

Proposals to Enhance the Regulation of Listing
Financial Services Branch
Financial Services and the Treasury Bureau
18/F Admiralty Centre Tower I
18 Harcourt Road
Admiralty
Hong Kong

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Our Ref: JT/L111/03

Dear Sir/Madam

Consultation on Proposals to Enhance the Regulation of Listing

We refer to the captioned consultation and set out our comments as follows.

In general, we agree that statutory backing should be given to certain fundamental requirements in the Listing Rules of SEHK to improve the quality of our equity market. However, we suggest that statutory provisions should be confined to principals that are essential to the protection of market integrity and investor's interest and should not be extended to the commercial operation of the business.

Essentially, the HKEx should continue to perform its existing functions in approving listings while SFC should be the ultimate gate-keeper protecting the interest of investors under the "dual filing" system and resolve any situations where the HKEx faces a conflict of interest. The power and role of the SFC in the listing process is sufficient as it has veto powers against problematic IPO applications after consultation with the Dual Filing Advisory Group.

We agree that the SFC should be empowered to investigate as to whether proper disclosure was made during listing. As to the role of various parties with respect to disclosure and prospectus, this issue is addressed in the other consultation paper on the "role of sponsors" and is still under debate.

As far as sanctions are concerned, we believe that the degree of penalty should be commensurate with the seriousness of any breach and criminal sanctions should not be ruled out. Yet, in the proposal, the entity who will be issuing the sanctions has not been named. There is a concern that the SFC will be both the prosecutor and the judge in these cases. We propose that the Listing Rules look to the market misconduct proceedings in the SFO for reference. Under market misconduct provisions, the SFC can elect to take civil action or criminal proceedings towards market misconduct. In the case of civil proceedings, the proceeding is brought to the Market Misconduct Tribunal and not adjudicated by the SFC.

On the legislation, we agree that the primary legislation should set out broad principals with details and operatives to be covered by the subsidiary legislation or non-statutory codes and guidelines.

With regards to the "Red Book", we prefer to retain the requirement set out in (a) and the Red Book should compliment the statutory backed listing requirements. On the disclosure requirements in the "Red Book" (paragraph 2.34), we propose that the mandatory disclosure include only those information that the investors "must know" such as (a) prospectuses, (b) periodic reports and (c) financial statements. Other information such as (d) price sensitive or material events can be quite subjective and should not be made statutory unless a consensus can be obtained on its definition from all parties concerned. The listing rules should seek a balance between protection of investors and allowing existing business practices to continue.

Our response to paragraph 3.15 is to propose that the SFC monitors the HKEx, while the Dual Filing Advisory Group should be mandated to vet all listing applications rejected by the SFC and the Market Misconduct Tribunal should be given the authority to impose sanctions which would provide a check on the SFC.

Under the possible models of regulatory structure, we support model D "Expanding the Dual Filing System".

Yours sincerely



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Chief Executive Officer

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