

Response to Combined Consultation Paper on Proposed Changes to the Listing Rules

We thank you for the opportunity to comment on the proposals in your Combined Consultation Paper on Proposed Changes to the Listing Rules (“**Consultation Paper**”). In general, we support your attempts to address developments in the market and international best practice, particularly those which can reduce the compliance burden on market participants without compromising market integrity. These are laudable objectives.

We are concerned, however, about two potential consequences of the changes proposed in Issue 7 of the Consultation Paper. We recognize at the outset that the proposals in Issue 7 are concerned with general announcements and circulars of more routine application and exclude major announcements, circulars and other documents concerning IPOs, transactions requiring shareholder approval and almost all connected transactions; thus, we do not wish to overstate our concerns. Nonetheless, we hope the Exchange will give due consideration to the points set forth briefly below.

First, we are somewhat apprehensive about the disruptive effect that Exchange actions taken as the result of post-publication vetting could have on the market. We fear that “after-the-fact” action by the Exchange (such as a request for clarification, modification or supplementation of an initial announcement) has the potential for creating market uncertainty and instability which, at times and depending on the degree of corrective regulatory action involved, could prove substantial.

If the Exchange habitually requests listed companies to clarify, modify or supplement public announcements, a situation may emerge where investors and market participants delay acting on un-vetted corporate disclosures until after the time for Exchange review is likely to have passed, largely mitigating the intended beneficial effect of the Exchange’s current proposals. Further, a false market might emerge based on incomplete or incorrect data to the extent disclosures drive price movement in listed shares.

Secondly, Hong Kong has achieved a pride of place among Asian markets because of its highly developed regulatory regime. Companies listed on the SEHK are widely under-



stood to meet high standards of transparency. The pre-vetting procedures in place under the current system help to maintain these high standards, in part, by ensuring that companies make all required disclosures in disseminating materials to the investing public. A system based on post-vetting procedures might allow companies to be more selective in choosing which facts to disclose and which to keep hidden or to disclose in more general and uncertain terms, particularly if they believe that the likelihood of review of any particular announcement is relatively low. As a result, companies may selectively withhold material or be less clear about material that could negatively impact their share prices. Unlike the Exchange at present, members of the investing public do not enjoy the ability to request companies to clarify information which is unclear.

The potential negative impact of the proposed changes in these two areas may be mitigated by a requirement for pre-publication review by counsel. Announcements and circulars which are to be exempted from pre-vetting under the new rules might carry a statement in a form similar to that of the Sponsor's Declaration in Appendix 19 to the Listing Rules, addressed to the Exchange and saying (i) that they have been reviewed by counsel, and (ii) that counsel having made reasonable due diligence inquiries, has reasonable grounds to believe that the announcement or circular complies with relevant provisions of the Listing Rules, the Securities and Futures Ordinance, and the Companies Ordinance.

We do not believe that such a requirement would increase the regulatory or compliance burden on the issuers of such announcements and circulars, as it is already common practice within the industry to have counsel review these documents prior to their issuance to the public. The concern of such counsel for their own professional reputations (subject to the risk of any subsequent regulatory censure) would ensure that their reviews of the material were fair and thorough, and would help fill the regulatory gap left by the departure of the Exchange from this area.

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