column (A) **or** the expected market value of such securities at the time of listing could meet the criteria in Column (B), **provided that**, the percentage of the class of securities to be held in public hands of an issuer shall not fall below 3.5%¹ of the total issued shares of the issuer:

Tier (Expected market value of the relevant class of securities at the time of listing)	(A) Min prescribed public float (excl treasury shares)	(B) Market value of securities in public hands for which listing is sought	No. of Issuers from 2022 until present
A. HK\$125 million ≤ HK\$1.5 billion	25%	N/A ²	70
B. >HK\$1.5 billion ≤ HK\$10 billion	15%	HK\$1.5 billion	88
C. >HK\$10 billion	10%	HK\$2.5 billion	74

In other words, for Tier C issuers, the Initial Public Float Threshold established at the time of such issuer's listing could be lower than 10% if the expected market value of securities in public hands for which listing is sought exceeds HK\$2.5 billion, subject to a floor of 3.5%.

As shown above, there is greater balance in the number of issuers falling into the respective tiers.

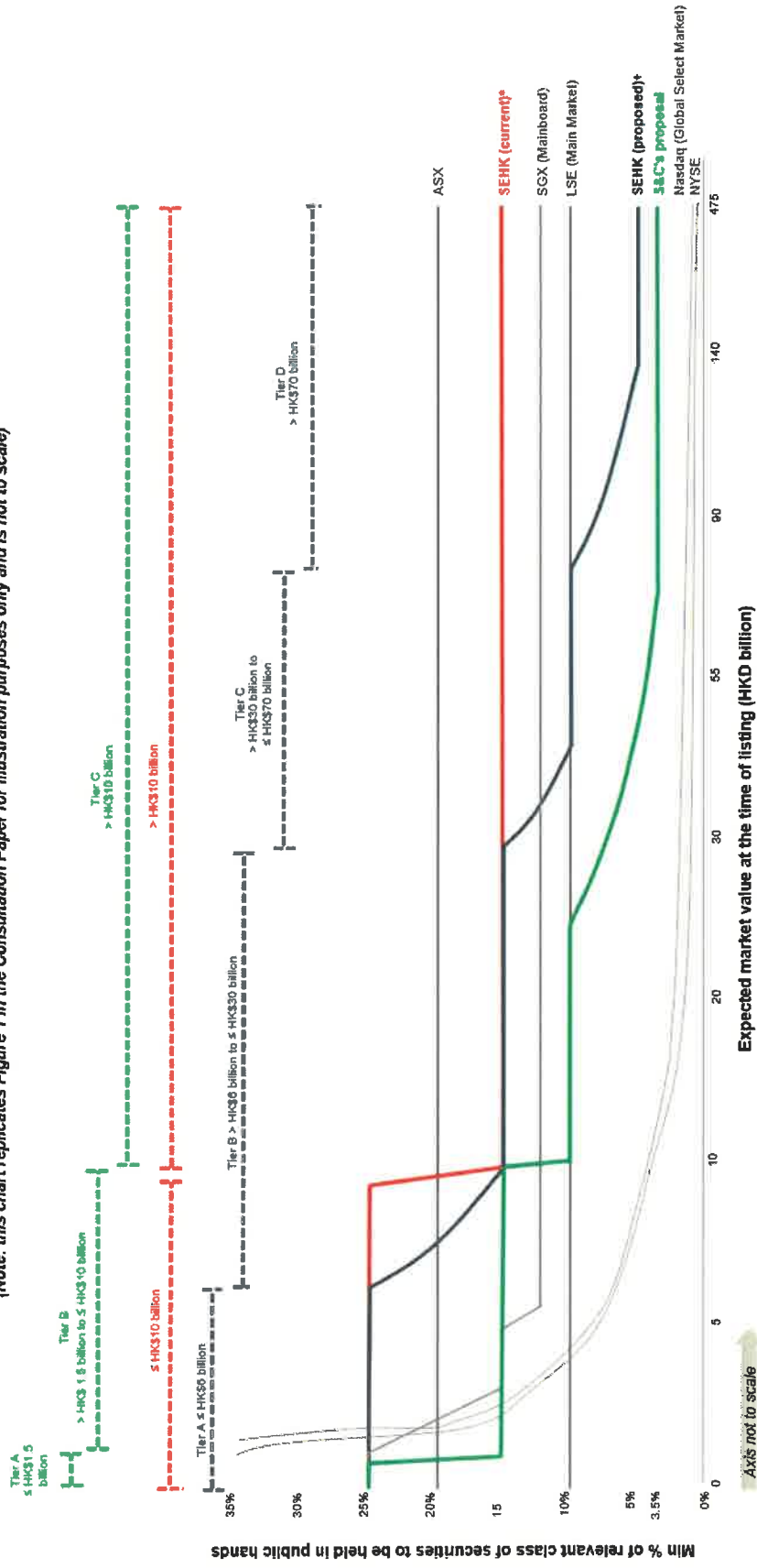
Please see below the S&C proposal imposed upon the illustrated chart on page 30 of the Consultation Paper.

¹ This roughly translates to a total market value of HK\$71 billion (which will be considered a mega sized issuer under the Consultation Paper) if the minimum market value of securities in public hands is HK\$2.5 billion.

² For small cap issuers, we believe that a straight 25% public float requirement should still apply given the potential volatility in such issuer's share value.

Comparison of initial public float percentages on the Exchange, other international stock exchanges and S&C's proposal

(Note: this chart replicates Figure 1 in the Consultation Paper for illustration purposes only and is not to scale)



* The Exchange may grant case-by-case waivers to allow public float percentages of below 15%.
 + A+H issuers (and other prescribed types of issuers) are subject to bespoke initial public float requirements (as set out in Section 1.D.1 of Chapter 1).

2. **S&C's Views on Ongoing Public Float Requirements and Establishment of an OTC Market**

2.1. General View. We support the Exchange's proposal that issuers, post-listing, should be given the flexibility to maintain a lower public float level. Similarly, we agree that a suspension of trading of an issuer's shares just because a certain percentage of shares is not in public hands will deprive minority shareholders of a liquid market to trade their shares. We also agree that ongoing public float requirements should apply to shares only.

2.2. Some Observations. Under the current regime, an issuer would most commonly fail to meet its minimum prescribed public float requirements on an ongoing basis after a material event (an "**Event**") such as:

- 2.2.1. after completion of a mandatory or voluntary general offer under the Codes on Takeovers and Share Buybacks ("**Takeovers Code**");
- 2.2.2. following completion of certain corporate actions such as new issuances of shares to core connected persons or a buy-back of shares; or
- 2.2.3. acquisition by a third party (who may or may not be an existing core connected person or its close associate).

We believe that it is a good opportunity for the Exchange to clarify (1) what is the obligation of maintenance of public float on an ongoing basis; (2) who is responsible; and (3) what are the consequences for failure to maintain the public float requirements.

2.3. S&C Proposal. The purpose for a minimum public float requirement is to ensure that the trading of an issuer's securities is conducted in a fair and orderly manner.

2.3.1. *Obligation to ensure fair and orderly market for an issuer's securities.* We propose that:

- (i) the Listing Rules shall clarify that the issuer, together with its directors and substantial shareholders (where applicable), have an obligation to ensure that the trading of the issuer's securities on the Exchange is being conducted in a fair and orderly manner; and
- (ii) the trading of an issuer's securities on the Exchange will normally³ be deemed to be conducted in a fair and orderly manner if: (a) it meets the Initial Public Float Threshold⁴; **or** (b) it could demonstrate that it meets any one of the

³ The Exchange shall retain discretion in either tightening or further lowering the public float thresholds applicable, having regard to the issuer's circumstances at the relevant time.

⁴ As an issuer matures following its listing on the Exchange, its overall market value may fluctuate and it may be subject to multiple Events rendering the Initial Public Float Threshold no longer meaningful for ongoing compliance

thresholds as proposed in paragraph 1.2, **provided that** in each case, there is no outstanding statement of concentration of shareholders⁵.

- 2.3.2. *Informing the market on an ongoing basis.* It is an issuer's obligation to regularly assess if it is in compliance with the proposed requirements under paragraph 2.3.1. An issuer will be required to regularly confirm that it has been in compliance with the requirements as proposed in paragraph 2.3.1 in all material respects during the relevant periods in its interim and annual results announcements (or alternatively, in its monthly returns announcements). Of course, if the Exchange is of the view that the trading of the issuer's securities on the Exchange is not being conducted in a fair and orderly manner, the Exchange may at any time request the issuer to publish an announcement to inform the market of the same and to rectify the inadequacy.
- 2.3.3. *Special warning instead of trading suspension.* Rather than requiring a suspension of trading in an issuer's securities, if an issuer is unable to confirm compliance with the obligations as proposed in paragraph 2.3.1 or if the Exchange is of the view that the trading of the issuer's securities on the Exchange is not being conducted in a fair and orderly manner, the Exchange shall place a special treatment ticker against an issuer's stock code that serves to warn investors that there may be insufficient liquidity in the trading of such issuer's securities⁶.
- 2.3.4. *Who is responsible and consequences of breach.* The issuer, its directors and, if applicable, its substantial shareholder (particularly as a result of an Event under paragraph 2.2.3) may be responsible for a breach of the obligation as proposed in paragraph 2.3.1. A breach of the Listing Rules and would allow the Exchange to bring disciplinary actions and impose or issue sanctions under Listing Rule 2A.10 against, among others, an issuer or any of its subsidiaries, any director of an issuer or any of its subsidiaries (or any alternate of such director), any member of the senior management of an issuer or any of its subsidiaries, any substantial shareholder of an issuer, or any other party who gives an undertaking to or enters into an agreement with the Exchange, among others. This will give the Exchange the necessary powers to take action against the part(ies) most responsible for the breach.
- 2.3.5. *Delisting and an OTC market.* If the Exchange does not require an issuer to suspend trading of its securities, we would recommend that issuers that have been given special warning under paragraph 2.3.3 for a prolonged period of time (e.g.

purposes. Accordingly, following or as part of an Event, an issuer should be allowed to apply to the Exchange (or the Exchange may request the issuer) to modify the Initial Public Float Threshold that applies to it for ongoing compliance purposes, having regard to the criteria as proposed in paragraph 1.2 ("**Modified Public Float Threshold**"). An issuer shall then refer to the Modified Public Float Threshold when confirming its ongoing compliance (see paragraph 2.3.2) with the requirements proposed in paragraph 2.3.1.

⁵ For the avoidance of doubt and to provide regulatory certainty, even if an issuer's market value falls following its listing or an Event, the issuer is not required to increase its public float threshold to meet the relevant thresholds.

⁶ Similar to the *ST and S*ST special treatment tickers given to A-share listed companies who may be at risk of delisting.

18 – 24 months) should have their listing status cancelled. Issuers that have their listing status cancelled may still be public companies in Hong Kong⁷ and remain subject to the requirements of the Takeovers Code and the Companies Ordinance (Cap. 622)⁸.

- 2.3.6. *OTC market.* Whilst there is no alternative trading platform in Hong Kong for delisted securities, the establishment of an OTC platform should be thoroughly investigated and not be established simply for the trading of companies that have been delisted from the Exchange⁹.

3. Requirements for A+H Issuers and other Prescribed Types of Issuers

- 3.1. Replacement of Minimum 15% Threshold – S&C Proposal. We agree that the existing Minimum 15% Threshold is too high and inhibitive and should be replaced. We agree with the Exchange’s formulation under paragraph 162 of the Consultation Paper that focuses on a “critical mass” of investor interest, but would suggest further lowering the minimum market value of H shares for which listing is sought (under paragraph 162(a)) and the minimum market value of the class of shares for which listing is sought on the Exchange (under paragraph 162(b)) to be in line with the numbers in the above table in paragraph 1.2 (with a “floor” percentage of 3.5%).
- 3.2. Ongoing Minimum Percentage and Market Value of H Shares for an A+H Issuer – S&C Proposal. We appreciate that maintaining a minimum percentage threshold for an A+H issuer may be difficult given future issuances of non-H Shares may affect such minimum percentage threshold. Nevertheless, measures should be in place to ensure that there is sufficient shares available for trading in Hong Kong at all times¹⁰. Accordingly, we propose that on an ongoing basis, an A+H issuer should ensure that the H shares in public hands should either:
- 3.2.1. have a market value of at least HK\$2.5 billion; or
- 3.2.2. represent no less than a floor percentage (e.g. 3.5%) of the total number of shares in the class to which the H shares belong (excluding treasury shares) at the time of listing, adjusted by excluding all new issuances (and repurchases) of A shares (or unlisted shares of the same class) since the H share listing from the denominator.

⁷ A “public company” in Hong Kong is defined in paragraph 4.2 of the Introduction in the Takeovers Code and section 12 of the Companies Ordinance (Cap. 622).

⁸ For example, Shanghai Dongzheng Automotive Finance Co., Ltd (stock code 2718) continues to publish announcements and notices in relation to its shareholders meetings / related party transactions after its cancellation of listing for lack of public float.

⁹ The experience of the National Equities Exchange and Quotations (NEEQ) in the PRC would serve as an appropriate reference point on the potential risks and benefits of an OTC market in Hong Kong.

¹⁰ For example, if the core connected persons of the A+H issuer acquire H shares which reduces substantially the number of H shares in public hands, this could be detrimental to the trading of H shares of such A+H issuer.

II. IPO OFFERING MECHANISM

1. Regulatory Lock-up on Cornerstone Investment

1.1. Current Regime and Other Observations. We agree with the Exchange's concerns relating to the regulatory lock-up on cornerstone investments and we have the following observations:

1.1.1. Cornerstone investors are given a preferential allocation and such preference will bear a "cost". A lock-up period is normally the expression of such cost. However, in a fast evolving market, a six-months lock-up period may be too burdensome and will have the negative effect of discouraging genuine investors from becoming cornerstone investors. In addition, it is not a regulator's role to help issuers and underwriters "incentivize" investors to enter into lock-up arrangements. It is up to the issuer and the underwriters to instill confidence in the issuer's securities.

1.1.2. Under the current regime, the cornerstone investor lock-up is not explicitly afforded any exceptions.

1.2. S&C's Proposal. We propose that the regulatory lock-up period applied to cornerstone investors should expire upon the expiry of the Stabilization Period¹¹. Of course, there is no restriction on the issuer, underwriters and the cornerstone investors agreeing to a longer lock-up period. Alternatively, if the Exchange adopts the staggered lock-up release arrangement or leave the current requirements unchanged, the Exchange should consider clarifying that exceptions under the lock-up include, among other things, using such shares as security in favor of a (1) an authorized financial institution under the Banking Ordinance (Cap.155)¹²; (2) "qualified lender" as such term is defined under section 308 of the Securities and Futures Ordinance¹³; or (3) Mainland Bank, in each case, for a bona fide commercial loan.

2. Allocation to the Public Subscription Tranche

2.1. The Exchange's Proposal. Pursuant to paragraphs 248 to 250 of the Consultation Paper, a listing applicant (other than a Specialist Technology Company) may choose to adopt either

¹¹ 30 days after the date of listing.

¹² The lock-up applicable to controlling shareholders under Listing Rule 10.07 is afforded an exception for using the issuer's securities as security in favor of an authorized institution (as defined under the Banking Ordinance (Cap. 155) for a bona fide commercial loan.

¹³ Under section 308 of the Securities and Futures Ordinance, "qualified lender" is defined to include an authorized financial institution, an authorized insurance company, an exchange participant of a recognized exchange company and an intermediary licensed to deal in securities or securities margin financing. The term "qualified lender" also includes a person that is a corporation authorized under the law of any place outside Hong Kong to carry on business as a bank, as an insurance company, or in an activity that is in the opinion of the Securities and Futures Commission equivalent to dealing in securities or securities margin financing. Currently, 11 jurisdictions are so recognized and they are Australia, France, Germany, Guernsey, Ireland, Isle of Man, Jersey, Luxembourg, Switzerland, United Kingdom and United States of America. It is further noted that where a qualified lender comes to have an interest in shares of a listed company "by way of security", his interests are exempted from reporting requirements under Part XV of the Securities and Futures Ordinance.

Mechanism A or Mechanism B with respect to the initial minimum allocation of offer shares to the public subscription tranche (“**Minimum Allocation**”). Mechanism A prescribes a Minimum Allocation of 5%, subject to a clawback whereby offer shares must be further allocated to the public subscription tranche depending on the level of demand in the public subscription tranche. The maximum clawback is 20%, down from the maximum clawback of 50% under the current Listing Rules.¹⁴ Mechanism B sets the Minimum Allocation at 10%, with flexibility for listing applicants to allocate up to 50% offer shares to the public subscription tranche without a mandatory clawback mechanism. The decision of an issuer to elect Mechanism A or Mechanism B will be disclosed in the issuer’s prospectus and will need to be made before the opening of the Hong Kong public offer and price determination.

2.2. S&C Views.

- 2.2.1. *10% Minimum Allocation to the Public Tranche is Appropriate.* For issuers that are not Specialist Technology Companies, a 10% Minimum Allocation to the public tranche would be appropriate and we do not consider that this requires further reduction. Having a 10% Minimum Allocation to the public would be a good measure of the true demand of the issuer’s securities in the public market and supports the post-listing liquidity of the shares to be listed. It would also balance the needs to (i) minimize the risk of mispricing in the bookbuilding placing tranche; and (ii) protect retail investors from being crowded out by larger institutional investors. The 5% Minimum Allocation applicable to a Specialist Technology Company was specifically designed for such issuers which has a different risk and marketing profile.
- 2.2.2. *No requirement for a mandatory clawback.* We agree that so long as the 10% Minimum Allocation is met, there needs not be a mandatory clawback mechanism. Listing applicants should be offered flexibility to apply an allocation strategy and allocation percentage appropriate to their circumstances and institutional investors should have certainty on the allocation they will receive. As such, we agree with adopting the Exchange’s Mechanism B for issuers other than Specialist Technology Companies.
- 2.2.3. *Reallocation and PO Over-allocation.* We also agree with the Exchange’s position on Reallocation and PO Over-allocation as it applies to Mechanism B.

¹⁴ Pursuant to paragraph 4.2 of Practice Note 18, listing applicants (other than Specialist Technology Companies) are required to meet the 10% Minimum Allocation requirement, subject to a clawback mechanism whereby a maximum 50% of allocated shares in the placing tranche could be subject to clawback to the public subscription tranche where the total demand for shares in the subscription tranche is 100 times or more the initial allocation.