

SFC and HKEX Released Joint Consultation Conclusions on Listing Regulation

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Background Information

On September 15, 2017, the Hong Kong Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong (HKEX) issued their Joint Consultation Conclusions on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure of Listing Regulation. The market reacted enthusiastically to the Joint Consultation Paper released in June 2016; according to preliminary statistics, around 8,700 responses were received from various sectors. After taking into consideration the various views and opinions, the SFC and the HKEX have concluded several reforms on the current listing regulation decision-making and governance structure.

Main Changes to the Listing Regulation

The SFC and the HKEX have decided to make the following reforms in reviewing and considering the views of the relevant parties.

1. Establishment of a Listing Policy Panel

A Listing Policy Panel (LPP) as a platform for advice and supervision by the SFC and the HKEX will be set up. The LPP will not be a subordinate committee under the HKEX or the SFC, but will instead be established by memorandum of understanding arrangements between the HKEX and the SFC. The members proposed for the LPP comprise the chief executives of the SFC and HKEX, two senior executives of the SFC's Corporate Finance Division, the chairperson and two deputy chairpersons of HKEX's Listing Committee, the chairperson of the SFC's Takeovers and Mergers Panel as well as two non-executive directors from each of the boards of directors of HKEX and the SFC. The Head of Listing will serve as the secretariat for the LPP. The LPP will hold regular meetings and ad hoc meetings when necessary. In order to ensure the transparency of the work of the LPP, the LPP's policy work and recommendations will be published regularly

on the SFC's and the HKEX's websites.

The main responsibility of the LPP is not to amend the listing rules, but to provide a platform of its members to propose and discuss new policy recommendations that are not binding on the SFC or the HKEX. However, if the HKEX proposes amendments to the Listing Rules or other policy proposals, it may consult the LPP at an early stage and consider their recommendations. As a result, the LPP's recommendations will play a positive role in the development of listing regulation.

2. Listing Regulatory Functions

The SFC and the HKEX have discussed and opted not to implement the setting up of the proposed Listing Regulatory Committee. The SFC and the HKEX will continue to perform their duties and supervise listings from their respective perspectives. The HKEX will continue to make decisions based on the Listing Rules and be the major front-line regulator and focal point for all listing applications. The SFC will perform its statutory duties to monitor the overall performance of the HKEX in reviewing listing applications. For more serious listing matters, the SFC will elevate its targeted intervention.

In order to ensure co-ordination between the SFC and the HKEX to avoid duplication, the SFC and the HKEX will inform each other of their respective opinions and inquiries on a listing application. The SFC and the HKEX will also involve each other on all correspondence with the applicant and its advisers. The HKEX will continue to have the discretion to suspend, resume or continue its vetting process regardless of whether the SFC's issues with a listing application has been resolved. The SFC will continue to do its best to carry out their work in accordance with the HKEX's timetable for processing listing applications. Both the SFC and the HKEX have the power to govern listing regulation. The SFC is governed by the Securities and Futures Ordinance, which is legally enforceable, while the HKEX is

governed by the Listing Rules, which has no legislative effect. The SFC, as a statutory regulator, can perform its statutory functions on post-IPO issues and maintain and promote the fairness, efficiency, transparency and orderliness of the securities and futures industry.

3. Review of Listing Decisions and Listing Functions

In order to strengthen the governance of the HKEX in reviewing the Listing Committee's decisions, the SFC proposes that there should be no overlap in membership between each review body and the body whose decisions it will review. The SFC proposes that the HKEX should set up an independent committee to replace the Listing Committee and the Listing Appeals Committee, composed entirely of external market participants and not members of the Listing Committee or representatives of the SFC or HKEX. The HKEX states that it will initiate a consultation in 2018 on this matter and that at present, the Listing Committee and the Listing Appeals Committee will continue to operate within the existing system.

Under the system suggested by the consultation paper, the Listing Policy Committee was to be the body responsible for monitoring the listing function and evaluating the performances of senior executives of the Listing Department. Under the Conclusions, the Listing Policy Committee will not be established, and

the SFC will supervise the Listing Committee and the Listing Department, focusing on the HKEX's performance of its listing function, including (1) developing, administering and implementing its Listing Rules and enforcement of compliance with those rules; (2) adequacy of the HKEX's systems, processes, procedures and resources of performing its listing function; and (3) whether the HKEX effectively manages its conflicts of interest as a regulatory body and as a for-profit organisation.

4. Conclusion

The Conclusions have clarified the regulatory roles that the SFC and the HKEX are required to perform. The role of the SFC as a statutory regulator would evolve as taking a more direct approach in dealing with more serious issues of listing supervision. It is particularly important that a Listing Policy Panel will be set up as a platform for the SFC and the HKEX to advise, consult, and supervise. The functions of the Listing Committee will not be substantially changed at present, and the SFC will enhance its review and audit of the performance of the Listing Committee and the Listing Department and issue relevant audit reports to meet its statutory responsibility for monitoring the listing functions of the HKEX. Through this consultation, the HKEX and the SFC's functions will become more definitive, which is set to enhance the regulation of Hong Kong's capital markets.

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