



香港會計師公會

HONG KONG SOCIETY OF ACCOUNTANTS

(Incorporated by the Professional Accountants Ordinance, Cap. 50)

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19 June 2002

SFC (Stock Market Listing Rules),
12/F., Edinburgh Tower,
The Landmark,
15 Queen's Road Central,
Hong Kong.

Attention: Corporate Finance Division

Dear Sirs,

A Consultation Paper on the Securities and Futures (Stock Market Listing) Rules and the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order (Consultation Paper)

We have reviewed the Consultation Paper and our comments are set out below.

We note that clause 5 “Copy of listing materials to be filed with the Commission” and clause 6 “Copy of ongoing disclosure materials to be filed with the Commission” of the draft Rules are newly added provisions and our comments below are made in relation to these two proposed new clauses.

Duplication of efforts and regulatory overlap

Under the existing regulatory framework, The Stock Exchange of Hong Kong Limited (SEHK) is the frontline regulator of listing applicants and listed issuers and deals with day-to-day regulation of the market while the Commission performs an oversight function. The proposed introduction of clauses 5 and 6 could result in duplication of efforts in the regulation of the market and create uncertainties as to the respective regulatory roles of the Commission and SEHK. Specifically, we have the following comments:

a. Prospectus-vetting

By filing all the listing materials with both the Commission and SEHK, it is not clear from the draft Rules as to whether there will be duplication of efforts between the Commission and SEHK, resulting in both bodies performing the same regulatory and vetting functions on the listing applications throughout the whole process. While there may not be any additional filing costs to the listing applicants, there is a potential increase in compliance costs for the applicants and their professional advisors in responding to questions from both the Commission and SEHK. There is also no guarantee that the points of view or emphasis of the Commission and SEHK coincide at all times. Any differences will add undue complication to the listing applications, the listing applicants and their professional advisors.



b. Approval of listing applications

While SEHK will remain as the frontline regulator under the draft Securities and Futures (Transfer of Functions – Stock Exchange Company) Order, clause 5 may have the effect of slowing down the listing approval process as all listing applications will be subject to the final approval of the Commission. Under clause 5 of the draft Rules, the Commission has 10 business days to raise questions from the time it receives a copy of the application. In practice, many subsequent revised draft prospectuses are often produced after the initial application and it is not clear if every subsequent revised draft has to be filed and if each is subject to the 10-day rule. This will slow down the listing process as there would have to be a lapse of 10 days between each subsequent draft.

New Memorandum of Understanding between the Commission and SEHK

It is vital that the respective roles of the Commission and SEHK in both the listing application process and ongoing monitoring process should be open and transparent, and that the circumstances under which the Commission exercises its “reserve power” under clause 5 should be clearly set out. We therefore strongly recommend that the proposed new Memorandum of Understanding between the Commission and SEHK on the administrative arrangements for vetting and authorising prospectuses and other initial-listing disclosure materials, and how the Commission will continue to rely on the frontline regulation by SEHK as referred to in paragraph 21 of the Consultation Paper, be exposed for public consultation as soon as possible.

Power of the Commission to object to a listing on the ground of the interest of the investing public or the public interest (clause 5(6)(d))

Under clause 5(6)(d), the Commission may object to a listing if it appears that it would not be in the interest of the investing public or in the public interest for the securities to be listed. We consider that this is a very subjective consideration and recommend that the circumstances under which this provision is to be invoked by the Commission should be set out in the draft Rules.

Authorisation of filing by SEHK to the Commission

Both clauses 5 and 6 permit the listing applicants/listed issuers to authorise SEHK to file the listing materials/ongoing disclosure materials with the Commission on their behalf. In the event that the proposed clauses 5 and 6 are adopted in the final Rules, in order to simplify the process, we recommend that dual-filing with the Commission by SEHK on behalf of the listing applicants or listed issuers should be a mandatory requirement.

We trust that you will find our above comments useful. If you have any questions in respect of the comments contained in this submission or wish to discuss them further, please feel free to contact the undersigned.

Yours faithfully,



STEPHEN CHAN
DEPUTY DIRECTOR (ASSURANCE)