



By email < ListingRegulation@sfc.hk > and by post

4 October 2016

Our Ref.: C/CFC, M107817

Corporate Finance Division
Securities and Futures Commission
35th Floor, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Sirs,

[Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation](#)

The Hong Kong Institute of Certified Public Accountants ("the Institute") welcomes the opportunity to provide comments on the consultation paper, which proposes measures to enhance decision-making and governance of Hong Kong's listing regime without changing the regulatory powers of the SFC under the Securities and Futures Ordinance.

We appreciate and welcome the coordinated efforts between the SFC and the Exchange in putting forward reform proposals ("the Proposals") to address new market developments. The Institute supports the consultation's objectives to improve the efficiency and effectiveness of the listing process and listing policy formulation, and enable better coordination between securities market regulators.

In preparing this submission, the Institute has focused on whether in its opinion the Proposals are likely to achieve the stated objectives and, where appropriate, proposes alternatives for your consideration. The Institute's observations and comments on the Proposals are as follows:

A. Development of the Proposals

- A.1 The consultation paper articulates, in broad terms, that the objectives of the Proposals are to ensure the Hong Kong business environment and regulatory system evolves with the growth in Hong Kong listing market to ensure that quality of the market is maintained and market participants can have confidence in the system. However, the consultation paper is non-specific as to what shortcomings under the existing structure that triggered the current review. Such specific information would be useful for assessing whether the proposed limited scope modification without changing the existing regulatory regime is sufficient to address the shortcomings.
- A.2 In developing new decision-making process and governance structure for listing regulation in Hong Kong, we suggest that a comparison with other major international financial markets is presented so that readers can better understand how Hong Kong fares in comparison with international practices.

B. Listing applications by new applicants

- B.1 It is noted that one of the objectives of the Proposals is intended to simplify the process for initial public offering ("IPO") applications so that they can be vetted and approved more efficiently. We suggest that a comparison of the IPO vetting and approval work flow together with the normal lead time under the proposed regime against the existing regime would be helpful to the understanding of how the proposed enhancements could improve efficiency. In this respect, there are certain matters that need to be clarified:
- (i) Under the proposed regime, the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. As there is no change to the statutory filing requirements, it would be useful to understand what would be the role and responsibility of the SFC Dual Filing Advisory Group and the dual filing team of the SFC under the proposed regime.
 - (ii) It is noted that the HKEX Listing Department ("LD") will decide whether an IPO application has suitability concerns or gives rise to broader policy implications so as to refer the case to the Listing Regulatory Committee ("LRC"). Since the view on suitability for listing is highly judgmental, it is important to have clear understanding of how the SFC will work together with the LD to ensure the right cases, and only the right cases, are referred to the LRC for consideration.
 - (iii) It is noted that the LD will notify the relevant applicant via its sponsor as soon as reasonably practicable of the decision to refer the application to the LRC. In order to improve efficiency, we submit that in such notification, the LD should also make known to the applicant and its sponsor the reasons/ concerns leading to referral of the case to the LRC. This will enable the listing applicant and its sponsor to, if they wish, respond to those concerns. Such responses should be presented to the Listing Committee ("LC") and/or the LRC for consideration.
 - (iv) There are other matters in an IPO case that require the SFC's approval/ clearance, e.g., waiver for change in substantial shareholders. It will be useful to have an assurance that these matters will be addressed at the early stage of the application so as to expedite the application process under the proposed structure.
- B.2 It is noted that LD will present an LRC IPO application to LRC after the LC has given its non-binding views on the case. In order not to cause undue delay in processing the IPO application, we recommend that the lead time between the LC meeting and the LRC meeting to consider the same LRC IPO case should be kept as short as possible.

C. Matters involving listed issuers

- C.1 It is stated in the consultation paper that many regulatory issues that the SFC and the Exchange deal with today, including stock price manipulation, corporate governance shortfalls, disclosure problems and misconduct on the part of corporate insiders which prejudice public investors, can be better

addressed by adopting a more coordinated approach, i.e., greater interaction between the SFC and the Exchange. However, the proposed regime appears to focus more on new listings than post-IPO matters. We consider that further information on how the proposed regime would help address post-IPO regulatory issues, such as corporate governance shortfalls, disclosure problems, corporate insiders' misconduct, shell companies, reverse takeovers, stock price manipulation, etc., is useful for the assessment of the effectiveness of the proposed structure.

D. Oversight of the listing function

- D.1 It is noted that the Listing Policy Committee ("LPC") will be responsible for oversight of the listing function and the performance of the LD. The LPC will have primary responsibility for appraising LD's senior executives in their performance of regulatory responsibilities, and its assessment will be taken into account by HKEX Remuneration Committee when determining the overall compensation of the LD and its senior executives.

We are of the view that listing function is not the sole responsibility of the LD but a concerted effort of the LD, the LC and the LRC. Therefore, oversight of the listing function should not focus only on the LD's performance.

- D.2 As the roles of the LPC are to initiate, steer and decide listing policy proposals and proposed Listing Rule amendments, it is not expected that the LPC will have frequent contacts with the LD. On the other hand, as a vast majority of IPO cases will be handled by the LC and the remaining cases which have suitability and other substantial issues will be handled by the LRC, the LD will have direct and frequent contact with the LC and the LRC on listing regulatory matters. It is not clear why it is proposed that only the LPC is responsible for reviewing the performance of the LD. It is also not a common management practice that the performance of an internal department of an organisation be appraised by an external party.

We suggest that, instead of one committee taking up the responsibility for appraising the performance of the LD and its senior executives, it should be the role of the employer (i.e., HKEX) to appraise the performance of its staff, based on criteria set jointly by, and feedback obtained from, HKEX, LC, LRC and LPC.

E. Composition and Procedures of the LPC and the LRC

- E.1 It is noted that the LC chair and deputy chairs will become members of the LPC and the LRC, and the LC chair will also chair the LPC and the LRC. We are concerned that the LC chair and deputy chairs, who have other full-time professional commitments, might be overburdened by participating in three committees.
- E.2 The LRC is supposed to make an independent assessment and decide cases that involve suitability issues or have broader policy implications, with reference to non-binding views of the LC on such cases. As half of the LRC membership are from the LC (i.e., the LC chair and two deputy chairs), this may give rise to self-review threats. We suggest that the LRC composition



should be reviewed to provide a higher degree of check and balance if the objective is to enhance the independence of the process in making important listing decisions.

- E.3 We are supportive of the formation of the LPC, which will provide a forum for the SFC and the Exchange to coordinate, collaborate and jointly develop listing policy. However, we suggest that consideration should be given to further broaden the LPC composition, rather than having five out of eight of its members from the LRC, as currently proposed. We are of the view that LPC should not just respond to regulatory or listing issues identified under the existing monitoring process but should be forward-looking to anticipate and address new market developments.
- E.4 It is proposed that nominees from the SFC and the Exchange are equally represented on the LPC and the LRC, but there is no casting vote by the chairperson of a LPC meeting and the chairperson of a LRC meeting. However, the consultation paper does not address the case of a deadlock when the votes at a LPC or LRC meeting are equally divided. We consider that such information would be crucial to the proper functioning of these two important committees.

If you have any questions on this submission or wish to discuss it further, please contact me at the Institute by phone on 2287 7111 or email raphaelding@hki CPA.org.hk or Mary Lam, Director, Member Support by phone on 2287 7086 or email mary@hki CPA.org.hk.

Yours faithfully,

Raphael Ding
Chief Executive & Registrar

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