



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會



## JOINT CONSULTATION CONCLUSIONS

# PROPOSED ENHANCEMENTS TO THE STOCK EXCHANGE OF HONG KONG LIMITED'S DECISION-MAKING AND GOVERNANCE STRUCTURE FOR LISTING REGULATION

SEPTEMBER 2017

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# INTRODUCTION

## Foreword

1. This paper presents the results of a public consultation (**Consultation**) conducted by the Securities and Futures Commission (**SFC**) and The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), in June 2016 on “Proposed Enhancements to the Exchange’s Decision-making and Governance Structure for Listing Regulation” (**Proposals**). The Consultation period ended on 18 November 2016.
2. The objective of this paper is to explain our conclusions following the public consultation (please see Appendix 1 for a summary of how our conclusions compare to the Proposals). Capitalised terms have the meanings given to them in the Consultation paper (unless otherwise defined in this Conclusions paper).
3. A total of 8,793 submissions were received in response to the Consultation. Except where the respondent requested his submission be withheld, each of the submissions received can be viewed at  
  
SFC website:  
  
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/responses?refNo=16CP2>.  
  
HKEX website:  
  
<http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/June2016/cp201606r.htm>  
  
A summary of the overall views expressed by different market constituents is set out under “SUMMARY OF PUBLIC SUBMISSIONS”.
4. The SFC and the Exchange would like to express their gratitude to all respondents for their contribution to the Consultation.

## EXECUTIVE SUMMARY

5. After considering the public submissions in response to the Consultation paper, the SFC and the Exchange are adopting the following way forward.

### Policy Development

6. A Listing Policy Panel (**LPP**) will be established as an advisory, consultative and steering body to initiate and centralise discussions on listing policy with broader regulatory or market implications. This will achieve the core objective behind the originally proposed Listing Policy Committee (**LPC**), which is to gather senior representatives of the relevant organisations in one forum to ensure that policy development is more agile, coordinated and responsive to emerging risks and market development imperatives.
7. The LPP will not be a committee under the Exchange or the SFC. Instead, it will be constituted by memorandum of understanding arrangements between the SFC and the Exchange. The LPP will operate pursuant to terms of reference which will govern, among other things, how meetings are convened, how they are conducted and how frequently they are held.
8. The LPP will consist of the members proposed for the LPC in the Consultation paper<sup>1</sup>, plus two non-executive Directors from the board of directors of HKEX (**HKEX's board**) and two non-executive Directors from the board of directors of the SFC (**SFC's board**).
9. The LPP will serve as a focal point for new policy proposals to be raised and discussed by LPP members. The LPP will have no rule-making powers, and its recommendations will not be binding on the organisations represented on the LPP. Any LPP member can raise items for discussion by the LPP as a whole; these can include issues arising in the course of performing the respective functions of their organisations. Through this system, the SFC, the Exchange (led by the Listing Committee (**LC**)) and HKEX can each contribute to the LPP's agenda through their representatives. The LPP secretariat will discuss the proposed meeting agenda with the SFC and the LC Chair and Deputy Chairs in advance of each LPP meeting. The LPP may request the Listing Department (**LD**) to work on a detailed proposal in relation to any matter under discussion by the LPP.

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<sup>1</sup> Namely, the Chair and two Deputy Chairs of the LC, the Chief Executive of HKEX, the Chair of the Takeovers Panel, the Chief Executive Officer of the SFC, the Executive Director of CFD, SFC and a Senior Director of CFD, SFC.

10. For the purposes of LPP discussions, LPP members may seek the views of their respective organisations. The Exchange will make provision for the LC Chair to seek the views of the LC as a whole, on a regular basis, so as to reflect the views of the LC at LPP meetings, and for the LC Chair to report back to the LC on LPP discussions. LPP members will attend meetings as representatives of their respective organisations.
11. On matters that are or will be discussed by the LPP, the LD will consult the LPP from an early stage when formulating proposed Listing Rule amendments or other policy proposals; and the LPP's recommendations will be taken into account by the LD in such work.
12. The LPP will meet both on a regular basis and on an ad hoc basis as needed. The CEO of the SFC and the LC Chair will take turns to chair LPP meetings. The Head of Listing will serve as the secretariat for the LPP and will attend LPP meetings.
13. A summary of the LPP's policy work and recommendations will be published on a regular basis and made available on the SFC's and the Exchange's websites.

### **Decision-Making and Oversight**

14. In response to changing market conditions and risks and to minimise harm to our markets and to investors, while ensuring that listing decisions are made in a transparent, efficient and accountable manner:
  - (a) The SFC, as the statutory regulator, has been engaging in targeted intervention at an early stage to protect markets and investors (e.g. to prevent harm, misconduct or crime taking place). This new approach has increased the SFC's direct presence in more serious listing matters that fall within the scope of the Securities and Futures (Stock Market Listing) Rules (**SMLR**)<sup>2</sup> or the Securities and Futures Ordinance (**SFO**)

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<sup>2</sup> The grounds for the SFC to raise objection to a listing application are set out in section 6(2) of the SMLR. Section 6(2) of the SMLR provides that the SFC may object to any listing application if it appears to the SFC that:

- (a) the application does not comply with a requirement under section 3 of the SMLR (namely, (i) non-compliance with the Listing Rules (except to the extent waived or not required by the Exchange); (ii) non-compliance with applicable law; or (iii) does not contain such particulars and information which, having regard to the particular nature of the applicant and the securities, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position, of the applicant at the time of the application and its profits and losses and of the rights attaching to the securities);
- (b) the application is false or misleading as to a material fact or is false or misleading through the omission of a material fact;
- (c) the applicant has failed to comply with a requirement to supply to the SFC such further information as the SFC may reasonably require for the performance of its functions under the SMLR or, in purported compliance with the requirement has furnished the SFC with information which is false or misleading in any material particular; or
- (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

more generally. This “real time” gatekeeping approach is complemented by rigorous enforcement work to pursue wrongdoers, seek remediation (where investor losses have occurred) and deter misconduct. The SFC may publish further guidance on how it proposes to perform its statutory functions where listing matters are concerned<sup>3</sup>.

- (b) The Exchange will continue to make decisions under its Listing Rules (including decisions on suitability for listing). The role of the LC under the Listing Rules will remain unchanged.
- (c) The SFC and the Exchange have been coordinating and cooperating on their respective regulatory actions under the new approach in relation to both IPO and post-IPO issues and will continue to do so going forward.
- (d) Going forward, the Chief Executive of HKEX (**HKEX CE**) will attend LC meetings as a non-voting member representing the HKEX’s board only where listing policy matters are discussed (primarily quarterly policy meetings). The HKEX CE will not attend LC meetings on individual cases. The LPP may be invited by the LC to attend individual listing policy meetings of the LC.
- (e) IPO applications will continue to be received by the Exchange and filed with the SFC in accordance with existing procedures. The SFC considers it appropriate and more efficient for an applicant to be able to communicate directly with the SFC when it raises concerns under the SMLR. Discussion of the SFC’s concerns under the SMLR will be conducted directly between SFC staff and the relevant applicant and its advisers, and the procedures described in paragraphs 66 to 79 will apply. If the SFC forms the view that it is more likely than not, given the known facts and circumstances, that an objection will be raised under the SMLR (see paragraph 70), it will promptly

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<sup>3</sup> Section 5(4)(e) and (f) of the SFO. For example, the SFC issued a statement on the factors that are relevant to its review of potential listings by infrastructure project companies to facilitate compliance and provide a pathway for them to list (see <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR46>). Earlier this year, the SFC also issued guidelines to sponsors, underwriters and placing agents directed at the untoward price volatility of GEM stocks associated with IPO placings together with a related joint statement by the SFC and the Exchange (see <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR11>). The SFC also issued guidance on directors’ duties and a circular to financial advisers regarding valuations in corporate transactions together with a statement on the liability of valuers for disclosure of false or misleading information (see <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR68>). More recently, in an SFC bulletin, the SFC explained how it would exercise its statutory powers under the SMLR to object to a listing or to suspend dealings in any securities and the grounds for using such powers (see [http://www.sfc.hk/web/EN/files/ER/PDF/SFC%20Regulatory%20Bulletin/SFC%20Regulatory%20Bulletin\\_Jul.pdf](http://www.sfc.hk/web/EN/files/ER/PDF/SFC%20Regulatory%20Bulletin/SFC%20Regulatory%20Bulletin_Jul.pdf)).

issue a “letter of mindedness to object” (**LOM**) with detailed reasons for its concerns directly to the listing applicant. Prior to issuing an LOM, when the SFC staff see potential grounds for issuing an LOM but require further clarification from the applicant, they will directly ask the applicant for the necessary information. All requests for information, LOMs and objection notices by the SFC will be issued within the time periods specified in the SMLR.

- (f) To use its resources efficiently, the SFC will, in performing its dual-filing function, concentrate its manpower on listing applications that are most relevant to its statutory objectives. The Exchange will be the primary front-line regulator and will remain the contact point for all listing applications save in respect of concerns raised by the SFC under the SMLR; and the Exchange will continue to process and vet such applications in accordance with its usual procedures. SFC staff will cease to review and comment on a listing application once they determine that the case does not raise concerns under the SMLR.
- (g) Where a pre-IPO enquiry made directly to the SFC relates to a Listing Rule issue, SFC staff will refer the potential applicant to the LD; similarly, where a pre-IPO enquiry made to the Exchange relates to an SMLR issue, the LD will refer the potential applicant to SFC staff.
- (h) The Exchange’s overall performance in vetting listing applications will continue to be subject to statutory oversight by the SFC. Going forward, the SFC will discharge its statutory oversight of the Exchange’s listing function (including IPO vetting) through a materially enhanced, published audit of the LC and the LD, focusing on whether the Exchange has discharged and is discharging its duties under the SFO (see paragraph 98).
- (i) Together, this approach will clarify (i) the role of the SFC as the statutory regulator that administers the SFO and the SMLR, and supervises, monitors and regulates the activities carried on by the Exchange; and (ii) the role of the Exchange as the regulator that administers the Listing Rules which do not have legislative effect. This will enable the regulatory structure devised by the SFO to be deployed more effectively to drive market quality and market development. The proposed Listing Regulatory Committee (**LRC**) will not be established.

## Review and Publication of Listing Decisions

15. To enhance governance within the Exchange's structure for reviewing LC's decisions, the SFC is of the view that there should be no overlap in membership between each review body and the body whose decisions it will review, and that the Listing (Review) Committee and the Listing Appeals Committee (**LAC**) should be replaced with one or more independent committees that consist entirely of outside market participants with no current LC members or representatives of the SFC or HKEX. The Exchange supports this proposal in principle and will conduct a separate consultation (see paragraphs 90 to 92) in this regard.
16. As publication of detailed reasons for listing decisions is important to promote transparency, accountability and consistency in decision-making, it will be proposed, as part of the forthcoming consultation, that detailed reasons will be issued and published for all decisions made by the new review committee(s).
17. The Exchange will conduct a consultation on the review system for decisions of the LC in 2018. The Listing (Review) Committee and the LAC, and other aspects of the current rules and procedures for the review and publication of listing decisions, will continue to operate unchanged until the implementation of necessary Listing Rule amendments resulting from the foregoing consultation process.



## SUMMARY OF PUBLIC SUBMISSIONS

### Companies and related entities

18. The respondents in this group consist primarily of listed companies, and also include chambers of commerce, industry associations and private companies. The vast majority of the respondents opposed the Proposals.
19. The arguments or reasons put forward by those opposing the Proposals include, amongst others that: the proposed structures are inconsistent with the existing three-tier regulatory structure and would give the SFC “front”- and “back-line” regulatory authority without sufficient checks and balances; the objectives could be achieved under the current arrangements; the current structure works well; listing policy and decisions would benefit from the experience and expertise of LC members; the compositions of the LPC and the LRC give SFC dominant control; the SFC already has sufficient power with regard to listing regulatory matters and should make better use of them; LPC’s appraisal of the LD’s performance would make the LD a subordinate of the SFC; and that the LC would be sidelined. Some considered that the rationales or justifications for the Proposals were not clearly explained in the Consultation paper.
20. Some respondents in this group also submitted that market problems could be tackled without changing the regulatory structure. The proposed structures would move Hong Kong away from a disclosure-based regime and towards a merit- or regulator-based regime and would stifle market development.
21. Some of the opposing listed companies made alternative suggestions, including having SFC representatives in the LC; re-designating the Chief Executive of HKEX as an “adviser” rather than a member of the LC and expanding the membership of the LPC. There was also commentary that the composition of the proposed committees should be configured to further increase transparency and avoid any potential conflicts.
22. The small number of listed companies who supported the Proposals saw the Proposals as an improvement to the current regulatory regime because they considered that the Proposals would streamline and simplify the decision-making process, allow better co-ordination between the regulators and enhance accountability and transparency for regulatory decision-making. There was also commentary that the composition of the disciplinary committees should be configured to further increase transparency and avoid any potential conflicts.

## **Investment Managers**

23. Respondents in this category include investment managers of mutual funds, pension funds, hedge funds and private equity funds. Industry associations representing the interests of the investment community are included in this category.
24. The vast majority of investment managers that responded expressed support for the Proposals, including international fund managers. There was a view that the Proposals do not go far enough.
25. Reasons put forward include that the launch of the Proposals is timely and imperative as there are increasing concerns that the quality of the market in Hong Kong has dropped; there is an urgent need to develop a more holistic and coordinated regulatory structure as existing mechanisms no longer serve the needs of the market; the creation of the LPC provides a suitable framework for incorporating market interests and that the Proposals address long-standing and complex issues of coordination with Mainland and other global market regulators. There was support for the publication of decisions of the committees because it will enhance transparency and accountability for regulatory decision-making.
26. A significant number of investment managers believed that a higher degree of SFC involvement in listing matters would help address concerns over potential conflicts of interest arising from the HKEX's role as both a commercial organisation and a regulator. A few investment managers suggested that the regulatory function should ultimately be transferred to the SFC or another independent regulator. There was a view that greater and more direct oversight of listing function by the SFC would be in line with international norms.
27. Opposing views included that alternatives should be considered, that the stated objectives of the Proposals could be better achieved by a simpler solution, and that a more streamlined approach could be adopted by adding SFC representatives to the existing LC, as either observers or regular members.

## **Brokerage Firms, Corporate Finance Advisers and Sponsors**

28. The respondents in this category include brokerage firms, corporate finance advisers and sponsors, and relevant industry associations.
29. The vast majority of the responses submitted by individual firms opposed the Proposals. These respondents were mainly local brokerage firms. They expressed concern about the risks of over-regulation, the slowing down of market development, concentration of powers

in the SFC and that the Proposals may not achieve the stated objectives. Supporting comments were to the effect that the Proposals are an improvement to the current regulatory regime as they would enhance accountability for regulatory decision-making and improve the efficiency of the decision-making process as a result of better co-ordination between regulators. There was a view that the Proposals could only be effected through amendments to the SFO and subsidiary legislation.

30. Views of industry associations varied. Some were generally supportive and agreed with the establishment of the LPC but with an expanded membership including industry professionals. Some disagreed with the establishment of the LRC and the appraisal of LD executives by the LPC.

### **Accounting Firms**

31. Accounting firms generally expressed their support for the Proposals with suggestions for their enhancement, including expanding the composition of the LPC and/or the LRC; and more detailed guidance and specified assessment criteria of the type of cases that would be referred to the LRC.
32. There was support for the consultation's objectives to improve the efficiency and effectiveness of the listing process and listing policy formulation and to enable closer coordination and cooperation between the SFC and the Exchange. Some respondents commented that the power of the LC would be significantly reduced under the Proposals.
33. Accounting professional associations that responded expressed support for the establishment of the LPC to steer listing policy and Listing Rule amendments; agreed that it would be more efficient to involve the SFC upfront in the policy setting and development process; and believed that the composition of the LPC and the LRC should be reviewed or expanded.
34. There was a view that the Proposals relating to oversight of the listing function may upset the balance of power between the SFC and the Exchange. Concerns were also expressed regarding LD executives being appraised by a committee comprising mostly of representatives from outside organisations, which may negatively affect staff morale and recruitment and retention. There was a commentary that the listing function is a concerted effort of the LD and the LC, and so oversight should not focus only on the LD's performance.

## Law Firms

35. A large majority of the law firms that responded opposed the Proposals.
36. Key comments or concerns of law firms opposing the Proposals were that the Proposals would not improve the quality of listed companies or the efficiency of the listing process; the LC (with its expertise and experience) is better placed to make listing policy and decisions; the Proposals would significantly increase the SFC's power and the LC would be sidelined; the referral of matters to the LRC might lengthen the IPO vetting process; the SFC already has considerable powers in overseeing the listing regulatory process; whether the SFC's participation in the new committees would appear to merge the roles of the SFC and the Exchange contrary to the legislative intent of the SFO; and the proposed changes might bypass the statutory process for objecting to a listing application and for the listing applicant to have the decision reviewed by the Securities and Futures Appeal Tribunal (**SFAT**). Some respondents disagreed with the proposal to identify the listing applicant in published IPO decisions since this could be unfair for the applicant as Hong Kong's suitability concerns may not be relevant in other markets. There was a view that the publication of decisions of the committees may make Hong Kong less attractive to potential listing applicants. There was also support to retain the current dual review framework.
37. Some respondents questioned whether the Proposals would combat abusive practices such as shell companies and backdoor listings and that regulators should focus on more robust enforcement action. Instead of establishing new committees, they suggested SFC representatives could join the LC or attend LC meetings involving listing matters that raise suitability concerns or broader policy implications.
38. A few law firms supported the view that the existing regime has been in place for many years during which time the market has changed dramatically and the current system has issues with efficiency, transparency and competitiveness. They considered that the establishment of the LRC and LPC would enhance coordination between the SFC and the Exchange on policy formulation and streamline the IPO vetting process in most cases and ensure a more independent system for listing regulation. There was also support for the publication of decisions of the committees as well as those of the LC and the LD to enhance transparency and accountability. Views were expressed that decisions should include (where applicable) an explanation of why an LC decision has been overturned and set out dissenting views (if any) to enable market practitioners to understand fully the reasons for the decisions. Some commentators welcomed the Proposal to appoint senior counsel to chair disciplinary hearings and saw it as an improvement to the current

structure. There was commentary that senior counsel should have substantial experience in listing regulation.

39. There was commentary that expressed concern about the current volume of published guidance by the Exchange and the risk that publishing review decisions would add to the volume of published decisions. It was felt that the Exchange and the SFC should revisit the current system of published guidance and that the process for the publication of guidance should be formalised to ensure greater clarity and consistency and to address concerns that guidance might be used as a substitute for rule making without consultation.

### **Legislators / Political Parties / Think Tanks**

40. A majority opposed the Proposals. The opposing respondents shared similar views, including that: the current regime is working well; the LC would be sidelined; current checks and balances would be lost; the proposed structures would reduce efficiency of processing IPO applications; the SFC would have excessive power; and the LPC's appraisal of the LD's performance would deprive the Exchange of its independence and impact on the LD's day-to-day operation.
41. Those who supported the Proposals and the consultation objectives considered that the Proposals move in the right direction and would be a step towards building a more transparent listing process resulting in a closer coordination between the regulators on policy matters and in regulatory decision-making.
42. A Legislative Council (**LegCo**) oral question related to this subject was raised on 9 November 2016 and there was a LegCo motion debate on 30 November 2016<sup>4</sup>. The progress of the Consultation was also discussed by members of the LegCo Panel on Financial Affairs on 18 April 2017<sup>5</sup>. Some of the above arguments for or against the Proposals were also taken up by LegCo members at these LegCo sessions.

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<sup>4</sup> See (a) the oral question at the Council Meeting on 9 November 2016 (<http://www.legco.gov.hk/yr16-17/english/counmtg/agenda/cm20161109.htm>) and (b) the motion debate on "Formulating a comprehensive listing policy" at the Council Meeting on 30 November 2016 (<http://www.legco.gov.hk/yr16-17/english/counmtg/agenda/cm20161130.htm>).

<sup>5</sup> See the discussions of the progress report on the Consultation at the Meeting of Panel on Financial Affairs on 18 April 2017 (<http://www.legco.gov.hk/yr16-17/english/panels/fa/agenda/fa20170418.htm>).

## **Academia**

43. A majority of these respondents supported the Proposals on the basis that they could mitigate the potential conflict of interests between the HKEX's role as a regulator and as a commercial entity and hence improve Hong Kong's corporate governance.
44. Comments have been raised on a number of legal issues including whether the Proposals: risk weakening the regulatory mandate of the SFC in relation to the admission and trading of listed securities, blur the roles of the SFC and the Exchange, and bypass statutory checks and balances and the statutory process for objecting to a listing application by the SFC. Similar comments have been raised by a few respondents in other categories.
45. Some concerns were raised over the establishment of the new committees including, among others, whether the Proposals are consistent with the current statutory scheme governing listing regulation, the role and the size of the new committees and how cases will be referred from the LD to the LRC. There was also commentary that disciplinary hearings should not be chaired only by lawyers and that it would be better to appoint market practitioners who have a sound understanding of how the markets work.
46. There were suggestions that the listing function should be transferred to the SFC or an independent listing authority in the long run.

## **Public and Regulatory Bodies**

47. Opposing views included that the Proposals may not achieve the stated objectives, and that the LRC added an extra layer to the listing process and would reduce efficiency. There were concerns raised about the legal and governance aspects of the SFC's proposed participation in the LRC and the LPC. There were suggestions that the High Level Group under the existing Listing MOU could be an alternative to the LPC or that non-executive directors of HKEX should be invited to join the LPC and that the performance of LD's senior executives and staff should not be appraised by the LPC. There was also a view that disciplinary hearings will be rendered legalistic and formal if they are chaired by senior counsel and would result in undue formality, delay and expense which are disproportionate to the potential penalties involved. There was also commentary that LC members should be given formal training on disciplinary matters. Other concerns raised include the issues relating to the current process for the publication of guidance.

48. Supporting views included that the Proposals would enhance the dual regulatory structure and facilitate a more efficient and coordinated approval process which would be in the interest of the public; the appointment of senior counsel to chair disciplinary hearings is an improvement to the regulatory structure; the publication of decisions of the committees can promote consistency in decision-making and better understanding of the interpretation and application of the relevant rules; and more independent and effective oversight of the listing function would help address the perceived conflicts of interest on the part of the Exchange.

**Other Respondents (Including Professional Associations not Included in the Above Categories)**

49. A number of respondents in this category supported the Proposals and the consultation objectives and considered that the implementation of the Proposals would strengthen listing policy and listing regulation.
50. Concerns raised by opposing respondents included that the implementation of the Proposals would undermine the checks and balances in the current listing regulation regime and stifle market development; the SFC's power would be excessive and the LC's power would be substantially reduced; the SFC already has various powers and authority and should be more ready to use these as appropriate under the current framework; there could be an excessive referral of cases to the LRC; and that the establishment of the new committees would reduce the efficiency of the listing decision-making process.
51. Some respondents preferred the roles and responsibilities of the LC to remain unchanged and suggested that SFC representatives join the LC so that the LC views could be heard by the SFC directly. A number of respondents suggested that the number of members of the LRC and the LPC should be increased (e.g. senior members of the LD should be included in the LPC). There was a view that more frequent publication of the reasons behind decisions at all levels of the regulatory system will enhance transparency and accountability, be conducive to good governance as well as help listed issuers and listing applicants understand better how the relevant rules are interpreted and applied.

## **Individuals**

52. Over 8,000 responses were received from individuals.
53. A significant number of the individual respondents provided submissions that did not contain detailed explanations or comments on the Proposals. A large number of individual respondents provided template-style submissions. The vast majority of the individual respondents opposed the Proposals.
54. The comments from individual respondents opposing and supporting the Proposals are similar to those outlined in the other categories.



## POLICY DEVELOPMENT

### Introduction

55. In view of some of the submissions made regarding the proposed LPC, we explain below how policy making is conducted under the current system:
- (a) A majority of policy proposals for Listing Rule amendments and listing guidance originate from the LD. The Head of Listing, working with senior executives of the LD, decides when a Listing Rule issue requires potential policy action; LD staff produce the draft policy proposal, rule amendment or guidance.
  - (b) Separately, SFC staff meet with the Head of Listing and other LD executives monthly and on an ad hoc basis during which regulatory concerns and market developments, as well as proposed policy matters, are discussed (among other things)<sup>6</sup>. The Head of Listing relays issues and proposals raised by SFC staff at these meetings to the LC Chair and Deputy Chairs and/or the LC.
  - (c) Policy matters are referred to the LC at the discretion of the Head of Listing (usually after discussion with the LC Chair and Deputy Chairs). Draft LC policy meeting agendas are discussed with the LC Chair and Deputy Chairs. The SFC is informed of the meeting agenda before each LC policy meeting.
  - (d) The LC meets quarterly and on an ad hoc basis as necessary to discuss policy matters. Policy papers prepared by the LD for the LC's consideration are normally sent to SFC staff for comment one to two weeks before the relevant LC policy meeting. SFC staff provide formal written comments when there are issues that require further discussion, and these written comments are tabled before the LC at the relevant policy meeting. After the relevant policy meeting, the Head of Listing would relay a summary of the LC's position to SFC staff and separately to HKEX's board and the board of directors of the Exchange (**Exchange's board**). If SFC staff have further views, these are again relayed through the Head of Listing to the LC.
  - (e) The Head of Listing will bring to the HKEX's board and the Exchange's board policy matters which are of relevance to HKEX group's policies on major strategic, financial,

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<sup>6</sup> If any Listing Rule-related matter has Takeovers Code implications, SFC executives will consult the Chairperson of the Takeovers Panel, or the full Panel, as appropriate and relay their views to the Head of Listing, who would in turn transmit these views to the LC Chair and Deputy Chairs and/or the LC as appropriate.

regulatory<sup>7</sup>, risk management, commercial and operational issues. Any views of the HKEX's board (and the Exchange's board) are passed on to the LC and to the SFC.

- (f) Senior management of the SFC and HKEX meet at least bimonthly to discuss a broad range of matters, including major listing policy initiatives. In addition, the Chief Executives and other senior executives of the SFC and HKEX have regular meetings to discuss current topics.

56. The way forward is designed to improve this system, particularly for dealing with policy matters that involve complex, cross-jurisdictional issues, whether the proposal relates to market regulation, market development or both.

## **The Way Forward**

57. Development of listing policy with broader implications will be conducted more efficiently and effectively if it were informed and steered through a central platform where representatives of the relevant organisations (namely, HKEX's board, the LC, the SFC and the Takeovers Panel) can discuss market issues and provide input to the policy agenda at the same time, instead of through multiple bilateral discussions.

58. The SFC and the Exchange have noted concerns raised by market respondents in relation to the LPC, including that the SFC's participation in the proposed LPC could appear to merge the roles of the SFC and the Exchange. The primary purpose of such a body is to enable the relevant organisations to contribute to and steer relevant policy proposals from an early stage to help achieve an early consensus for policy action – as such, it is not essential for such a body to be an Exchange or SFC committee, or be part of the formal decision-making structure.

59. Accordingly, the Proposal related to the LPC will be adopted with the following modifications:

- (a) Instead of being a committee under the Exchange or the SFC<sup>8</sup>, the body will be re-named the Listing Policy Panel and will be constituted by memorandum of understanding arrangements. The LPP will meet regularly and will operate pursuant to terms of reference which will govern, among other things, how meetings are convened, how they are conducted and how frequently they are held.

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<sup>7</sup> This refers to HKEX group's own regulatory compliance matters and not the Exchange's regulatory function.

<sup>8</sup> i.e. either an Exchange committee constituted by the Listing Rules or a SFC committee appointed under section 8 of the SFO.

- (b) The LPP will serve as the focal point for its members to raise and discuss listing policy with broader regulatory or market implications. The LPP will have no rule-making powers, and its advice or recommendations will not be binding on the organisations represented on the LPP. Any LPP member can raise items for discussion by the LPP as a whole. These issues can include those arising in the course of performing the functions of their respective organisations. Through this system, the SFC, the Exchange (led by the LC) and HKEX can each contribute to the LPP's agenda through their representatives. The LPP secretariat will discuss the proposed meeting agenda with the SFC and the LC Chair and Deputy Chairs in advance of each LPP meeting. The LPP may request the LD to work on a detailed proposal in relation to any matter under discussion by the LPP.
- (c) On matters that are or will be discussed by the LPP, the LD will consult the LPP from an early stage when formulating proposed Listing Rule amendments or other policy proposals; and the LPP's recommendations will be taken into account by the LD in such work. For the purposes of LPP discussions, LPP members may seek the views of their respective organisations. The Exchange will make provision for the LC Chair to seek the views of the LC as a whole, on a regular basis, so as to reflect the views of the LC at LPP meetings, and for the LC Chair to report back to the LC on LPP discussions.
- (d) When there is a sufficiently advanced proposal on a matter of interest to the LPP, it will first be presented to the LC for approval, followed by the Exchange's board for its approval as necessary and then for the approval of the SFC's board; the views, advice or recommendations of LPP members will be recorded in writing and relayed to the LC, the Exchange's board and the SFC's board.
- (e) LPP members will attend meetings as representatives of their respective organisations.
- (f) The LPP will consist of the members proposed in the Consultation paper<sup>9</sup>, plus two non-executive Directors from HKEX's board and two non-executive Directors from the SFC's board. The LPP's membership is designed to bring the relevant organisations together for efficient, productive and focused discussions. The LC Chair and Deputy Chairs will represent the views of the LC (including any differing views among LC

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<sup>9</sup> Namely, the Chair and two Deputy Chairs of the LC, the Chief Executive of HKEX, the Chair of the Takeovers Panel, the Chief Executive Officer of the SFC, the Executive Director of CFD, SFC and a Senior Director of CFD, SFC.

members). The non-executive Directors of HKEX and the HKEX CE will represent the broader interests of HKEX in LPP discussions. The non-executive Directors and CEO of the SFC will represent the views of the SFC (including input from different SFC divisions).

(g) The LPP will meet both on a regular basis and on an ad hoc basis as needed. The CEO of the SFC and the LC Chair will take turns to chair LPP meetings. The Head of Listing will serve as the secretariat for the LPP and will attend LPP meetings.

(h) A summary of the LPP's policy work and recommendations will be published on a regular basis and made available on the websites of the SFC and the Exchange.

60. The establishment of the LPP will not limit the SFC's powers to direct the Exchange to make or amend Listing Rules in accordance with section 23 of the SFO, and to make statutory rules itself in respect of listing matters in accordance with section 36 of the SFO, after consulting the Financial Secretary and the Exchange. The establishment of the LPP also will not limit the Exchange's power to make Listing Rules under section 23 of the SFO, subject to the SFC's approval under section 24 of the SFO. The authority and powers delegated by the Exchange's board to the LC (and in turn by the LC to the Head of Listing) will remain unchanged, so the LC will retain its existing role under the Listing Rules.

## LISTING DECISIONS

### Introduction

61. In view of some of the submissions made regarding the proposed LRC, we explain below certain aspects of IPO vetting under the current system.
62. The framework for the current system of IPO vetting is augmented by the memorandum of understanding governing listing matters entered into between the SFC and the Exchange in 2003 (**2003 Listing MOU**), which was entered into in relation to the implementation of the dual-filing regime under the SMLR. A key idea behind the framework was that, to avoid duplication and facilitate communications with the market, there should be a primary point of contact for listing applicants and their advisers – namely, the Exchange. The 2003 Listing MOU provided that, in particular, if the SFC has any comments on a listing application, it will pass them in writing to the Exchange to raise with the applicant and its advisers. The SFC is of the view that the “primary contact point” approach contemplated by the 2003 Listing MOU needs to evolve. A number of submissions stated that the Exchange should continue to be the “primary contact point” and front-line regulator for its Listing Rules. A number of submissions stated that the SFC should interact more directly with the market in relation to issues raised by it during the vetting of listing applications.
63. Under the SMLR, the time limit for the SFC to raise queries or object to a listing application is 10 business days (a) from the date that the application (or any amendment or supplement, or supporting document, to the application) is filed with the SFC, or (b) if the SFC has requested further information, from the date that the information is supplied. The 10 business day-period “re-starts” each time the applicant files an amendment or supplement or a new supporting document to its application<sup>10</sup>, so the SFC can raise an objection even after the final prospectus is filed. The SFC staff normally work within the Exchange’s timetable for processing listing applications.

### The Way Forward

64. The SFC, as the statutory regulator, has been engaging in targeted intervention at an early stage to minimise harm to our markets and to investors, while ensuring that listing decisions are made in a transparent, efficient and accountable manner. This new

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<sup>10</sup> “Application” is defined under section 2 of the SMLR to mean an application for listing of securities submitted under section 3 of the SMLR and all documents in support of or in connection with the application including any replacement of and amendment and supplement to the application.

approach has increased the SFC's direct presence in more serious listing matters that fall within the scope of the SMLR or the SFO more generally. The SFC and the Exchange have been coordinating and cooperating on their respective regulatory actions under the new approach and will continue to do so going forward.

65. After considering the public submissions, the SFC and the Exchange have decided not to implement the Proposal to establish the LRC. Instead:
- (a) the SFC will continue to engage in targeted intervention in more serious listing matters that fall within the scope of the SMLR<sup>11</sup> or under the SFO more generally;
  - (b) the Exchange will continue to make decisions under its Listing Rules (including decisions on suitability for listing); and
  - (c) the SFC will, in performing its dual-filing function, concentrate its manpower on listing applications that are most relevant to its statutory objectives. The Exchange will be the primary front-line regulator and will remain the contact point for all listing applications save in respect of concerns raised by the SFC under the SMLR. The Exchange's overall performance in performing this aspect of the listing function will subsequently be assessed as part of the enhanced audit or review of the LC and the LD under the new approach through which the SFC will discharge its statutory oversight function (see paragraph 98).

### **IPO applications**

66. In vetting IPO applications, SFC staff will cease to review and comment on a listing application once they determine that the case does not raise concerns under the SMLR.
67. The Exchange will be the primary front-line regulator and will remain the contact point for all listing applications save in respect of concerns raised by the SFC under the SMLR. The Exchange will continue to process and vet such applications in accordance with its usual procedures.
68. The Exchange's overall performance in vetting listing applications will be subject to statutory oversight by the SFC. The SFC's supervisory audit or review of this aspect of the Exchange's listing function will be enhanced as described elsewhere in this Conclusions paper (see paragraph 98).

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<sup>11</sup> The grounds for the SFC to raise objection to a listing application are set out in section 6(2) of the SMLR. See footnote 2.

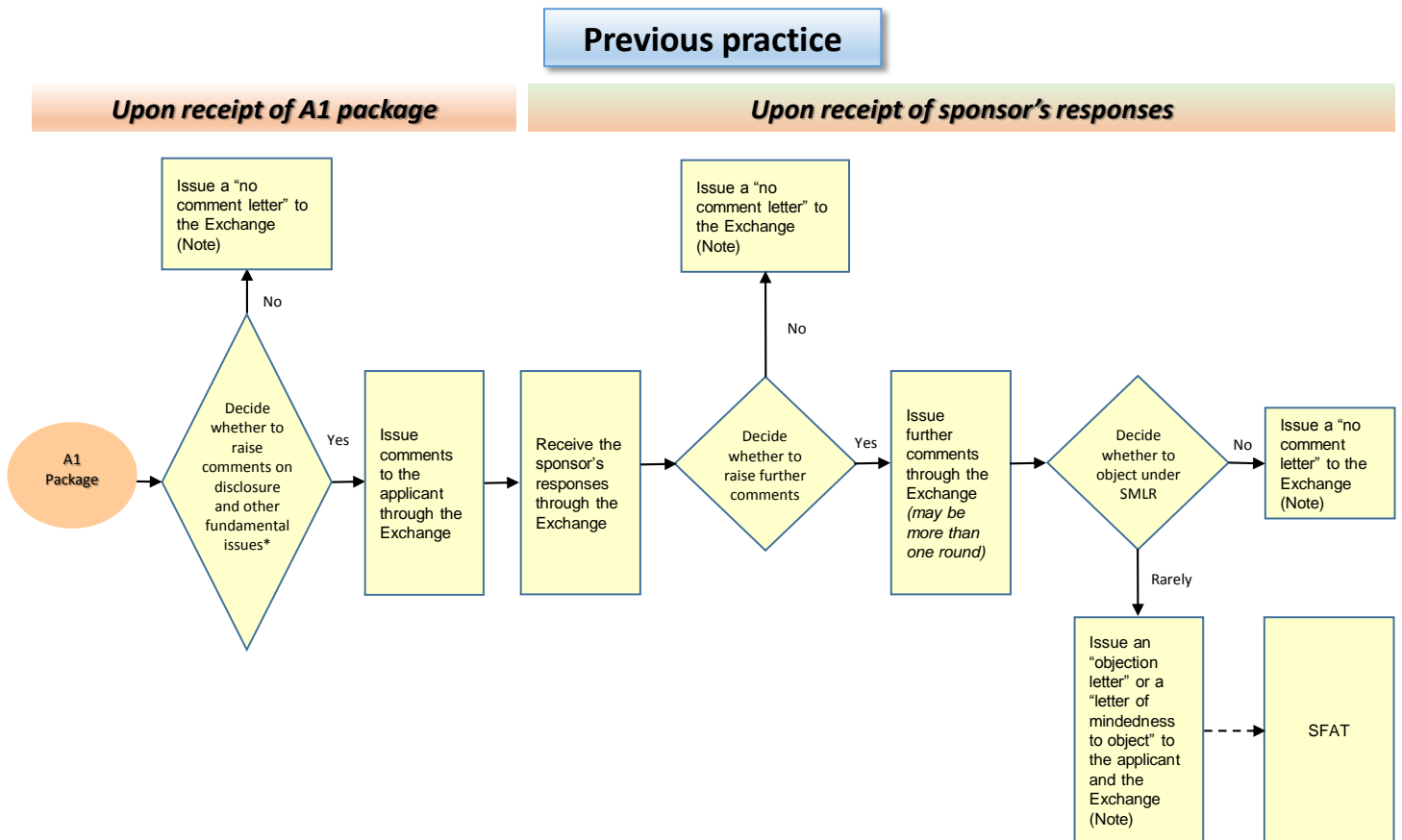
69. The SFC considers it appropriate and more efficient for an applicant to be able to communicate directly with the SFC when it raises concerns under the SMLR. Accordingly, in all cases where an LOM is or is likely to be issued, discussions of the SFC's concerns will be conducted directly between SFC staff and the applicant and its advisers as described in the following paragraph. These discussions, and any submissions made in response to an LOM, could lead to a resolution of those concerns.
70. If SFC staff form the view that it is more likely than not that, given the known facts and circumstances, an objection would be raised under the SMLR, an LOM will be issued promptly to the applicant. The LOM will set out in detail the reasons for the SFC's concerns. Prior to issuing an LOM, when the SFC staff see potential grounds for issuing an LOM but require further clarification from the applicant, they will directly ask the applicant for the necessary information. All requests for information, LOMs and objection notices by the SFC will be issued within the time periods specified in the SMLR.
71. As a matter of process, the SFC and the Exchange (a) will keep each other apprised of their respective comments and queries on a listing application and their discussions with the applicant and its advisers (including those prior to the possible issue of an LOM), and (b) will copy each other on all correspondence with the applicant and its advisers. This process ensures coordination between the SFC and the Exchange and avoids unnecessary duplication.
72. The SFC staff will notify the LD as soon as practicable of their intention to issue an LOM and the grounds for doing so. Similarly, the LD will notify SFC staff as soon as practicable if they form the view that there are potential grounds for rejecting a listing application.
73. The SFC staff will notify the LD and the applicant as soon as practicable if they form the view that the issues raised in an LOM have been addressed satisfactorily. Similarly, the LD will notify SFC staff as soon as practicable if they form the view that the potential issues that may cause them to reject a listing application have been addressed satisfactorily.
74. Going forward, in cases where an LOM is issued by the SFC, the Exchange will continue to have the discretion to suspend, resume or continue its own vetting process regardless of whether the SFC's concerns in the LOM have been addressed.
75. The SFC will continue to endeavor to work within the Exchange's timetable for processing listing applications. If SFC staff form the view that an applicant's submission(s) in response to the LOM are inadequate, they will issue a final decision notice (**FDN**) under

the SMLR within the specified time period to object to the listing application. The FDN would be a specified decision under the SFO that is subject to review by the SFAT.

76. The SFC's new approach to performing its dual-filing function means that, where there are apparent concerns under the SMLR, these will be made known to the applicant directly by the SFC – with detailed reasons founded on the statutory criteria in the SMLR – and at an earlier stage than before.
77. This approach will also make it clear that interpretation of the Listing Rules including “suitability” for listing is determined solely by the Exchange, whereas the SFC's focus is upon the grounds for objection under the SMLR, which have a distinct and unique function as a part of listing regulation.
78. The SFC will routinely publish on its website all FDNs issued under the SMLR (along with the detailed reasons stated in the notices), but the SFC has the discretion to publish an FDN either on a “no-names” basis or on a delayed basis if it is demonstrated that disclosure of the issuer's identity would be unduly prejudicial to its interests or that the decision is price sensitive. This will help the market understand the types of cases that are of concern under the SMLR and the SFC's approach to exercising its statutory powers and functions. Any decision that is pending appeal will not be published until the appeal process has ended. In some cases, the listing application may lapse or be withdrawn after the issue of an LOM, but before any decision is made by the SFC; the absence of a FDN would not preclude the SFC from publishing a discussion of the issues raised in the LOM on an anonymised basis if it is of the view that such guidance would be useful to the market.
79. SFC staff will be available for pre-IPO enquiries in relation to issues that potentially pose a concern under the SMLR. It is important to ensure that such an arrangement does not encourage listing applicants to routinely make pre-IPO enquiries to both the Exchange and the SFC, effectively creating a parallel, duplicative application process. Where a pre-IPO enquiry made directly to the SFC relates to a Listing Rule issue, SFC staff will refer the potential applicant to the LD; similarly, where a pre-IPO enquiry made to the Exchange relates to an SMLR issue, the LD will refer the potential applicant to SFC staff.



80. The following charts set out the SFC's previous approach to processing IPO applications and its approach going forward :



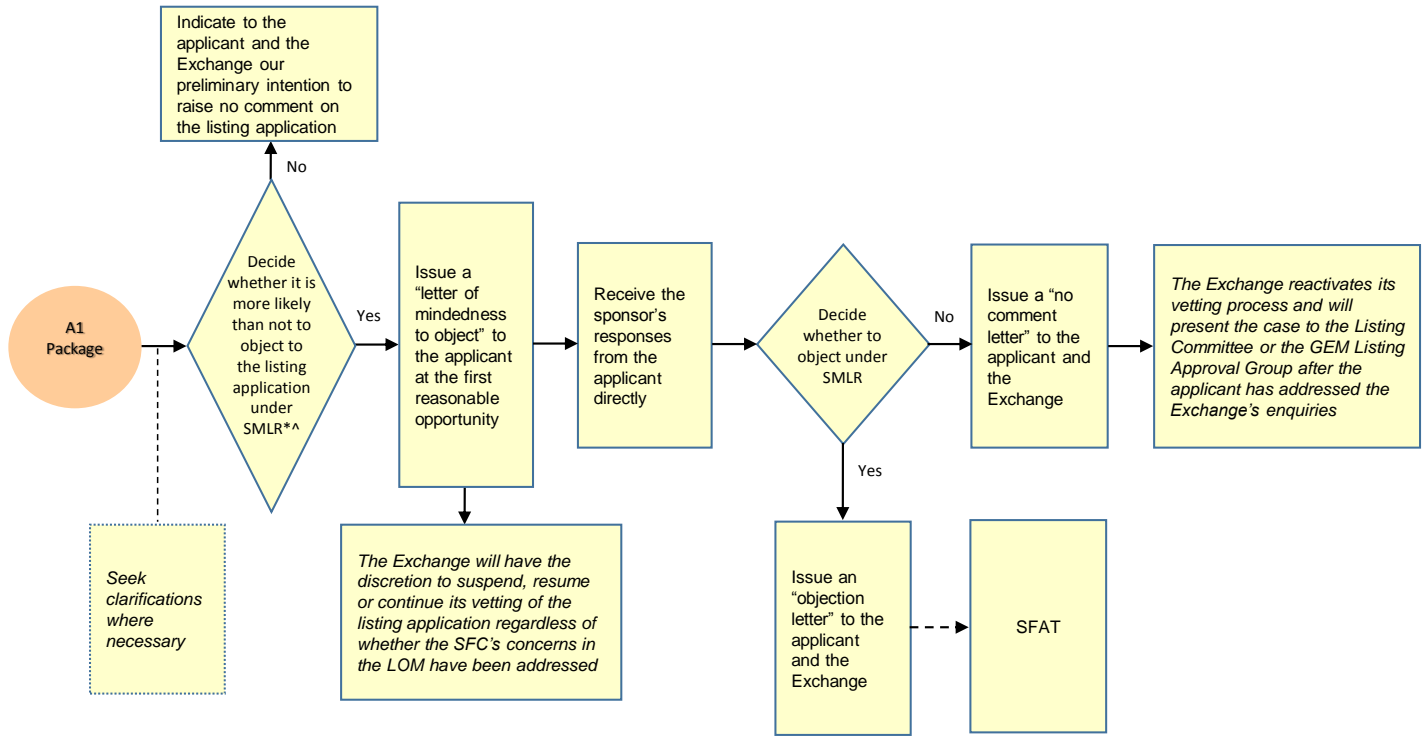
\* The application proof should be substantially complete with sufficient information for an informed assessment.

Note: In general, the Exchange will not present a listing application to the Listing Committee or the GEM Listing Approval Group for approval until the SFC has issued a "no comment" letter.

## New practice

### Upon receipt of A1 package

### Upon receipt of sponsor's responses



\* The application proof should be substantially complete with sufficient information for an informed assessment.

^ Prior to issuing an LOM, when the SFC staff see potential grounds for issuing an LOM but require further clarification from the applicant, they will directly ask the applicant for the necessary information.

81. The SFC may publish further guidance on how it proposes to perform its statutory functions where IPO matters are concerned<sup>12</sup>. For example, the SFC recently issued a statement on the factors that are relevant to its review of potential listings by infrastructure project companies to facilitate compliance and provide a pathway for them to list<sup>13</sup>. Earlier this year, the SFC also issued guidelines to sponsors, underwriters and placing agents directed at the untoward price volatility of GEM stocks associated with IPO placings together with a related joint statement by the SFC and the Exchange<sup>14</sup>.

### **Post-IPO matters**

82. As discussed elsewhere in this Conclusions paper, the Exchange and the SFC each have a range of gatekeeping powers and functions in relation to the listing market. The Exchange's gatekeeping powers stem from the Listing Rules, which do not have legislative effect, and the SFC's gatekeeping powers are set out in the SFO and the SMLR, which have the force of law and a broader jurisdiction.

83. As the statutory regulator, the SFC has been engaging in targeted, early intervention to perform its statutory functions<sup>15</sup> in relation to post-IPO matters including:

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry<sup>16</sup>;
- (b) to secure an appropriate degree of protection for members of the public investing in and holding financial products; and
- (c) to suppress illegal, dishonourable and improper practices in the securities and futures industry.

84. This means that the SFC will, as in the case of IPOs, regulate directly listing matters that fall within the scope of the SMLR or the SFO more generally. In relation to post-IPO

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<sup>12</sup> Section 5(4)(e) and (f) of the SFO.

<sup>13</sup> <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR46>.

<sup>14</sup> <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR11>.

<sup>15</sup> See section 5 of the SFO.

<sup>16</sup> Schedule 1, Part 1, section 1 of the SFO defines this to mean the securities and futures market and participants (other than investors) therein, and any activities related to financial products that are carried on in the securities and futures market or by such participants. "Participants" include recognized exchange companies (such as the Exchange), recognized clearing houses, recognized exchange controllers (such as HKEX), recognized investor compensation companies and persons carrying on any regulated activity.

matters, the SFC will, where appropriate, use its powers<sup>17</sup> in combination to perform its SFO functions<sup>18</sup>; and will, where appropriate, utilise its cooperation arrangements with the China Securities Regulatory Commission to obtain cross-border regulatory assistance in the Mainland to perform its statutory functions.

85. Consistent with the approach taken for IPOs, if and to the extent the SFC is minded to exercise its power to object to a listing application by a listed issuer (e.g. for a follow-on equity offering) based on the grounds set out under the SMLR, it will normally issue an LOM and its staff will make themselves available for discussions with the issuer and its advisers. If the SFC makes a determination to object to the listing application, an FDN setting out the reasons for its decision will be issued directly to the issuer within the time period specified in the SMLR.
86. The SFC may publish further guidance on how it proposes to perform its statutory functions where post-IPO matters are concerned<sup>19</sup>. For example, the SFC recently issued a guidance note on directors' duties<sup>20</sup> and a circular to financial advisers<sup>21</sup> regarding valuations in corporate transactions together with a statement on the liability of valuers for disclosure of false or misleading information<sup>22</sup>.

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<sup>17</sup> These powers include (i) its powers to require production of records and documents concerning listed corporations under section 179 of the SFO, and to conduct investigations under section 182 of the SFO, (ii) its enforcement powers under the SFO, including its power to seek remedies in cases of unfair prejudice, etc., to members of listed corporations, etc., under section 214 of the SFO, (iii) its powers to make statutory listing rules (after consultation with the Financial Secretary and the recognized exchange company) under section 36 of the SFO, to direct the Exchange to make or amend its listing rules (after consultation with the Financial Secretary and the recognized exchange company) under section 23 of the SFO and to issue codes or guidelines under section 399 of the SFO, (iv) its powers to object to follow-on securities listings under section 6 of the SMLR, (v) its power to direct the suspension of dealings in any securities under section 8 of the SMLR, and (vi) its power to direct the resumption of trading of suspended securities or the cancellation of a listing under section 9 of the SMLR.

<sup>18</sup> For example if, following a section 179 enquiry and/or section 182 investigation, the SFC has serious concerns that the affairs of a listed corporation are being conducted in a fraudulent manner, it may both (a) direct the Exchange to suspend dealings in the relevant security if one or more of the grounds under section 8(1) of the SMLR exist, and (b) take steps to bring proceedings under section 214 of the SFO.

<sup>19</sup> Section 5(4)(e) and (f) of the SFO.

<sup>20</sup> <http://www.sfc.hk/web/EN/assets/components/codes/files-current/web/guidance-note-on-directors'-duties-in-the-context-of-valuations-in-corporate-transactions/guidance-note-on-directors'-duties-in-the-context-of-valuations-in-corporate-transactions.pdf>.

<sup>21</sup> <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=17EC25>.

<sup>22</sup> <http://www.sfc.hk/web/EN/assets/components/codes/files-current/web/statement-on-the-liability-of-valuers-for-disclosure-of-false-or-misleading-information/statement-on-the-liability-of-valuers-for-disclosure-of-false-or-misleading-information.pdf>.

87. The Exchange will continue to be responsible for making decisions under its own Listing Rules in relation to post-IPO matters. The duties of the Exchange under the SFO include (a) ensuring, so far as reasonably practicable, an orderly, informed and fair market in securities that are traded through its facilities, and (b) making rules for the proper regulation and efficient operation of its markets. In discharging its duties, the Exchange will, among other things, administer, monitor and take steps to enforce compliance by listed issuers and other relevant persons with its Listing Rules.

## REVIEW OF LISTING DECISIONS

### Introduction

88. The Proposals were designed, among other things, to enhance the decision-making structure for the review of listing decisions by:
- (a) replacing the Listing (Review) Committee for the reasons discussed in paragraph 107 of the Consultation paper; and
  - (b) replacing the LAC to address any perceived conflict of interests posed by it sitting at the top of the review structure.

### The Way Forward

89. Only a small number of submissions commented on the Proposal in relation to the review of listing decisions. To enhance governance within the Exchange's structure for reviewing LC's decisions, the SFC is of the view that there should be no overlap in membership between each review body and the body whose decisions it will review, and that the Listing (Review) Committee and the LAC should be replaced with one or more independent committees that consist entirely of outside market participants with no current LC members or representatives of the SFC or HKEX. The Exchange supports this proposal in principle and will conduct a separate consultation in this regard as described below.
90. The Exchange will conduct a separate consultation on a proposal to replace the Listing (Review) Committee and the LAC with one or more independent committees that consist entirely of outside market participants with no current LC members or representatives of the SFC or HKEX. Under the framework to be proposed, each review body would be separate and independent from the body whose decisions it reviews, so there will be no overlap in membership between any committee that replaces the LAC and the committee that replaces the Listing (Review) Committee. The Exchange will also consult on the LD's right to seek review of the LC's decision if the LC overturns, modifies or varies a LD decision on matters involving listed issuers as proposed in the Consultation paper.
91. The Exchange also intends to further consult on whether to maintain a two-tier review structure for the LC's decisions, given that the LC is itself an independent committee of experienced market participants.
92. The Exchange will conduct the separate consultation described above in 2018.

93. The Listing (Review) Committee and the LAC, and other aspects of the current system for the review of listing decisions (including the publication of review decisions), will continue to operate unchanged until the implementation of necessary Listing Rule amendments resulting from the consultation process described in the preceding paragraph.

## OVERSIGHT OF THE LISTING FUNCTION

### Introduction

94. The Proposals relating to oversight of the listing function were for:
- (a) the LPC to become the body responsible for oversight of the listing function and for the LD to report to the LPC on its work; and
  - (b) senior executives of the LD to be appraised by the LPC (although their compensation would continue to be determined by HKEX's Remuneration Committee taking into account the LPC's assessment).

### The Way Forward

95. Under the current regulatory framework, listing regulation is conducted by both the SFC and the Exchange with the SFC performing its functions prescribed by the SFO and the SMLR, which have the force of law, and with the Exchange as a regulator for matters prescribed by the Listing Rules, which do not have legislative effect. The SFC's statutory functions in sections 4(a) and 5(1)(a) of the SFO in relation to the securities and futures industry are wider than and include matters similar to the Exchange's statutory duties in section 21(1) of the SFO in relation to the stock market.
96. Separately, the SFC has a function under the SFO<sup>23</sup> to supervise, monitor and regulate the activities carried on by the Exchange, as a recognized exchange company, and by HKEX, as a recognized exchange controller. In this regard, the SFC plays an oversight role as the statutory regulator of the Exchange and HKEX.
97. Within this framework, the Exchange has considerable discretion in the day-to-day administering of its own Listing Rules, including enforcement of those rules.
98. After considering the public submissions, the SFC and the Exchange have decided that a better way to achieve the objectives of the Consultation is for the SFC to enhance its supervisory function of auditing or reviewing<sup>24</sup> the Exchange's performance of its listing function by focusing on:

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<sup>23</sup> See section 5(1)(b) of the SFO.

<sup>24</sup> The 2003 Listing MOU provides that the SFC would conduct periodic audits or reviews of the Exchange's performance in its regulation of listing-related matters as a means to discharge this statutory function and sets out some general provisions relating to such audits or reviews.



- (a) whether the Exchange, in carrying out its listing regulatory function, has discharged and is discharging its duties under the SFO; this will include assessing the Exchange's work in developing, administering and implementing its Listing Rules as well as the monitoring and enforcement of compliance with those rules;
  - (b) adequacy of the Exchange's systems, processes, procedures and resources for performing its listing function; and
  - (c) the effective management of conflicts of interest within the Exchange as a regulator and as part of a for-profit organisation; including the supervisory functions performed by the LC.
99. This enhanced audit approach will clearly delineate the role of the SFC as regulator and those of the Exchange and HKEX as regulatees under the SFO.
100. The SFC will publish its supervisory audit or review reports from time to time in accordance with current procedures.

## **MISCELLANEOUS**

### **Publication of Decisions**

#### **Introduction**

101. Only a small number of submissions commented on the Proposal to publish review decisions.

#### **The Way Forward**

102. The SFC and the Exchange agree that the publication of detailed reasons for listing decisions is important to promote transparency, accountability and consistency in decision-making. The Exchange will, as part of its separate consultation (see paragraphs 90 to 92), propose that the decisions made by the proposed new review committee(s) be routinely published with an explanation of the reasons for the decisions, including (where applicable) why the decision under review was upheld or overturned and setting out any dissenting views.

103. Under the proposed framework, (a) the proposed new review committee(s) will have the discretion to allow decisions to be published either on a “no-names” basis or on a delayed basis, if it is demonstrated that disclosure of the applicant’s identity would be unduly prejudicial to its interests or that the decision is price sensitive; and (b) decisions that are pending review will not be published until the review process has ended.

### **Disciplinary Matters**

#### **Consultation Responses**

104. Only a small number of submissions commented on the Proposal relating to disciplinary matters.

#### **The Way Forward**

105. The SFC and the Exchange agree that the manner in which the Exchange’s disciplinary proceedings are conducted should take into account the severity of the penalties that could be imposed by the Exchange. At present, rule 2A.09 authorises the LC to impose a range of sanctions, a number of which could have potentially serious consequences for the relevant organisations. However, these more severe sanctions have not been imposed in any disciplinary action taken by the Exchange in recent years for legal and technical reasons. The Exchange will continue to keep the effective use of its existing disciplinary powers and sanctions under review, and will conduct a separate public consultation on its

disciplinary powers and sanctions in due course. The Proposal to establish the Listing Disciplinary Chairperson Group will not be implemented.

106. The Exchange's enforcement of compliance with the Listing Rules is an integral aspect of its regulation of listing-related matters. The Exchange's enforcement of compliance with the Listing Rules will continue to be subject to statutory oversight by the SFC and will be audited or reviewed as part of the enhanced periodic audit of the Exchange's performance in listing regulation as described in paragraph 98.

### **Composition and Tenure of LC Members**

107. The role of the LC under the Listing Rules will remain the same as currently. The HKEX CE will continue to be an ex officio member of the LC. Going forward, HKEX CE will attend LC meetings as a non-voting member representing the HKEX's board only where listing policy matters are discussed (primarily quarterly policy meetings). The HKEX CE will not attend LC meetings on individual cases. The LPP may be invited by the LC to attend individual listing policy meetings of the LC. Consistent with current practice, SFC executives will not participate in weekly meetings of the LC.
108. In response to the Consultation paper, a public body raised a governance issue that was not addressed in the Consultation paper. It noted that many members of the LC have served on the committee for six years. There is therefore an expectation by LC members that, unless their attendance record was poor, they would serve on the LC for six years. This was not the intent when the LC regime was designed in the mid-1990's. The public body commented that, unlike other government advisory committees, the LC is a decision-making body whose members are privy to a large amount of market-sensitive information. A more frequent rotation of members would help to minimise conflicts of interest and the perception of potential misuse of market-sensitive information.
109. The SFC and the Exchange agree that more frequent rotation of the LC's membership would enhance its governance and a six-year term should not be the norm. Under the Listing Rules, members of the LC are subject to reappointment each year. Based on the Exchange's own records, in the past ten years, fewer than half of the members of the LC served on the committee for six consecutive years. The Exchange has been and will continue to encourage more frequent turnover of LC members. Members can be reappointed after a two-year absence.

**Joint Consultation on Proposed Enhancements to the Exchange's  
Decision-making and Governance Structure for Listing Regulation**  
**Summary of the main consultation proposals and our conclusions**

Proposals	Adopt?	Way forward	
<b>Policy Development</b>	1. Establishment of the Listing Policy Committee ( <b>LPC</b> ) as a new Exchange committee to initiate, steer and decide listing policy.	The Listing Policy Panel ( <b>LPP</b> ) will be established as an advisory, consultative and steering body on listing policy with broader regulatory or market implications. The LPP will be formed outside of the Exchange and the SFC through MOU arrangements.	
	2. Composition of LPC to include Chair and two Deputy Chairs of the Listing Committee ( <b>LC</b> ); Chief Executive of HKEX; Chair of Takeovers Panel; CEO of the SFC; and two senior executives of the SFC.	Yes, with modification	The LPP will have the same composition as proposed for the LPC, plus two non-executive Directors from HKEX's board and two non-executive Directors from the SFC's board.
	3. Chief Executive of HKEX ( <b>HKEX CE</b> ) will be a member of the LPC and will cease to be a member of the LC.	Yes, with modification	HKEX CE will remain on the LC and will attend LC meetings as a non-voting member representing the HKEX's board only where listing policy matters are discussed (primarily quarterly policy meetings). HKEX CE will not attend LC meetings on individual cases.
<b>Listing Decisions - IPO applications and Post-IPO matters</b>	4. Establishment of the Listing Regulatory Committee ( <b>LRC</b> ) as a new Exchange committee to decide cases with suitability concerns or broader policy implications.	No  LRC will not be established. Instead: <ul style="list-style-type: none"> <li>• The SFC has been engaging and will continue to engage in targeted intervention at an early stage, which will increase its direct presence in more serious listing matters that fall within the scope of the SMLR<sup>1</sup> or the SFO more generally.</li> <li>• The Exchange will continue to make all decisions under its Listing Rules (including decisions on suitability of listing).</li> </ul>	
	5. SFC will not issue a separate set of comments on IPO applications as a matter of routine.	Yes, with modification	SFC staff will cease to review and comment on a listing application once they determine that the case does not raise concerns under the SMLR.

<sup>1</sup> The grounds for the SFC to raise objection to a listing application are set out in section 6(2) of the SMLR. See footnote 2 of the Conclusions Paper.

	<b>Proposals</b>	<b>Adopt?</b>	<b>Way forward</b>
<b>Review of Listing Decisions</b>	6. The Listing (Review) Committee will be replaced as the review body of LC's decisions; the Listing Appeals Committee ( <b>LAC</b> ) will be replaced as the final review body within the Exchange.	Subject to further consultation	The Exchange will conduct a separate consultation in 2018 to replace the Listing (Review) Committee and the LAC with independent committees solely comprising outside market participants with no current LC members or representatives of the SFC or HKEX.
	7. Establishment of the Listing Regulatory (Review) Committee ( <b>LRRC</b> ) as an Exchange committee.	No	LRRC will not be established.
	8. For matters involving listed issuers, if the LC overturns, modifies or varies the LD's decision, the LD will have the right to seek review of the LC's decision.	Subject to further consultation	The Exchange will conduct a separate consultation on the review system for decisions of the LC as described in the Conclusions Paper.
	9. The Listing Rules to be amended to codify paragraph 10.6 of the 2003 Listing MOU (i.e. among others, that the LC and the LAC shall, if requested by the SFC, consider and review any matter, including a decision by the respective committee itself) but the reference to the LAC shall be deleted.	Yes	Adopt as proposed.
<b>Disciplinary matters</b>	10. Proposals relating to disciplinary matters including the establishment, constitution and processes of the Listing Disciplinary Chairperson Group ( <b>LDCG</b> ), Listing (Disciplinary) Committee ( <b>LDC</b> ), Listing (Disciplinary Review) Committee ( <b>LDRC</b> ).	No	Proposed new disciplinary committees will not be established. The SFC's enhanced supervisory audit of the Exchange's performance in listing regulation will cover its enforcement of compliance with the Listing Rules. The Exchange will conduct a further consultation on its disciplinary powers and sanctions in due course.
<b>Oversight of Exchange</b>	11. LPC to be the body responsible and accountable for oversight of the listing function and for appraising senior executives of the LD in the performance of their regulatory responsibilities.	No	SFC will conduct an enhanced, published supervisory audit of the LC and LD, focusing on whether the Exchange, in performing its listing function, has discharged its statutory duties under the SFO.
<b>Publication of Decisions</b>	12. Publication of reasoned decisions by LRC, LRRC, LDC and LDRC.	Subject to further consultation	The Exchange will, as part of a separate consultation, consult on whether decisions made by the proposed new review committees of the Exchange should be routinely published on a reasoned basis. The SFC will publish its final decision notices issued under the SMLR.