

SECURITIES AND FUTURES COMMISSION

To: Annie CHAN/CF/SFC@SFC CF Ext : 277
cc: "Donna Canestra" <donna@hksi.org> Ext :

From: "Daisy" <daisy@hksi.org>
Date: 07/06/2002 04:28 PM

Our Ref:
Subject: SFC's Consultation Paper

Dear Ms Chan

In response to the SFC's recent consultation paper on the Securities and Futures (Stock Market Listing) Rules and the Securities and Futures (Transfer of Functions - Stock Exchange Company) Order, the Hong Kong Securities Institute has sent a questionnaire to our corporate members to seek their views on the document. The files containing the results are attached for your information.

The original copy will reach your office later the today. Please let me know if you have further queries.

Thank you for your attention.

Daisy Lo

Daisy Lo (Ms)
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- Questionnaire - Eng (Result).doc



- Questionnaire Result - Attachment.doc



- Letter to SFC.doc

7 June 2002

Ms Annie Chan
Associate Director, Corporate Finance Division
Securities and Futures Commission
12/F Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

Dear Ms Chan

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

Following the release of the above public consultation paper, the Hong Kong Securities Institute (HKSI) has sent a questionnaire to our corporate members to seek their views on the document. We are pleased to enclose, for your information, the results of this survey.

As a professional organization our aim in consulting our members was firstly to draw their attention to the consultation paper, and secondly to act as a forum for them to present their views.

A total of 180 questionnaires were sent out to our corporate members on 27 May, 2002 and at the close of the consultation period we had received 4 responses. Enclosed for your information is a copy of the results of the questionnaire we sent to our corporate members, including all comments given. Please do not hesitate to contact Ms Donna Canestra on 3120 6158 or Ms Daisy Lo on 3120 6159 if you have any queries about our survey.

Yours faithfully

Gary WK Cheung
Chief Executive

**QUESTIONNAIRE ON CONSULTATION PAPER ON
THE SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES AND
THE SECURITIES AND FUTURES (TRANSFER OF FUNCTIONS –STOCK
EXCHANGE COMPANY) ORDER**

JUNE 2002

The following information is presented using the same paragraph numbering in the draft Rules. Please indicate your view as to whether you agree with the SFC recommendations by using the following scaling system:

- 1 Agree
- 2 No comment
- 3 Disagree

You may put forward other suggestions using the space provided in each question or on a separate sheet of paper.

Paragraph	Description	Answer
<i>Securities and Futures (Stock Market Listing) Rules Part II - Stock Market Listing</i>		
5	<p><i>Copy of listing materials to be filed with the Commission</i></p> <p><i>(1) An applicant must file a copy of its application with the Commission within one business day after the day on which the applicant submits the application to the recognized exchange company concerned.</i></p> <p><i>Comments / Suggestions:</i></p> <p><i>Please see <u>Attachment A</u> for the comments made by one of our corporate members.</i></p>	<p>1 – 75%</p> <p>2 – 25%</p> <p>3 – 0%</p>

Securities and Futures (Stock Market Listing) Rules Part II - Stock Market Listing (continued)		
<p>(2) <i>An applicant is regarded as having complied with subsection (1) on the day it submits the application to the recognized exchange company concerned if, prior to or at the time of submitting the application to the recognized exchange company the applicant has authorized the recognized exchange company in writing to file the application with the Commission on its behalf.</i></p>	<p>1 – 100% 2 – 0% 3 – 0%</p>	
<p>(3) <i>The recognised exchange company must not list the securities to which the application relates unless –</i></p> <p style="padding-left: 2em;"><i>(a) the period specified in subsection (5) has expired and the Commission has not within that period, notified the recognized exchange company and the applicant under subsection (6) that it objects to the listing; or</i></p> <p style="padding-left: 2em;"><i>(b) the Commission has notified the recognized exchange company and the applicant that it does not object to the listing.</i></p>	<p>1 – 75% 2 – 25% 3 – 0%</p>	
<p>(4) <i>The Commission may, by notice to the applicant and the recognised exchange company given within 10 business days from the date the applicant files a copy of its application with the Commission, require the applicant to supply to the Commission such further information as the Commission may reasonably require for the performance of its functions under these Rules.</i></p>	<p>1 – 100% 2 – 0% 3 – 0%</p>	
<p>(5) <i>The period specified for the purposes of subsection (3) is 10 business days –</i></p> <p style="padding-left: 2em;"><i>(a) where the Commission has not given notice under subsection (4), from the date the applicant files a copy of its application with the Commission; or</i></p> <p style="padding-left: 2em;"><i>(b) where the Commission has given notice under subsection (4), from the date when the further information is supplied.</i></p>	<p>1 – 75% 2 – 25% 3 – 0%</p> <p>1 – 75% 2 – 25% 3 – 0%</p>	

<i>Securities and Futures (Stock Market Listing) Rules Part II - Stock Market Listing (continued)</i>		
<p>(6) <i>The Commission may, by notice in writing to the recognized exchange company and the applicant, object to a listing if it appears to the Commission that –</i></p> <p style="padding-left: 20px;"><i>(a) the application in respect of the listing does not comply with a requirement specified in section 3;</i></p> <p style="padding-left: 20px;"><i>(b) an application in respect of the listing is false or misleading as to a material fact or is false or misleading through the omission of a material fact;</i></p> <p style="padding-left: 20px;"><i>(c) the applicant has failed to comply with a requirement under subsection (4) or, in purported compliance with such requirement has furnished the Commission with information which is false or misleading in any material particular; or</i></p> <p style="padding-left: 20px;"><i>(d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.</i></p>	<p style="padding-left: 20px;">1 – 100%</p> <p style="padding-left: 20px;">2 – 0%</p> <p style="padding-left: 20px;">3 – 0%</p>	<p style="padding-left: 20px;">1 – 100%</p> <p style="padding-left: 20px;">2 – 0%</p> <p style="padding-left: 20px;">3 – 0%</p>
<p>(7) <i>A notice given under subsection (6) must be accompanied by a statement specifying the reasons for the objection.</i></p>	<p>1 – 100%</p> <p>2 – 0%</p> <p>3 – 0%</p>	<p>1 – 100%</p> <p>2 – 0%</p> <p>3 – 0%</p>

Securities and Futures (Stock Market Listing) Rules Part II - Stock Market Listing (continued)		
6	<p>Copy of ongoing disclosure materials to be filed with the Commission</p> <p>(1) <i>An issuer must file with the Commission a copy of any announcement, statement, circular, or other document made or issued by it or on its behalf to the public or to a group of persons comprising members of the public (including its shareholders) under the rules and requirements of a recognized exchange company or any provision of law applicable, or pursuant to the terms of any listing agreement between the issuer and a recognized exchange company under the rules of the recognized exchange company within one business day following the day on which such announcement, statement, circular or other document is made or issued.</i></p> <p>Comments/Suggestions:</p> <p><i>I understand that circulars and other documents issued to public shareholders are passed by the Stock Exchange to the SFC on a regular basis. This being the case, it does not seem necessary for the issuer to make a dual-filing to the SFC.</i></p> <p>(2) <i>A person must file with the Commission a copy of any announcement, statement, circular or other document made or issued by that person or on his behalf to the public or to a group of persons comprising members of the public (including holders of the securities of an issuer) under any codes published by the Commission under sections 399(2)(a) and (b) of the Ordinance within one business day following the day on which such announcement, statement, circular or other document is made or issued.</i></p>	<p>1 – 75% 2 – 0% 3 – 25%</p> <p>1 – 50% 2 – 50% 3 – 0%</p>

<i>Securities and Futures (Stock Market Listing) Rules</i>		
<i>Part II - Stock Market Listing (continued)</i>		
	<p><i>(3) An issuer or other person, as the case may be, is regarded as having complied with subsection (1) or (2) if the issuer or other person has –</i></p> <p><i>(a) filed with the recognized exchange company concerned; and</i></p> <p><i>(b) authorized the recognized exchange company in writing to file with the Commission on its behalf, a copy of the relevant announcement, statement, circular or other document.</i></p>	<p>1 – 75%</p> <p>2 – 25%</p> <p>3 – 0%</p> <p>1 – 75%</p> <p>2 – 25%</p> <p>3 – 0%</p>

Attachment A

I am generally in support of the objective of the dual-filing proposal which is expected to add more teeth to the non-statutory nature of the current regulations governing corporate information disclosure. I would however like to put forward for the consideration of the SFC a counter proposal as more fully described below.

Comments on clause 5 of the Securities and Futures (Stock Market Listing) Rules

As a general comment, I think rather than entitling to a reserve power only, the SFC should take on entirely the prospectus vetting and listing authorization functions from the Stock Exchange. This will fall more in line with the profit-orientated nature of the publicly listed Stock Exchange. The proposed closer involvement of the SFC with pre-listing information disclosure will also facilitate the Commission in invoking its investigative powers into suspected false or misleading disclosure to the public. Under the current proposal discussed in the consultation document dated 6 May, 2002, the SFC is not privy to the comments or queries made by the Stock Exchange on a proposed listing or draft prospectus and the responses made thereto by the sponsors or other advisers, and which information is often useful in assessing whether or not certain information disclosure to the public is false or misleading.

Should the current proposal whereby the SFC is empowered to review and comment on pre-listing materials is adopted, I think it would facilitate sponsors in better advising their clients if the SFC clarifies the circumstances that will warrant the exercise of its power to comment on the draft disclosure materials (principally the prospectus) and objecting to the listing of the company on the basis of insufficient disclosure under the new rules. For example, will the disclosure in a listing document be considered adequate if it has contained all the information required under the applicable listing rules? Or in the case of disagreement of views between a listing applicant and the Stock Exchange on the extent of disclosure in a listing document, will the SFC step in? It is suggested that more clarity, say in the form of a guideline be made on this area.