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6 January 2004

(Attn: Proposals to Enhance the Regulation of Listing)

Dear Sirs

CONSULTATION PAPER ON PROPOSALS TO
ENHANCE THE REGULATION OF LISTING

Set out below are our comments on the above Consultation Paper. We have based our comments on Chapter 4 “Summary of Issues for Public Comments” (using the same numbering):

- 4.4 (a) Statutory Backing: The Standing Committee on Company Law Reform Consultation Paper issued in June 2003 proposed that a number of listing related provisions be incorporated into the Companies Ordinance. We repeat our concerns (which we understand are shared by a number of other parties) over such provisions being incorporated into the Companies Ordinance. Regulation of listed issuers should continue to be governed by the Listing Rules; the benefits of this are adaptability (legislation is difficult and time consuming to change), ease of administration through one set of rules, and flexibility (i.e. the ability to grant waivers).

It is widely recognised that there is a need for greater sanctions to be available for breaches of the Listing Rules, and statutory backing for some aspects of the Listing Rules is the best way that this can be achieved.

- 4.4(b) Provisions requiring statutory backing: In general, provisions relating to disclosure and on-going obligations (such as connected party transactions) are the ones requiring statutory backing. However, the regulators are in a better position to comment in detail on areas in the Listing Rules which currently suffer from lack of adequate sanctions, and it would be helpful if the SFC and HKEx worked together to identify in detail the provisions in the Listing Rules which require statutory backing.
- 4.4(c) Other provisions requiring statutory backing: We have no comment on this.

- 4.4(d) Sanctions to be imposed: Civil sanctions would seem most appropriate for breaches of provisions with statutory backing. We have no particular views on the types and levels of civil sanctions that should be imposed, and support the statement in the consultation paper that this should be the subject of detailed legal research (presumably in consultation with the SFC, HKEx and market practitioners). We do not favour criminal sanctions; as the paper highlights, there are difficulties in securing criminal convictions for “white collar” crimes, and we question whether criminal sanctions do in fact act as a stronger deterrent for breaches of the listing rules.
- 4.4(e) Conflict of Interests: Although there may be a perceived conflict of interests within HKEx as the primary regulator of entry to the market and its listed company status, we are not convinced that in practice such a conflict exists. In its letter of 1 April 2003 to the Financial Secretary, HKEx made a number of valid points in response to the recommendations of the Expert Group (that listing responsibility be transferred to the SFC), including those relating to its ability to impartially discharge its regulatory role. Criticism has been levelled over the quality of some new listings, but there is no guarantee that, had the SFC been responsible for approving those listings, that they would necessarily have made a different decision. Furthermore, there is now in place the dual filing regime, with greater SFC involvement in the IPO vetting process, which appears to be working well.

Whilst we recognise that there is already in place a system of checks and balances, it would nonetheless be advisable (as raised in 3.14 of the Consultation Paper) that there be some form of documentation which clearly defines the roles, powers and responsibilities of the Listing Committee, its chairman or its members, and their relationship with staff of the Listing Division. The opportunity could be taken to consolidate various memoranda of understating between the SFC and HKEx to clarify in one document their respective roles.

- 4.4(f) Regulatory Structures:

Model A:

Transfer of listing functions to the SFC: A number of valid concerns have been raised by HKEx in their 1 April 2003 letter to the Financial Secretary with regard to the possible combination of the functions of policy maker, enforcement agency and adjudication body under one organisation (i.e. the SFC). Furthermore, having HKEx staff working for a listed issuer, and closely involved with the market, can be beneficial. Given the radical change that this model would entail, and for the reasons given, we are not in favour of this option.

Model B:

Transfer of listing functions to a new HKEx subsidiary: Although this would strengthen to a certain extent the present “Chinese Wall” arrangements, we see this as somewhat superficial and, more importantly, we do not see how this model can accommodate statutory backing of the listing rules.

Model C:

Transfer of listing functions to a new statutory authority: This will be a particularly expensive (and it is proposed that this be paid for by listed companies) and time consuming proposal to follow, it will not necessarily resolve or address all the concerns being expressed, and may be confusing for the market (as indicated in one of the disadvantages expressed in the Consultation Paper). We do not support this model.

Model D:

Expanding the “Dual Filing” system: Although some disadvantages and concerns have been identified in the consultation paper, we believe that this model is the best way forward. The current dual filing arrangement appears to be working well, this would cause the least disruption, and retain (as far as possible) the existing HKEx role. We do not think it will create public confusion although, as indicated earlier, clear, consolidated, documentation of the respective roles, duties and responsibilities of the SFC and HKEx would be helpful. This should also reduce the incidents of regulatory overlap, and it is hoped that the SFC will only become involved with more serious, material breaches of the listing rules.

Other Issues

Although the following two issues have not been raised in the Consultation Paper, they do relate to the HKEx regulatory role and (we believe) reflect market views.

One of these is the current need to submit documentation for clearance to HKEx prior to publication or circulation. This contrasts with systems in other jurisdictions (such as London and New York) where not all documentation (in particular routine documentation) has to be submitted for pre-clearance. There would be merit in reviewing the Hong Kong practice to try and minimise the volume of documents requiring clearance by HKEx.

The other matter relates to the requirement to take out paid advertisements (for items such as connected transactions and results announcements). Other major markets have a system of electronic dissemination, including publication of announcements on company and exchange websites. HKEx already has an e-submission system, and it is questionable who reads paid announcements. Items of interest will be covered by the media, and by professional investors/analysts, who will study such announcements either through dissemination of hard copies (e.g. results announcements) and internet releases. The current requirement for paid advertisements is costly for listed issuers, adds little or no value for shareholders, and can lead to delays in releasing information to the market (especially when coupled with the requirement to pre-clear announcements).

I apologise for the late submission of this letter.

Yours faithfully

M W Scales
Corporation Secretary

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