



By email (SMLR.Review@sfc.hk)

23 May 2025

Our ref: C/CFC, M141095

The Securities and Futures Commission
54/F One Island East
18 Westlands Road
Quarry Bay
Hong Kong

Dear Sirs,

Re: Consultation Paper on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules ("SMLR")

The Corporate Finance Committee of Hong Kong Institute of Certified Public Accountants ("the Institute") has reviewed the Consultation Paper on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules ("Consultation Paper") issued by the Securities and Futures Commission ("SFC") and would like to submit its views, as set out below, in response to the SFC's invitation for written comments on the proposals.

It is noted that the SFC has made these proposals after conducting a review of the SMLR, seeking to address "certain identified gaps and operational limitations in the SMLR", and to refine existing procedures.

The Institute supports the objective and approach, which, in terms of imposing continuing conditions on listing applicants and post-listing conditions on listed issuers, is, in effect, codifying what the SFC has been doing, and will provide more clarity to market participants in handling listing applications and listed company matters. In principle, the provision of other disclosure measures instead of an "all-or-nothing" approach is also helpful. Meanwhile, we would suggest that it would be useful to have a clearer understanding of the criteria to be used in future to distinguish those types of applications that will be handled by imposing conditions, which may be continuing conditions post-listing, from those applications that the SFC will not support at all. More guidance on this issue would be welcome.

The Consultation Paper proposes, inter alia, to address concerns arising in relation to an application for listing or after an issuer's listing, by imposing conditions on issuers as an alternative to more draconian measures like objecting to listing or suspending the trading of shares. The proposals state that the majority of the conditions are expected to be "disclosure-based". A circumstance, suggested in paragraph 25, is where there are concerns that a listing applicant may have given undisclosed benefits to a market intermediary, in which case the SFC could impose a continuing condition on the applicant to disclose the details of any other subsequent transactions between the parties by way of timely announcements after the listing and in the first post-listing annual report. Another circumstance, suggested in paragraph 37 for a post-listing scenario, is where an issuer puts the proceeds of its initial public offering ("IPO") to a



usage not aligned with the intended usage disclosed in the prospectus, in which case the SFC could impose a condition on the company to disclose prescribed information about the divergence in the usages of the funds.

Moving towards a more disclosure-based approach to vetting listing applications, where appropriate, will add flexibility and should enable the SFC to make more nuanced decisions. However, in order to maintain adequate investor protection, bearing in mind that, unlike in some other more disclosure-based markets, the practical scope for investor-led remedies is limited in Hong Kong, ongoing monitoring and enforcement of mandated disclosures will be very important. We suggest, therefore, that the SFC should elaborate on the process by which it will monitor the disclosure of information that an issuer makes pursuant to an imposed condition, and what action will be taken where there is no disclosure or the disclosure is clearly inadequate, so as to ensure the protection of the investing public.

As a company's directors are responsible for the disclosures made by the company, pursuant to a condition imposed by the SFC on an issuer, either pre-listing or post-listing, we suggest that the SMLR explicitly assign to the directors the responsibility to ensure that the appropriate disclosures are made when they are required to be made, and that they are complete and accurate. The regulatory consequence of their failing in that responsibility should also be made clear.

Currently, both the SFC and the Exchange have roles and responsibilities in relation to listing applications, vetting of prospectuses of listing applicants, etc. We suggest there should be a clear delineation of the roles of the SFC and the Exchange following any changes brought about by the proposals in the Consultation Paper, including in relation to monitoring disclosures made by a company after the imposition of a condition or conditions, pre- or post-listing. We further propose that this delineation of roles be spelled out in the Explanatory Note in Appendix 2 of the Consultation Paper.

Paragraph 41 of the Consultation Paper refers to the proposed new sections 6(3A)(a), 7A(3) and 9(2)(a) to be introduced into the SMLRs "to allow the SFC to amend or revoke any conditions imposed by the SFC in relation to a listing application, post-listing matter and resumption of dealings, respectively. The SFC may also impose new conditions on listing applicants and listed issuers where the situation warrants."

Paragraph 42 goes on to say: "The discretion to amend, revoke or supplement an existing condition is necessary to ensure that any regulatory action taken can be appropriately modified to take account of any subsequent changes and developments. Issuers are encouraged to maintain a constant dialogue with the SFC where conditions are imposed to resolve all relevant concerns as soon as possible".

This is quite a broad-brush explanation of, and rationale for, new and fairly wide discretionary powers to be given to the SFC.

We would suggest that fairness requires that an issuer be allowed adequate time to comply with a new condition, especially any amendment of an existing condition, and in particular, amendments of pre-listing conditions. Changes to existing conditions pre-listing could potentially place unforeseen obstacles in the way of an IPO and cause a listing applicant to incur a considerable additional burden in terms of time and costs. Generally, substantial resources may already have been expended by a listing



applicant or issuer to achieve compliance. Ultimately, such changes could have a significant impact on the whole process, after an applicant or issuer has progressed a long way towards a listing or avoiding a suspension of trading. We would suggest, therefore, the need for some further explanations and examples of situations in which existing conditions might be amended, or new conditions imposed, to be included in the Explanatory Note.

To assist market participants in operating under the revised regulatory regime, the SFC should consider publishing circulars or “practice notes” at intervals, to illustrate and clarify implementation issues that may arise, particularly in the early stages of applying the revised SMLR. In this regard, we would also suggest that the SFC should provide periodic updates of the examples illustrated in paragraph 4.6 of the Explanatory Note.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/PN/pk



Hong Kong Institute of
Certified Public Accountants
香港會計師公會