

**For discussion
on 20 September 2002**

Paper No. 29/02

**Subcommittee on Draft Subsidiary Legislation to be made
under the Securities and Futures Ordinance**

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

This paper sets out the proposals of the Securities and Futures Commission (SFC) –

- (a) to make rules under section 36(1) of the Securities and Futures Ordinance (Cap. 571) (SFO) to prescribe certain requirements relating to the listing of securities; and
- (b) to request the Chief Executive in Council to transfer to the Stock Exchange Company, by order made under section 25 of the SFO, certain functions of the SFC under Parts II and XII of the Companies Ordinance (Cap. 32) (CO) relating to the vetting and authorization of prospectuses.

Proposals

2. The SFC proposes to make the Securities and Futures (Stock Market Listing) Rules, now in draft at **Annex 1** (the draft Rules), under section 36(1) of the SFO; and to request the Chief Executive in Council to make the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order, now in draft at **Annex 2** (the draft Transfer Order), under section 25(1) of the SFO.

Power to make the Rules

3. Section 36(1) of the SFO empowers the SFC to make rules in respect of the listing of securities, including, in particular, rules prescribing or providing for the following matters –

- (a) the requirements to be met before securities may be listed;

- (b) the procedure for dealing with applications for the listing of securities;
- (c) the cancellation of the listing of any specified securities by the SFC in certain circumstances; and
- (d) the conditions subject to which, and the circumstances in which, dealings in securities shall be suspended or recommenced.

4. Section 36(1) also empowers the SFC to make rules providing for any matters which may be prescribed by a recognized exchange company in rules made under section 23 of the SFO. They include such matters as may be necessary or desirable for the proper regulation and efficient operation of the securities market.

5. The SFC is of the view that the draft Rules would be *intra vires* if made as drafted.

Major features of the draft Rules

6. The draft Rules at Annex 1 are to be made by the SFC under section 36(1) of the SFO. They are drafted largely on the basis of two sets of existing Rules, namely the Securities (Stock Exchange Listing) Rules (Cap. 333, Sub. Leg. C) and the Securities (Stock Exchange Listing) (Approved Share Registrar) Rules (Cap. 333, Sub. Leg. F).

Stock market listing

7. Clause 3 prescribes the requirements for listing applications submitted to a recognized exchange company. Clause 4 provides for certain limited exemptions from the requirements for listing applications set out in clauses 3 and 5.

Dual filing with the SFC

8. New elements of the draft Rules are confined to clauses 5 to 7. Under clause 5, a company applying to list its securities for trading on the recognized stock market operated by a recognized exchange company (the applicant) will be required to submit copies of its listing application to the SFC within one business day after the same is submitted to the exchange company. To facilitate compliance, the draft Rules enable the applicant to fulfil this obligation by authorizing the exchange company to file the materials with the SFC on its behalf.

9. Under clause 6 the SFC may require the applicant to supply further information. The SFC may object to the listing if the applicant fails to comply with such a requirement, or it appears to the SFC that the applicant has supplied false or misleading information in its application, or it is not in the public interest or in the interest of the investing public. Clause 7 provides, in effect, that similar filing requirements as those described in paragraph 8 above will apply to public statements and other on-going disclosure of information by listed corporations to the public pursuant to requirements under rules made by the exchange company or other applicable laws.

10. With these dual filing requirements and power to request additional information from listed corporations or listing applicants, the SFC is able to employ its investigatory powers in gathering evidence and establishing the facts. Where appropriate, the SFC may bring offenders to prosecution in the Court. This is considered and generally accepted by respondents in the public consultation exercise as an effective deterrent against disclosure of false or misleading information and a positive move to improve the quality of corporate information disclosure.

11. An effective disclosure regulatory regime benefits the investing public as well as other market and industry participants. The credibility of a market as being fair and transparent, with proper safeguards on the integrity of information disclosure, translates into a lower cost of funds to issuers of securities, attracts more local and international investors, thus providing further opportunities for intermediaries and professionals and increasing market size and liquidity.

Suspension of dealings

12. Under clause 8, the SFC may direct the exchange company to suspend dealings in the securities of a listed corporation if it appears to the SFC that the corporation has supplied any materially false or misleading information in its prospectus or other listing document or in any public communications and on other grounds such as the public interest or to maintain a fair and orderly market.

13. Clause 9 sets out the powers of the SFC after taking action under clause 8, including the power to permit dealings to recommence subject to conditions which it may impose and to cancel the listing in certain circumstances. The listed corporation and the exchange company may make representations to the SFC.

14. Clause 10 contains provisions relating to the making of oral representations to the SFC. These provisions together with those set out in clauses 11 (restriction on re-listing) and clause 12 (which enables the SFC to waive certain requirements of the draft Rules in certain circumstances) are largely based on the existing rules.

Approved share registrars

15. Part IV of the draft Rules provides for the approval of share registrars (clause 13) and prohibits the listing of any securities of a corporation unless the corporation is, or employs, an approved share registrar (clause 14). Clause 15 provides for the suspension of dealings in listed securities if the corporation ceases to be, or no longer employs, an approved share registrar.

Power to make the Transfer Order

16. Division 2 of Part III of the SFO provides for the recognition of exchange companies and prescribes their duties. Under section 25(1) of the SFO, the SFC may request the Chief Executive in Council to make a transfer order transferring certain functions of the SFC, as specified in section 25(2), to a recognized exchange company, if the SFC is satisfied that the designated exchange company is willing and able to perform the functions.

17. Section 25(3) provides that a function may be transferred by a transfer order either in whole or in part, and the transfer may be subject to a reservation that the Commission is to perform the function concurrently with the exchange company.

18. The Department of Justice has been consulted on the vires of the draft Transfer Order. The advice is that the draft Transfer Order would be *intra vires* if made as drafted.

Major features of the draft Transfer Order

19. Under clause 4 of the draft Transfer Order the functions conferred on the SFC under sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the CO¹ are transferred to the Stock Exchange Company to the extent that they

¹ These sections of the CO fall under Parts II and XII thereof, and the SFC's functions as set out there may be transferred to a recognized exchange company pursuant to section 25(2)(c) of the SFO. Please refer to **Annex 3** for a brief description of the functions to be transferred.

relate to any prospectus concerning shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognized stock market. These functions relate to the vetting and authorization of prospectuses. The draft Transfer Order is substantially the same as the present Securities (Transfer of Functions) Order (Cap. 24, Sub. Leg. H).

20. Under the current Transfer Order, prospectuses of mutual funds corporations are carved out from the transfer as the SFC wishes to retain the power to authorize prospectuses for such funds. To preserve existing arrangements, we propose to adapt to the new defined concept of “collective investment schemes” under the SFO, which essentially refers to mutual fund corporations in the context of the draft Transfer Order. Accordingly, collective investment schemes are carved out from the draft Transfer Order so that they will remain subject to SFC authorization for marketing to the public.

21. The transfer is made subject to a reservation that the SFC is to perform the functions concurrently with the exchange company. This provides the SFC with a firm legal basis for considering listing applications as necessary under the draft Rules.

Consistent with SFC’s regulatory objectives

22. The SFC considers that as a general principle, the proposals are consistent with its objective in section 4(a) of the SFO to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry. In particular, the new filing and disclosure requirements in the draft Rules will assist the SFC in attaining its objectives in sections 4(c) and (d) of the SFO to provide protection for members of the public investing in or holding financial products and to minimize crime and misconduct in the securities and futures industry.

Public consultation

23. The SFC released a consultation document and exposure drafts of the Rules and the Transfer Order on 6 May 2002 for comment by the public. Eleven submissions were received. The SFC has considered all the comments received and made some amendments to the draft Rules to better reflect the policy intention and to improve drafting.

24. We attach the following documents for Members' reference -
- (a) Consultation Document on the draft Rules and the draft Transfer Order, at **Annex 4**, which sets out the underlying policy together with the exposure drafts of the Rules and the Transfer Order. The draft Rules and the draft Transfer Order, as subsequently revised, are at Annex 1 and Annex 2 respectively for Members' consideration;
 - (b) Consultation Conclusions, at **Annex 5**, which sets out the conclusions from the consultation and the SFC's responses to the comments received; and
 - (c) Summary of Comments and SFC's Responses, at **Annex 6**, in the form of a table.

Way forward

25. The proposals in this paper are targeted for implementation on the commencement of the SFO in early 2003 to enhance the regulatory framework relating to the approval of listing and subsequent surveillance of disclosure by listed corporations under the Listing Rules. We will conduct a review and formulate long term measures in the light of the recommendations concerning listing matters put forward by the Panel of Inquiry on the Penny Stocks Incident in its Report issued on 10 September.

26. Subject to Members' views, the draft Rules and the draft Transfer Order would be submitted to the relevant authority for approval and, if approved, published in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that the Rules and the Transfer Order shall come into operation on the commencement of the SFO.

Securities and Futures Commission
Financial Services and the Treasury Bureau
13 September 2002

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Annex 1

[Cf : sections 19, 23 - 25 and 36 of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(Made by the Securities and Futures Commission
under section 36(1) of the Securities
and Futures Ordinance (Cap. 571)
after consultation with the
Financial Secretary and
The Stock Exchange of
Hong Kong Limited)

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day on which Part III of the Securities and Futures Ordinance (Cap. 571) comes into operation.

2. Interpretation

In these Rules, unless the context otherwise requires -
"applicant" (申請人) means a corporation or other body which has submitted an application under section 3;
"application" (申請) means an application submitted under section 3 and all documents in support of or in connection with the application including any replacement of and amendment and supplement to the application;

"approved share registrar" (認可股份登記員) means a share registrar who is a member of an association of persons approved by the Commission under section 12;

"issuer" (發行人) means a corporation or other body the securities of which are listed, or proposed to be listed, on a recognized stock market;

"share registrar" (股份登記員) means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market.

PART 2

STOCK MARKET LISTING

3. Requirements for listing applications

An application for the listing of any securities issued or to be issued by the applicant shall -

- (a) comply with the rules and requirements of the recognized exchange company to which the application is submitted (except to the extent that compliance is waived or not required by the recognized exchange company);

- (b) comply with any provision of law applicable; and
- (c) 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.

4. Exemptions from sections 3 and 5

Sections 3 and 5 do not apply to the listing of any -

- (a) securities issued or allotted -
 - (i) by a capitalization issue pro rata (apart from fractional entitlements) to existing shareholders, whether or not they are shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom the securities are not actually issued or allotted because of restrictions imposed by legislation of that place; or

- (ii) pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;
- (b) securities offered on a pre-emptive basis, pro rata (apart from fractional entitlements) to existing holdings, to holders of the relevant class of shares in the corporation, whether or not they are shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom the securities are not actually offered because of restrictions imposed by legislation of that place;
- (c) shares issued in substitution for shares listed on a recognized stock market, if the issue of the shares does not involve any increase in the issued share capital of the corporation;
- (d) shares issued or allotted pursuant to the exercise of options granted to existing employees as part of their remuneration under a scheme approved by the shareholders of the corporation in a general meeting.

5. Copy of application to be filed with the Commission

(1) An applicant shall file a copy of its application with the Commission within 1 business day after the day on which the application is submitted to a recognized exchange company.

(2) An applicant is regarded as having complied with subsection (1) on the day it submits the application to a recognized exchange company 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.

6. Powers of the Commission to require further information and to object to listing

(1) Subject to subsection (8), the Commission may, by notice to an applicant and a recognized exchange company given within 10 business days from the date the applicant files a copy of its application with the Commission (or if there is more than 1 such date, the latest date), 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.

(2) The Commission may, within the period specified in subsection (6), by notice to an applicant and a recognized exchange company, object to a listing of any securities to which an application relates if it appears to the Commission that -

- (a) the application does not comply with a requirement under section 3;
- (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 under subsection (1) or, in purported compliance with the requirement has furnished the Commission 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.

(3) The Commission may, within the period specified in subsection (6), notify an applicant and a recognized exchange company that -

- (a) it does not object to the listing of any securities to which an application relates; or
- (b) it does not object to the listing of any securities to which an application relates

subject to such conditions as the Commission may think fit to impose.

(4) A recognized exchange company may list the securities to which an application relates only if -

- (a) the Commission has not, within the period specified in subsection (6), notified the recognized exchange company that it objects to the listing;
- (b) the Commission has given a notice in relation to the application under subsection (3)(a); or
- (c) the conditions referred to in subsection (3)(b) in relation to the application have been complied with.

(5) Where the Commission objects to a listing under subsection (2) or imposes any condition under subsection (3)(b), the objection or imposition shall take effect immediately.

(6) The period specified for the purposes of subsections (2), (3) and (4) is 10 business days -

- (a) where the Commission has not given a notice under subsection (1) in relation to the application, from the date the applicant files a copy of the application with the Commission (or if there is more than 1 such date, the latest date); or
- (b) where the Commission has given a notice under subsection (1) in relation to the application,

from the date when the further information is supplied.

(7) A notice given under subsection (2) shall be accompanied by a statement specifying the reasons for the objection.

(8) The Commission shall not give any notice to an applicant under subsection (1) after -

- (a) it has given a notice in relation to the application under subsection (3)(a); or
- (b) the conditions referred to in subsection (3)(b) in relation to the application have been complied with.

7. Copy of ongoing disclosure materials to be filed with the Commission

(1) An issuer shall 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) -

- (a) under the rules and requirements of a recognized exchange company or any provision of law applicable; or
- (b) 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 1 business day following the day on which such announcement, statement, circular or other document is made or issued.

(2) A person shall file with the Commission a copy of any announcement, statement, circular or other document made or issued by the 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 section 399(2)(a) and (b) of the Ordinance within 1 business day following the day on which such announcement, statement, circular or other document is made or issued.

(3) An issuer or a person is regarded as having complied with subsection (1) or (2) if the issuer or the person has -

- (a) filed with the recognized exchange company concerned; and
- (b) authorized the recognized exchange company in writing to file with the Commission on behalf of the issuer or the person, as the case may be, a copy of the relevant announcement, statement, circular or other document.

PART 3

SUSPENSION OF DEALINGS

8. Suspension of dealings in securities

(1) Where it appears to the Commission that -

(a) any materially false, incomplete or misleading information has been included in any -

(i) document (including but not limited to any prospectus, circular, introduction document and document containing proposals for an arrangement or reconstruction of a corporation), issued in connection with a listing of securities on a recognized stock market; or

(ii) announcement, statement, circular or other document made or issued by or on behalf of an issuer in connection with its affairs;

(b) it is necessary or expedient in the interest of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on the recognized stock market it operates;

(c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in any securities listed on a recognized stock market; or

(d) there has been a failure to comply with any condition imposed by the Commission under section 9(3)(c),

the Commission may, by notice to the recognized exchange company, direct the recognized exchange company to suspend all dealings in any securities specified in the notice.

(2) The recognized exchange company shall comply with any notice given under subsection (1) without delay.

9. Powers of the Commission upon the suspension under this Part of dealings in any securities

(1) An issuer which is aggrieved by a direction given by the Commission under section 8 may make representations in writing to the Commission and where an issuer makes such representations, the Commission shall notify the recognized exchange company.

(2) In respect of a direction given by the Commission under section 8, the recognized exchange company may make representations in writing to the Commission irrespective of whether representations in respect of that direction have been

made by an issuer under subsection (1) and where the recognized exchange company makes such representations, the Commission shall notify the issuer.

(3) Where the Commission has -

(a) directed a recognized exchange company to suspend dealings in any securities under section 8(1); and

(b) considered any -

(i) representations made by the issuer under subsection (1);

(ii) representations made by the recognized exchange company under subsection (2);
and

(iii) further representations made by the issuer or the recognized exchange company,

the Commission may, by notice to the recognized exchange company -

(c) permit dealings in the securities to recommence subject to such conditions as the Commission may think fit to impose, being conditions of the nature specified in subsection (4); or

(d) direct the recognized exchange company to cancel the listing of the securities on a recognized stock market operated by it if the Commission -

(i) is satisfied that there has been a failure to comply with any requirement in respect of listing set out in these Rules or in any other rules made under section 36 of the Ordinance; or

(ii) considers that the cancellation of the listing is necessary to maintain an orderly market in Hong Kong,

and the recognized exchange company shall comply with the direction without delay.

(4) The conditions which may be imposed under subsection (3)(c) are -

(a) where the Commission has given a direction under section 8(1)(a) or (d), conditions imposed with the object of ensuring, so far as is reasonably practicable, that the issuer remedies the default by reason of which the suspension of dealings was directed;

(b) where the Commission has given a direction under section 8(1)(b), such conditions as the Commission may consider necessary or expedient in the interest of maintaining an orderly and fair market in securities traded through the facilities of the recognized exchange company mentioned in that section;

(c) where the Commission has given a direction under section 8(1)(c), such conditions as the Commission may consider to be in the interest of the investing public or in the public interest, or to be appropriate for the protection of investors generally or for the protection of the investors mentioned in that section.

(5) In subsection (3), "further representations" (進一步申述) means representations either in writing or orally or both in writing and orally as the issuer or the recognized exchange company may determine which are submitted within such reasonable time as the Commission may determine.

(6) The powers of the Commission under this section may only be exercised by a meeting of the Commission and are not delegable.

(7) A member of the Commission who made the decision in the exercise of the Commission's powers under section 8 shall not participate in the deliberations or voting of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers.

(8) Notwithstanding subsection (7), the member of the Commission referred to in that subsection may attend any meeting or proceeding of the Commission in the performance of its functions under this section as regards the exercise of the

Commission's powers under section 8 and may make such explanations of his decision as he thinks necessary.

10. Provisions supplementary to sections 8 and 9

(1) At any hearing held by the Commission to receive oral representations made to it under section 9(3)(b)(iii), the issuer and the recognized exchange company each have the right to be represented by its counsel or solicitor.

(2) If representations are made under section 9(1) or (2) against a direction made under section 8(1) then, pending the decision of the Commission under section 9(3), all dealings in the securities concerned shall remain suspended.

11. Restriction on re-listing

No security the listing of which has been cancelled under section 9(3)(d) shall be listed again on a recognized stock market except in accordance with Part 2.

PART 4

APPROVED SHARE REGISTRARS

12. Approval of share registrars

(1) The Commission may approve an association of persons as an association each of whose members shall be an approved share registrar for the purposes of these Rules.

(2) The Commission may cancel the approval of any association of persons approved under subsection (1).

(3) The Commission shall maintain a list of associations of persons approved under subsection (1).

13. Securities not to be listed where approved share registrar not employed

No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant shall be approved by the recognized exchange company unless the applicant is an approved share registrar or employs an approved share registrar as its share registrar.

14. Suspension of dealings on cessation of employment, etc. of approved share registrar

(1) Where -

(a) the securities of a corporation are listed on a recognized stock market; and

(b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar as its share registrar,

the recognized exchange company shall give the corporation a notice of its intention to suspend dealings in the securities of the corporation unless, before the date specified in the notice, being 3 months after the date on which the recognized exchange company first learned of such cessation or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(2) Where the corporation fails to comply with the requirement stated in the notice given under subsection (1), the recognized exchange company shall suspend dealings in the securities of the corporation.

(3) The Commission may require a recognized exchange company to give notice under subsection (1) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar as its share registrar if, in the opinion of the Commission, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company shall comply with the requirement without delay.

(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (2) shall permit the recommencement of dealings in those securities when it is satisfied that the corporation has become

an approved share registrar or has employed an approved share registrar as its share registrar.

15. Power to exempt

(1) The Commission may exempt all or any particular class of securities issued by a corporation specified in a notice under subsection (2) from all or any of the provisions of this Part.

(2) An exemption granted under subsection (1) shall be notified by the Commission to the corporation specified in the notice and to the recognized exchange company which operates the recognized stock market on which the exempted class of securities is, or is proposed to be, listed.

(3) The Commission may withdraw any exemption granted under subsection (1), and the withdrawal shall be notified in the same manner as an exemption is required to be notified under subsection (2).

(4) Where an exemption in respect of any securities of a corporation has been withdrawn under subsection (3), the recognized exchange company shall suspend dealings in those securities unless -

- (a) at the date of notification of the withdrawal, the corporation is an approved share registrar or employs an approved share registrar as its share registrar; or

- (b) within 3 months after the date of notification of the withdrawal, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

16. Appeal against suspension

(1) Where a recognized exchange company suspends dealings in the securities of a corporation under section 14 or 15(4) the corporation may, within 21 days of the suspension, appeal in writing to the Commission against the suspension.

(2) An appeal under subsection (1) shall be accompanied by such submissions in writing as the corporation wishes to make.

(3) On any appeal under subsection (1), the Commission may -

- (a) dismiss the appeal;
- (b) direct the recognized exchange company to permit the recommencement of dealings in the securities;
or
- (c) direct the recognized exchange company to permit the recommencement of dealings in the securities subject to such conditions as the Commission thinks fit.

**17. Waiver of requirements
of Parts 2 and 3**

The Commission may by notice to an applicant or an issuer and a recognized exchange company, modify or waive, subject to such reasonable conditions as the Commission may think fit to impose, any requirement of Parts 2 and 3 where the Commission is of the opinion that -

- (a) the applicant or issuer, as the case may be, cannot comply with the requirement or it would be unreasonable or unduly burdensome for the applicant or issuer to do so;
- (b) the requirement has no relevance to the circumstances of the applicant or issuer, as the case may be; or
- (c) compliance with the requirement would be detrimental to the commercial interests of the applicant or issuer, as the case may be, or to the interests of the holders of its securities.

**18. Suspensions, etc. by a recognized
exchange company to be notified
to the Commission**

(1) If a recognized exchange company intends to suspend dealings in any securities it shall, where reasonably practicable, inform the Commission of its intention prior to such suspension

or, if not so practicable, inform the Commission of the suspension as soon as possible after the suspension.

(2) If a recognized exchange company, after having suspended dealings in any securities, intends to permit dealings in the securities to recommence, it shall, where reasonably practicable, inform the Commission of its intention to permit dealings to recommence or, if not so practicable, inform the Commission as soon as possible after permitting dealings to recommence.

(3) A recognized exchange company shall not cancel the listing of any securities unless it gives the Commission at least 48 hours' notice of its intention to do so.

(4) This section applies only to the suspension of dealings in any securities or the cancellation of dealings in any securities by a recognized exchange company other than in accordance with a direction of the Commission under section 8 or 9.

19. Notices, etc. to be in writing

Any notice or direction under these Rules shall be in writing.

20. Transitional

(1) Where -

- (a) before the commencement of these Rules, any power could have been, but was not, exercised under rule 9 or 10 of the Securities (Stock Exchange Listing) Rules (Cap. 333 sub. leg.) which has been repealed under section 406 of the Ordinance ("the repealed Rules"); or
- (b) before such commencement any power has been exercised under any provision referred to in paragraph (a), and the exercise of the power would, but for the commencement, continue to have force and effect on or after such commencement,

then -

- (c)
 - (i) where paragraph (a) applies, the power may be exercised; or
 - (ii) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,as if the repealed Rules had not been repealed;
and
- (d) the provisions of the repealed Rules shall continue to apply to the exercise of the power and to any matters relating thereto (including any right to make representations in respect of the exercise of the power under rule 9) as if the repealed Rules had not been repealed.

(2) Subject to subsection (3), where before the commencement of these Rules, an application is made under rule 3 of the repealed Rules and immediately before such commencement the application has not been approved, refused or withdrawn, the application shall upon such commencement be treated as an application under section 3 and the provisions of these Rules (except section 3) shall apply accordingly.

(3) Section 5 shall apply only to any part of an application submitted on or after the commencement of these Rules.

Chairman,
Securities and Futures Commission

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Explanatory Note

These Rules are made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (Cap. 571). The Rules -

- (a) prescribe certain requirements to be met before securities may be listed, including requirements for applications for the listing of securities and the employment of approved share registrars;

- (b) provide for the cancellation of the listing of securities if the requirements are not met;
- (c) prescribe the circumstances in which and the conditions subject to which a recognized exchange company shall suspend dealings in securities;
- (d) provide for the filing with the Commission of copies of applications for the listing of securities and information disclosed to the public by issuers and certain other persons; and
- (e) provide for other requirements to be complied with by a recognized exchange company.

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Annex 2

[Cf : sections 25 and 103 of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (TRANSFER OF FUNCTIONS - STOCK EXCHANGE COMPANY) ORDER

(Made by the Chief Executive in Council under section 25 of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Order shall come into operation on the day on which Part III of the Securities and Futures Ordinance (Cap. 571) comes into operation.

2. Application

Nothing in this Order applies to a prospectus offering for subscription or purchase interests in a collective investment scheme, the issue of which -

- (a) would be an offence under section 103(1)(b) of the Ordinance; or
- (b) is exempted from the application of section 103(1)(b) of the Ordinance solely by virtue of section 103(3)(h) of the Ordinance.

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3. Transfer of functions of the Commission

The functions conferred upon the Commission by sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap. 32) are transferred to the Stock Exchange Company -

- (a) to the extent that they relate to any prospectus which is concerned with any shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognized stock market; and
- (b) subject to the reservation that the Commission is to perform the functions concurrently with the Stock Exchange Company.

4. Fees

The Stock Exchange Company is entitled to charge and retain any fees payable in relation to its performance of functions transferred under this Order which, had this Order not been made, would be payable to the Commission under the Securities and Futures (Fees) Rules (L.N. [] of 2002) in relation to the performance by the Commission of such functions.

DRAFT

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 25 of the Securities and Futures Ordinance (Cap. 571). It transfers certain functions of the Securities and Futures Commission in relation to prospectuses under the Companies Ordinance (Cap. 32) to The Stock Exchange of Hong Kong Limited.

Functions conferred upon the SFC under the Companies Ordinance (Cap. 32) to be transferred to the Stock Exchange of Hong Kong Limited under the draft Securities and Futures (Transfer of Functions – Stock Exchange Company) Order

Sections in Companies Ordinance	Details
<i>Part II</i>	
38B(2A)(b)	This section empowers the Commission to specify and authorize the form and manner of publication of any extract from or abridged version of a prospectus.
38D(3)	A company incorporated in Hong Kong shall make its application in writing to the Commission for authorisation for registration of its prospectus with the Companies Registrar.
38D(5)	This section empowers the Commission to authorize/refuse to authorize the registration of a prospectus issued by a company incorporated in Hong Kong with the Companies Registrar.
<i>Part XII</i>	
342C(3)	A company incorporated outside Hong Kong shall make its application in writing to the Commission for authorisation for registration of its prospectus with the Companies Registrar.
342C(5)	This section empowers the Commission to authorize/refuse to authorize the registration of a prospectus issued by a company incorporated outside Hong Kong.



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

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

Hong Kong
May 2002

香港
2002年5月

Consultation Document

i. This consultation document invites public comments on the draft **Securities and Futures (Stock Market Listing) Rules** (the “draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 36(1) of the Securities and Futures Ordinance (5 of 2002) (the “Ordinance”) when it commences and on the draft **Securities and Futures (Transfer of Functions – Stock Exchange Company) Order** (the “draft Order”) which the Chief Executive in Council may promulgate under section 25(1) of the Ordinance.

ii. Subsidiary legislative rules and orders must be subject to negative vetting by the Legislative Council. In addition, for rules that the SFC proposes to make, section 398 of the Ordinance stipulates a mandatory consultation requirement. The SFC now releases the draft Rules and the draft Order, attached as Annex 1 to this document, for public consultation.

iii. The public may obtain copies of this as well as other consultation documents and attachments free of charge at the SFC office and on the SFC Internet website at <http://www.hksfc.org.hk>.

iv. The SFC invites interested parties to submit written comments on the draft Rules and the draft Order, and other matters that might have a significant impact on the Rules and the Order **before 7 June 2002**. Persons wishing to comment should provide details of any organizations whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit their proposed text for amending the Rules and the Order.

v. Written comments may be sent

By mail to: SFC (Stock Market Listing Rules)
Attn: Corporate Finance Division
12/F, Edinburgh Tower
The Landmark
15 Queen’s Road Central
Hong Kong

By fax to: (852) 2810 5385

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: stock_market_listing_rules@hksfc.org.hk

vi. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents. In this connection, please read the Personal Information Collection Statement attached as Annex 2 to this consultation paper.

vii. You might not wish your name to be published by the SFC in connection with your submission. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

Introduction

1. The Hong Kong securities market stakes its credibility on transparency and the integrity of information issued to the investing public. Our regulatory regime is disclosure-based and investor protection is furthered through providing the public with reliable information and enabling investors to make well-informed decisions for themselves. This is the approach adopted internationally in all major jurisdictions.
2. Key to this is information disclosure by companies with public shareholders or which are seeking to raise funds from the public. In reaching public investors, these companies take on an obligation to provide timely, accurate, and full disclosure of material information. Failure to do so is a violation of the public trust and should be met with appropriate enforcement action.
3. An effective disclosure regulatory regime benefits the investing public as well as other market and industry participants. The credibility of a market as being fair and transparent, with proper safeguards on the integrity of information disclosure, translates into a lower cost of funds to issuers of securities, attracts more local and international investors, thus providing further opportunities for intermediaries and professionals.
4. Our enforcement regime for corporate information disclosure has been mostly based on the non-statutory Listing Rules of the Stock Exchange of Hong Kong and on the contractual obligation that a listed company owes to the Exchange under a Listing Agreement. As the Hong Kong market continues to develop and gain in diversity and complexity, there have been increasing suggestions for some degree of statutory support. International regulatory practice also points in this direction.
5. In particular, there is a consensus that effective enforcement is paramount to credible disclosure regulation and the regulatory regime must be backed with:
 - Effective investigatory powers to be available for use in cases of suspected dissemination of false or misleading information to the public; and
 - Effective sanctions – the most serious of which, criminal liability, would be used rarely but its applicability in the most egregious cases would have an overall positive effect.
6. Different jurisdictions provide for this in different ways and the international models continue to evolve. The SFC has carefully reviewed Hong Kong market practice and our legislative framework and now proposes certain minimum changes to the present Securities (Stock Exchange Listing) Rules (to be re-enacted as the Securities and Futures (Stock Market Listing) Rules).
7. Under the draft Rules, companies that disseminate information to public investors pursuant to applicable rules or laws will have to file a copy of the disclosure materials with the SFC. Accordingly, under existing statutory laws concerning the provision of false or misleading information, re-enacted in

section 384 of the new Ordinance, any person that intentionally or recklessly provides false or misleading information when making the disclosure (in other words, any company that lies to the public) would be subject to the statutory powers of the SFC. The SFC will be able to employ its existing investigatory powers in establishing the facts and gathering evidence. In appropriate cases, the SFC may bring (or refer to the Department of Justice to bring) the offenders to prosecution in the courts.

8. Prospectuses and other listing documents constitute the single most important category of corporate information disclosure to the public. Disclosure in these materials forms a key element of the relationship between a company and its public shareholders. Accordingly, the draft Rules also require companies seeking to list their securities for trading in the Hong Kong public market to submit their application materials as a statutory filing to the SFC.
9. There would be no additional costs to the companies or the market. The draft Rules provide that a company may save the administrative step of filing with the SFC by authorizing the Exchange to file the materials on its behalf. The Exchange will continue to discharge its prospectus-vetting and authorization function.
10. The net effect of the draft Rules is to bring the Hong Kong regulatory regime more in line with international practice in providing for a statutory regulator of corporate information disclosure to the public. This is important for effective enforcement and the credibility of our disclosure-based regulation.

The Draft Rules

11. Most of the provisions in the draft Rules are copied from existing laws. These include clauses 1– 4, 7– 10, and 12– 14, which are in the present Securities (Stock Exchange Listing) Rules, and clauses 11 and 15, which are taken from the existing Securities (Stock Exchange Listing) (Approved Share Registrar) Rules. These provisions have been operating smoothly and the market is well accustomed to their application in practice. Any changes reflected in the draft Rules are only technical in nature and are intended to make the language more user-friendly.
12. Clauses 5 and 6 relate to the policies mentioned above on the regulation of corporate information disclosure to the public. Specifically, clause 6 requires companies whose securities are listed on the Stock Exchange to dual-file their public disclosure materials with the SFC. This will not change the disclosure content requirements, most of which are set out in the Stock Exchange Listing Rules and will continue to be administered by the Exchange. It will, however, attach statutory liability under section 384 of the Ordinance to any person who intentionally or recklessly makes false or misleading information disclosure.
13. Corporate information disclosure to the public is also made pursuant to the SFC Codes on Takeovers and Mergers and Share Repurchases. Identical disclosure is usually required by the Stock Exchange Listing Rules, but not in

all cases. To address this, Clause 6 also specifically refers to disclosure made pursuant to these Codes.

14. Since the disclosure materials will be statutory filings with the SFC, the SFC will be able to invoke its powers under section 182 of the Ordinance to conduct the necessary investigations into cases of suspected false or misleading information disclosure to the public. If there is sufficient evidence and prosecution is appropriate, the SFC may refer the case to the Department of Justice or, under section 388, itself prosecute the matter before a magistrate.
15. In the event that an investigation uncovers suspected wrongdoing in areas other than false or misleading disclosure, the SFC may refer the matter to another regulatory body or, if the matter fall within the jurisdiction of the SFC, itself take appropriate further action. (Examples include corporate fraud, which may be a matter for the Police Commercial Crime Bureau, or market manipulation and misconduct by intermediaries, both of which are matters for SFC enforcement.)
16. Where the false or misleading disclosure has a proven market manipulation element, it might be possible to bring a civil action in front of the new Market Misconduct Tribunal or criminal prosecution in the courts. (Sections 277 and 298 of the Ordinance requires proof of the false or misleading information being likely to induce a subscription, sale or purchase in securities or likely to maintain, increase, reduce, or stabilize the price of securities.) In addition, following an investigation, the SFC may pass the evidence it has gathered to the Stock Exchange for them to consider potential disciplinary action under the Listing Rules.
17. Prospectuses and other listing documents constitute the single most important category of disclosure materials. Clause 5 recognizes this and requires companies seeking to access the public market to file a copy of its listing application made to the Stock Exchange with the SFC. In line with the international model practiced in all major jurisdictions, the SFC will be able to comment on the draft disclosure materials (principally the prospectus) and object to the company accessing the public market on the basis of insufficient or inadequate disclosure.
18. Under sections 40A and 342F of the Companies Ordinance, any person who authorizes a prospectus containing any untrue statements commits an offence, unless he proves that the untrue statement was immaterial or he had reasonable grounds for believing the statement to be true. Under the new Ordinance, the SFC may invoke its section 182 investigatory power for such suspected false or misleading disclosure in prospectuses. If appropriate, the SFC may bring (or refer to the Department of Justice to bring) prosecutorial action.

Saving Market Costs and Administrative Burden

19. The SFC recognizes that cost is an important consideration for market users. To avoid unnecessary administrative burden, the draft Rules allow a company

or other person to file the required disclosure materials only with the Stock Exchange, provided that the person has authorized the Exchange to make the statutory filing to the SFC on its behalf. There will be no additional filing or compliance costs. By taking this route, the company or other person will also avoid inadvertently forgetting to file its disclosure materials with the SFC.

20. In addition, the public disclosure materials a company files under clause 6 will not be subject to any SFC pre-vetting. There will be no additional steps in the administrative process or any time delay in disseminating the information.
21. In respect of prospectuses and other initial-listing disclosure materials, the Stock Exchange will remain the frontline regulator in vetting and authorizing the documents. Listing applicants will continue to make their applications to the Stock Exchange, which, with the authorization of the applicants, will make the appropriate filings with the SFC. The power of the SFC under clause 5 will be a reserve power only. The SFC will enter into a new Memorandum of Understanding with the Exchange on the administrative arrangements and how the SFC will continue to rely on the frontline regulation by the Exchange.

The Draft Order

22. In order that the Stock Exchange can continue to act as the frontline regulator of listed companies and listing applications, the present transfer (from the SFC to the Exchange) of prospectus-vetting and authorization function will remain. Accordingly, the draft Order is substantially identical to the present Securities (Transfer of Functions) Order.
23. The Ordinance uses a new defined concept of “collective investment schemes” to include mutual funds and other pooled investment vehicles. The general intention is that these products should be subject to authorization by the SFC if marketed to the public. The present Transfer of Functions Order carves out mutual funds; the power to authorize prospectuses for these products has not been transferred from the SFC to the Stock Exchange. Similarly, the new draft Order will carve out collective investment schemes that should be subject to SFC authorization.

International Comparison

24. The net effect of the draft Rules and the draft Order is to bring the Hong Kong regulatory regime more in line with international practice in providing for a statutory regulator of corporate information disclosure to the public. All major jurisdictions provide for statutory investigation and enforcement against false or misleading disclosure. Given the widely accepted disclosure-based approach, the use of statutory powers is key to effective regulation and public credibility.
25. The US Securities and Exchange Commission, the UK Financial Services Authority, and the Australian Securities and Investments Commission are

empowered by legislation to conduct statutory investigations into public disclosure abuses. The laws in these jurisdictions also make violations of the relevant disclosure requirements criminal offences. The effect of the proposed draft Rules will be in line with this international practice.

26. The SEC and FSA are also able to seek fines and other civil penalties for violation of disclosure requirements in administrative proceedings, and ASIC has recently been empowered to apply for civil sanctions in the courts. The SFC does not propose to introduce this option at present but will keep the possibility under review as investigatory experience accumulates.

Checks and Balances

27. The draft Rules do not introduce any new enforcement powers for the SFC and only enable the SFC to invoke its existing investigatory and prosecutorial powers in cases of suspected false or misleading corporate information disclosure. Checks and balances currently in place or to be established under the Ordinance will automatically apply. These include built-in safeguards (required proof of mens rea and other elements as clearly set out in relevant sections of the Ordinance) and various internal control mechanisms (as already explained in detail in previous public consultation documents). There are also a number of external mechanisms of checks and balances, including judicial review by the courts, the Process Review Panel, the Ombudsman, and the Independent Commission Against Corruption.
28. The power of the SFC under clause 5 will be a reserve power. Nevertheless, it will be subject to the same mechanisms of checks and balances as are generally applicable to the work of the SFC. In addition, we propose that, where the SFC exercises its reserve power, the decision will be subject to the full-merit review of the new Securities and Futures Appeals Tribunal.

No Merit Regulation of Business Activities

29. The draft Rules enable the SFC to perform more effectively its role in regulation of corporate information disclosure. The SFC will not be regulating corporate activities or transactions. For example, the SFC will not attempt to determine what transactions are permissible between a listed company and its connected parties, nor whether a rights issue is at an appropriate price. Under our disclosure-based regulation, such commercial decisions are left to the company's management, board of directors, and shareholders (with relevant voting and other procedures as set out in the Stock Exchange Listing Rules). The merit of a transaction is not a matter for regulators to determine. Our object is to ensure that public investors receive timely, accurate, and full information disclosure in order to make the best judgment of the events for themselves.

Other Matters

30. Investigation of disclosure abuse is an inherently difficult task. The complex nature of corporate and financial activities makes building a case a painstaking exercise. Furthermore, most companies listed in Hong Kong have substantial operations outside of the territory; important evidence and witnesses might be unavailable. That the SFC will have to gather sufficient evidence to establish a case to the criminal standard of proof, i.e., beyond all reasonable doubt, will also raise very high the bar for successful enforcement.
31. Nevertheless, the SFC is committed to employing all the tools available to it to pursue persons who provide false or misleading information (i.e., lie) to the public and the market. The SFC will re-deploy internal resources and recruit for further market expertise where necessary to carry out this disclosure regulatory function. In cases involving cross-jurisdiction issues, we will also need to seek the co-operation of fellow regulators overseas under formal memoranda of understanding or informal arrangements.

Public Consultation

32. Strengthening our enforcement of disclosure regulation in Hong Kong is an important part of the overall effort to enhance the transparency, credibility, and competitiveness of our securities market. The proposals in the draft Rules and draft Order will bring Hong Kong further in line with the international model of having a disclosure regulator able to employ the necessary tools to promote the quality of corporate information disclosure.
33. The SFC would welcome views and comments from the public on the above proposals, the draft Rules and the draft Order, and any related matters.

Securities and Futures Commission
6 May 2002

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(NO. 5 OF 2002, SECTION 36(1))

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SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(Made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002) after consultation with the Financial Secretary and the Stock Exchange Company.)

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (5 of 2002).

2. Interpretation

In these rules, unless the context otherwise requires –

"applicant" means a corporation which has made an application under section 3;

"application" means an application made under section 3 and all documents in support of or in connection with the application including any replacement of or amendment or supplement to such application and the filing obligation in section 5(1) applies separately to any such replacement, amendment or supplement;

“approved share registrar” means a share registrar who is member of an association of persons approved, for the purposes of these Rules, by the Commission under section 15;

"chief executive", in relation to a corporation, means a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"director", in relation to the Commission, means a director appointed under Schedule 2 of the Ordinance;

"expert" means an expert within the meaning of section 38C of the Companies Ordinance (Cap. 32);

"issuer" means a corporation or other body whose securities are listed, or proposed to be listed, on a recognized stock market;

“share registrar” means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market.

PART II

STOCK MARKET LISTING

3. Requirements for listing applications

An application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant must –

- (a) comply with the rules and requirements of the recognized exchange company (except to the extent that compliance is waived or not required by the recognized exchange company);
- (b) comply with any provision of law applicable;
- (c) contain such particulars and information which, according to the particular nature of the applicant and the securities for the listing of which application is being made, 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 such securities;

- (d) state the name of the applicant;
- (e) give particulars of the numbers, classes and denominations of the securities which are the subject of the application;
- (f) give particulars of the proposed manner of issue of the securities, whether by offer for sale, public subscription, private placing, introduction or otherwise;
- (g) state, in so far as is known, or may be ascertained after reasonable enquiry, by the directors of the applicant, the name and address of any person who at the time of the application is a substantial shareholder of the applicant or of another corporation of which it is a subsidiary, and the extent of his shareholding in the applicant or that other corporation;
- (h) give particulars of the qualifications and experience of the directors and chief executive of the applicant;
- (i) specify the purpose for which the applicant intends to use the proceeds (if any) of the issue or sale of the securities to which the application relates, or the portion of such proceeds to be received by the applicant; and
- (j) specify the qualifications of any person whose opinion as an expert is referred to in any document included in the application.

4. Exemptions from section 3

Section 3 does not apply to the listing of any –

- (a) securities issued or allotted –

- (i) by a capitalization issue pro rata (apart from fractional entitlements) to existing shareholders, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they are not issued or allotted because of restrictions imposed by legislation of that place; or
 - (ii) pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;
- (b) securities offered on a pre-emptive basis, pro rata (apart from fractional entitlements) to existing holdings, to holders of the relevant class of shares in the corporation, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they were not offered because of restrictions imposed by legislation of that place;
- (c) shares issued in substitution for shares listed on a recognized stock market, if the issue of the shares does not involve any increase in the issued share capital of the corporation.

5. Copy of listing materials to be filed with the Commission

(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.

(2) 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.

(3) The recognised exchange company must not list the securities to which the application relates unless –

- (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
- (b) the Commission has notified the recognized exchange company and the applicant that it does not object to the listing.

(4) 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.

(5) The period specified for the purposes of subsection (3) is 10 business days –

- (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
- (b) where the Commission has given notice under subsection (4), from the date when the further information is supplied.

(6) 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 –

- (a) the application in respect of the listing does not comply with a requirement specified in section 3;
- (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;

- (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
- (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

(7) A notice given under subsection (6) must be accompanied by a statement specifying the reasons for the objection.

6. Copy of ongoing disclosure materials to be filed with the Commission

(1) 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.

(2) 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.

(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 –

- (a) filed with the recognized exchange company concerned; and
- (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.

PART III

SUSPENSION OF DEALINGS

7. Suspension of dealings in securities

- (1) Where it appears to the Commission that –
 - (a) any materially false, incomplete or misleading information has been included in any –
 - (i) prospectus, circular, or other document, including an introduction document and a document containing proposals for an arrangement or reconstruction of a corporation, issued in connection with a listing of securities on a recognized stock market;
 - (ii) announcement, statement, circular or other document made or issued by or on behalf of an issuer in connection with its affairs; or
 - (b) it is necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on the recognized stock market it operates;
 - (c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market; or

- (d) there has been a failure to comply with any condition imposed by the Commission under section 8(3)(c) relating to the listing of, or dealings in, any securities,

the Commission may direct, by notice to the recognized exchange company concerned, the recognized exchange company to suspend all dealings in any securities specified in the notice.

(2) A recognized exchange company must comply with any notice given under subsection (1) without delay.

8. Powers of the Commission upon the suspension under this Part of dealings in any securities

(1) An issuer which is aggrieved by the exercise of the Commission's powers under section 7 may make representations in writing to the Commission and where an issuer makes such representations, the Commission must notify the recognized exchange company concerned.

(2) In respect of the exercise of the Commission's powers under section 7, the recognized exchange company concerned may make representations in writing to the Commission irrespective of whether representations in respect of that exercise of powers have been made by an issuer under subsection (1) and where the recognized exchange company makes such representations, the Commission must notify the issuer concerned.

(3) Where the Commission has –

- (a) directed a recognized exchange company under section 7(1) to suspend dealings in any securities; and
- (b) considered any –
 - (i) representations by the issuer under subsection (1);

- (ii) representations by the recognized exchange company under subsection (2); and
- (iii) further representations by the issuer or the recognized exchange company,

the Commission by notice to the recognized exchange company concerned may –

- (c) permit dealings in the securities to recommence subject to such conditions as the Commission may think fit to impose, being conditions of the nature specified in subsection (4); or
- (d) direct the recognized exchange company to cancel the listing of the securities on its recognized stock market if the Commission –
 - (i) is satisfied that there has been a failure to comply with the requirements in respect of listing set out in these Rules or in any other rules made under section 36 of the Ordinance; or
 - (ii) considers that such action is necessary to maintain an orderly market in Hong Kong,

and the recognized exchange company must comply with that direction without delay.

- (4) The conditions which may be imposed under subsection (3)(c) are –
 - (a) where the Commission has exercised its powers under section 7(1)(a) or (d), conditions imposed with the object of ensuring, so far as is reasonably practicable, that the issuer remedies the default by reason of which the suspension of dealings was directed, provided that the Commission must permit such dealings unconditionally without delay if it is of the view that there has been no such default;

- (b) where the Commission has exercised its powers under section 7 (1)(b), such conditions as the Commission may consider necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on its recognized stock market;
- (c) where the Commission has exercised its powers under section 7(1)(c), such conditions as the Commission may consider to be in the interest of the investing public or in the public interest, or to be appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market.

(5) In subsection (3) "further representations" means representations either in writing or orally or both in writing and orally as the issuer or the recognized exchange company concerned may determine which are submitted within such reasonable time as the Commission may determine.

(6) The functions of the Commission under this section may only be exercised by a meeting of the Commission and are not delegable.

(7) A director of the Commission who made the decision in the exercise of the Commission's powers under section 7 may not participate in the deliberations or voting of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers.

(8) Notwithstanding subsection (7), the director referred to in that subsection may attend any meeting or proceeding of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers and may make such explanations of his decision as he thinks necessary.

9. Provisions supplementary to sections 7 and 8

(1) At any hearing held by the Commission to receive oral representations made to it under section 8(3), the issuer and the recognized exchange company each have the right to be represented by its counsel or solicitor.

(2) If representations are made under section 8(1) or 8(2) against a direction made under section 7(1) then, pending the decision of the Commission under section 8 (3), all dealings in the securities concerned shall continue to be suspended.

10. Restriction on re-listing

No security the listing of which has been cancelled under section 8 may be listed again on a recognized stock market except in accordance with Part II.

11. Waiver of requirements of Parts II and III

The Commission may by notice to an applicant or an issuer, as the case may be, and a recognized exchange company, modify or waive, subject to such reasonable conditions as the Commission may think fit to impose, the requirements of any provision of Parts II and III where the Commission is of the opinion that –

- (a) the applicant or issuer, as the case may be, cannot comply with the provision or it would be unreasonable or unduly burdensome for the applicant or issuer to do so;
- (b) the provision has no relevance to the circumstances of the applicant or issuer, as the case may be; or

- (c) compliance with the provision would be detrimental to the commercial interests of the applicant or issuer, as the case may be, or to the interests of the holders of its securities.

PART IV

APPROVED SHARE REGISTRARS

12. Approval of share registrars

- (1) The Commission may approve an association of persons as an association each of whose members must be an approved share registrar for the purposes of these Rules.
- (2) The Commission may cancel the approval of any association of persons approved under subsection (1).
- (3) The Commission must maintain a list of associations of persons approved under subsection (1).

13. Securities not to be listed where approved share registrar not employed

No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant may be approved by the recognized exchange company concerned unless the applicant is an approved share registrar or employs an approved share registrar.

14. Suspension of dealings on cessation of employment etc. of approved share registrar

- (1) If –
 - (a) the securities of a corporation are listed on a recognized stock market; and

- (b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar;

the recognized exchange company concerned must suspend dealings in those securities unless within 3 months after the date on which the recognized exchange company first learned of such cessation or before the expiry of 21 days' notice given under subsection (2), whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(2) Before suspending dealings in the securities of a corporation under subsection (1) the recognized exchange company concerned must give notice in writing to the corporation warning the corporation of its intention to suspend dealings in the corporation's securities unless, before the date specified in the notice, being the date on which the period of 3 months specified in subsection (1) expires or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(3) The Commission may require a recognized exchange company to give notice under subsection (2) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar if, in the Commission's opinion, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company must comply with such a requirement without delay.

(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (1) must permit the recommencement of dealings in those securities when it is satisfied that the corporation has become an approved share registrar or has employed an approved share registrar as its share registrar.

15. Power to exempt

(1) The Commission may exempt all or any particular class of securities issued by a specified corporation from all or any of the provisions of this Part.

(2) An exemption granted under subsection (1) must be notified in writing by the Commission to the specified corporation and to the recognized exchange company which operates the recognised stock market on which the exempted class of securities are, or are proposed to be, listed.

(3) The Commission may withdraw any exemption granted under subsection (1), and such withdrawal must be notified in the same manner as an exemption is required to be notified under subsection (2).

(4) Where any securities of a corporation are listed on a recognised stock market and have been exempted under subsection (1), in the event of a withdrawal under subsection (3) of the exemption the recognised exchange company concerned must suspend dealings in those securities unless at the date of notification of the withdrawal the corporation is, or within 3 months after the date the corporation becomes, an approved share registrar or employs an approved share registrar as its share registrar.

16. Appeal against suspension

(1) Where a recognized exchange company suspends dealings in the securities of a corporation under sections 13 or 14 the corporation may within 21 days of the suspension appeal in writing to the Commission against the suspension.

(2) An appeal under subsection (1) must be accompanied by such submissions in writing as the corporation wishes to make.

(3) On any appeal under subsection (1), the Commission may –

- (a) dismiss the appeal;
- (b) direct the recognized exchange company to recommence dealings in the securities; or
- (c) direct the recognized exchange company to recommence dealings in the securities subject to such conditions as the Commission thinks fit.

PART V

MISCELLANEOUS

17. Suspensions, etc. by recognized exchange company to be notified to the Commission

(1) If a recognized exchange company intends to suspend dealings in any securities it must, where reasonably practicable, inform the Commission of its intention prior to such suspension and, if not so practicable, inform the Commission of the suspension as soon as possible after the event.

(2) A recognized exchange company, after having suspended dealings in any securities, may not permit dealing in them to recommence without first giving notice to the Commission.

(3) A recognized exchange company may not cancel the listing of any securities unless it gives the Commission 48 hours' notice of its intention to do so.

18. Notices, etc. to be in writing

Any notice or direction under these rules must be in writing.

Chairman
Securities and Futures Commission

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002). They prescribe certain requirements to be met before securities may be listed including requirements for applications for the listing of securities and the employment of approved share registrars and provide for the cancellation of the listing of any specified securities by the Commission if the requirements for listing are not met. The Rules prescribe the circumstances in which and the conditions subject to which a recognized exchange company must suspend dealings in specified securities. They also prescribe for the filing with the Commission of copies of applications for the listing of securities and information disclosed to the public by issuers and certain other persons under the rules and other requirements of a recognized exchange company.

SECURITIES AND FUTURES
(TRANSFER OF FUNCTIONS – STOCK EXCHANGE COMPANY) ORDER

(Made by the Chief Executive in Council under
section 25(1) of the Securities and Futures
Ordinance (No. 5 of 2002))

1. Commencement

This Order shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (No. 5 of 2002).

2. Interpretation

In this Order, unless the context otherwise requires, the expressions "prospectus" (招股章程), "share" (股份) and "debenture" (債權證) have the respective meanings assigned to them by the Companies Ordinance (Cap. 32).

3. Application

Nothing in this Order applies to a prospectus offering interests in a collective investment scheme, the issue of which –

- (a) would be an offence under section 103(1)(b) of the Ordinance; or
- (b) is exempted from the application of section 103(1)(b) solely by virtue of section 103(3)(h) of the Ordinance.

4. Transfer of functions of the Commission

The functions conferred upon the Commission by sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap. 32) are transferred to the Stock Exchange Company to the extent that they relate to any prospectus which is concerned with any shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognised stock market.

5. Fees

The Stock Exchange Company is entitled to charge and retain any fees for the performance of functions transferred under this Order which, had this Order not been made, would be payable to the Commission under the Securities and Futures (Fees) Rules (L.N. [] of 2002) in relation to the performance by the Commission of such functions.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 25(1) of the Securities and Futures Ordinance (No. 5 of 2002). It transfers certain functions of the Securities

and Futures Commission in relation to prospectuses under the Companies Ordinance (Cap.32) to the Stock Exchange of Hong Kong Limited.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection by the securities and Futures Commission (“SFC”), what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to the draft amendments proposed to be made to the current Financial Resources Rules, under section 28 of the Securities and Futures Commission Ordinance, may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Document. The names of persons who submit comments on the Consultation Document together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Document, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer,
The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen's Road Central Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.



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

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

Hong Kong
July 2002

香港
2002年7月

Introduction

1. On 6 May 2002 the SFC issued a consultation paper (“Consultation Paper”) on the draft Securities and Futures (Stock Market Listing) Rules (“draft Rules”) and the draft Securities and Futures (Transfer of Functions – Stock Exchange Company) Order (“draft Order”) to be made under the Securities and Futures Ordinance (5 of 2002) (“Ordinance”). The draft Rules and draft Order will be subsidiary legislation under the Ordinance and deal with effective regulation of information disclosure by listed companies and listing applicants.
2. The proposals in the draft Rules and draft Order received broad support from the public; press reports following the release of the Consultation Paper also reflected this. They were generally viewed as a positive move to improve the quality of corporate information disclosure.
3. The consultation period ended on 7 June 2002 but late submissions were also accepted and considered. A total of 11 submissions were received, including one submission from a law firm made on behalf of 4 financial institutions, one submission from a professional body summarizing a survey conducted of its members, and submissions from other professional bodies, practitioners, and a market organization. A profile of the respondents is set out in the Annex.
4. The majority of the submissions were in favour of the proposed disclosure arrangements and regulation by the SFC. Most of the detailed comments relate to operational and technical issues. There were no comments on the draft Order. This document, to be read in conjunction with the Consultation Paper, analyses the consultation submissions and sets out the conclusions.

Consultation Conclusions

General

5. Under the draft Rules, companies that disseminate information to the public pursuant to applicable rules or laws will have to file a copy of the disclosure materials, including any prospectuses and listing documents, with the SFC. Any person who intentionally or recklessly provides false or misleading information when making the disclosure (i.e., any company that lies to the public) would be subject to the statutory powers of the SFC. The SFC will be able to employ its existing investigatory powers in gathering evidence and establishing the facts. In appropriate cases, the SFC may bring (or refer to the Department of Justice to bring) offenders to prosecution in the courts.
6. Most of the respondents supported and welcomed the proposals. They saw the draft Rules as a positive regulatory measure to enhance corporate governance as well as the transparency, credibility, and competitiveness of the Hong Kong securities market. One of the respondents also remarked that the proposals would facilitate and enhance the role of the Stock Exchange as the frontline regulator of listing matters, while allowing the market to continue to enjoy the benefits of the flexibility of the non-statutory Listing Rules.
7. Two of the respondents suggested that in addition to the proposal, the SFC should take on entirely the prospectus vetting and listing regulatory functions, which would be in line with development overseas. It was suggested that the then proposed abolition of the Listing Committee could remove a vital check and balance mechanism within the Exchange.

Criminal liability on the provision of false or misleading information

8. The draft Rules extend criminal liability under existing laws, re-enacted as section 384 of Ordinance, to persons who intentionally or recklessly provide false or misleading information in listing documents and on-going disclosure materials (i.e., persons who lie to the investing public).
9. The majority of respondents supported this proposal. However, two respondents believed existing civil and criminal provisions under the Ordinance and the Companies Ordinance deal adequately with false or misleading statements or communications concerning securities and futures contracts. They queried whether statutory filing of disclosure documents with the SFC would provide any greater investor protection.
10. One of these two respondents noted that false or misleading disclosure under section 384 of the Ordinance has lower threshold for liability than offences under sections 277 and 298 of the Ordinance (on disclosure of false or misleading information inducing transactions). It was further noted that the SFC would not need to give any warning of potential liability before receiving filings.

11. The SFC would like to point out that sections 277 and 298 do not deal directly with the obligation of truthful disclosure by listing applicants or listed companies.
12. Our securities market is founded on proper disclosure of reliable information. Intentional and reckless provision of false or misleading information to the public undermines this principle and those responsible should be held to account. There is a general expectation that this will be the case; it would be wrong to require a specific warning before each filing is made.
13. A respondent queried whether the Rules would apply to sponsors, arrangers, or lead managers. The SFC confirms that these persons are not considered “applicants” or “issuers” as defined in the Rules. However, professionals and intermediaries are also reminded of the important role they play and their associated duties, many of which are set out in the SFC Corporate Finance Adviser Code of Conduct and in the Stock Exchange Listing Rules. Failure to satisfy these responsibilities could lead to disciplinary action.

Definition and scope of listing applications

Definition of listing application

14. In the draft Rules, “application” is defined to include all documents in support of or in connection with an application, including any replacement of, or amendment or supplement to, such application.
15. Two respondents believed that the definition of listing “application” was too wide, because it would include any communication from an issuer in response to a request from the Exchange for additional information, clarification or elaboration in connection with an application.
16. The SFC disagrees. The listing applicant is applying for access to the market to raise funds from public investors. The information it provides to the public or to the regulators in order to gain access is crucially important. Those who intentionally or recklessly provide false or misleading information during this process should be held liable.
17. One respondent suggested that there should be a cut-off time for the provision of such communication. The SFC agrees with this suggestion and has amended the draft Rules accordingly.

Requirements for a listing application

18. As in the existing Securities (Stock Exchange Listing) Rules, clause 3 of the proposed new Rules sets out a list of requirements for a listing application.
19. Two respondents believed that these items should be a matter for the Listing Rules of the Exchange and, where appropriate, the Third Schedule of the Companies Ordinance. In addition, certain requirements in clause 3 may not always be relevant to particular types of listed products.

20. The SFC agreed with the suggestions and has amended the draft Rules accordingly.

Exemptions from the requirements of a listing application

21. As in the existing Securities (Stock Exchange Listing) Rules, clause 4 of the proposed new Rules sets out a list of exemptions from the requirements of a listing application.
22. Two respondents believed that the existing list of exemptions should be expanded. One respondent also suggested that the SFC should have the flexibility to specify additional exemptions in order to be responsive to market development.
23. The SFC agrees. The draft rules have been amended to exempt shares issued pursuant to an employee stock option scheme that has been approved by shareholders in a general meeting. The list of exemptions will be reviewed from time to time and further amended in light of market development.

Dual filing and vetting by the Exchange and the SFC

Dual filing

24. Clause 5 of the draft Rules requires companies seeking access to the public market to file a copy of its listing application made to the Exchange with the SFC. In order to avoid duplication, the clause provides that a company may simply authorize the Exchange to making the filing on its behalf.
25. This cost saving measure was welcomed by the respondents. One respondent believed that flexibility should be afforded to the Exchange as to the extent and timing of the information to be provided to the SFC. The respondent also believed that the SFC should channel its request for further information and the applicant should channel its response through the Exchange.
26. The SFC has deliberately framed the draft Rules to ensure that the listing process is not burdened with additional red tape. Under the “deemed filing” provisions, listing applicants and listed issuers satisfy their obligations once they file with the Exchange, provided that they have authorized the Exchange to forward a copy to the SFC. The administrative arrangements between the Exchange and SFC are matters for the two organizations. (With the enactment of the new Ordinance, the SFC and the Exchange would need to revise the Memorandum of Understanding between the two bodies. The new MOU will be published as soon as it is ready.) Indeed, since the Exchange is already moving towards electronic submission/reception and dissemination of disclosure documents, forwarding to the SFC can be automatic. By using FinNet, the communication would also be secure.

Dual vetting

27. In line with the model practiced in all major overseas markets, under the draft Rules, the SFC will be able to comment on the draft listing disclosure materials (principally the prospectus) and object to a company accessing the public market on the basis of insufficient or inadequate disclosure within a 10-business-day period.
28. Some respondents felt that this might result in duplication of effort between the SFC and the Exchange, create uncertainty as to the regulatory roles of the two bodies, and potentially increase compliance costs. One respondent specifically argued that the “dual” approach is unnecessary as the SFC should take over entirely all vetting and listing regulatory functions.
29. The SFC would like to make clear that, with the “deemed filing” provisions in the draft Rules, the Exchange will remain the point of contact with listing applicants and will conduct the frontline review. Arrangements will be made between the SFC and the Exchange to ensure consistency of comments given to the listing applicant.
30. The proposal should not add to compliance costs. Providing truthful information to the public is an existing obligation and all relevant compliance mechanisms should be in place. The SFC will raise queries and take enforcement action only if there are grounds to suspect that there is a disclosure problem.
31. Some respondents commented that the 10 business days period is too long and might lead to delay in the listing process. In particular, one of the respondents suggested that the period should be shortened for derivative warrants and structured products.
32. The SFC would like to clarify that the 10-day period would run concurrently with the Exchange’s vetting timetable, which usually takes a minimum of 25 clear business days. It would not prolong the listing approval process. The SFC also agrees with the suggestion that certain structured products are marketed with standard disclosures. To address the different considerations arising out of varied products, the SFC will take into account the special nature of different products and confirms its “no objection” to the listing in as short a timeframe as possible.
33. One respondent suggested that there should be a cut-off time for further documents to be subject to the 10-day vetting period. The SFC agrees with this suggestion and has amended the draft Rules accordingly.

Objection to listing applications

34. Clause 5(6) of the draft Rules empowers the SFC to object to a listing if the applicant does not comply with the applicable rules and requirements or if it appears that the listing would not be in the interest of the investing public or in the public interest.

35. Some respondents queried what steps the SFC will have to take to be in an informed position to consider whether to object to a listing. Two respondents also felt that this might contradict the statement in the Consultation Paper that the SFC will not be looking at the merits of a transaction.
36. The SFC would like to make clear that it will not attempt to assess the commercial merits of each listing applicant. The draft Rules provide that SFC may ask a listing applicant for further information. This is standard practice in developed markets and is part and parcel of disclosure-based regulation.
37. The “interest of the investing public and public interest” criterion mirrors clause 7(1)(c) of the draft Rules, which is based on a similar provision in the existing Securities (Stock Exchange Listing) Rules empowering the SFC to suspend dealings in the interest of the investing public or in the public interest.
38. One respondent raised the need to clarify follow-up actions or consequences arising from objection by the SFC and to spell out the subsequent procedures.
39. The SFC would like to repeat its explanation in the Consultation Paper that, in the event it makes an objection, the applicant would have a full right of appeal to the independent Securities and Futures Appeal Tribunal for a fresh review. (This would require amendments to the list of specified decisions in Schedule 8 to the Ordinance.) The procedures are set out in Part XI of the Ordinance and related rules.

Suspension of dealing

40. The draft Rules provide for suspension of dealing in a security by the SFC under certain circumstances. Clauses 8 and 9 then provide for the making of representations by the issuer or the Exchange.
41. One respondent suggested that the sponsor, arranger, or lead manager to a transaction should have the ability to make representations to the SFC with respect to a listing application.
42. The SFC would like to clarify that clauses 8 and 9 deal with the suspension of dealings, not listing applications. Financial advisors would, of course, be able to make representations on behalf of the issuers.
43. Professionals and intermediaries may also make representations on behalf of a listing applicant, provided, of course, that the applicant authorizes so and takes responsibility for the truthfulness of the information.
44. Clause 17 of the draft Rules requires the Exchange to inform the SFC of its intention to suspend or permit recommencement of dealings in any securities before or as soon as practicable after the event.

45. One respondent felt that the Exchange should have the flexibility to inform the SFC of a suspension as soon as reasonably practicable, while another believed that the Exchange should be able to permit a resumption of trading following a suspension it has itself instigated without the prior approval of the SFC.
46. The SFC would like to clarify that, in the case of a suspension, the draft Rules already provide that, if it is not reasonably practicable for the Exchange to inform the SFC of its intention to suspend, it need only to inform the SFC as soon as possible after the event. In the case of resumption, the draft Rules only require the Exchange to give prior notice to SFC and no approval need be sought.

Approved share registrar

47. As in the existing Securities (Stock Exchange Listing) (Approved Share Registrar) Rules, clause 13 of the draft Rules requires a listing applicant to appoint an approved share registrar in Hong Kong to maintain its register of members.
48. Two respondents felt that the requirement to maintain a share register in Hong Kong should only apply to issuers whose shares, and not other types of securities, are listed on the Exchange.
49. To extent that the issue is, as the respondents believe, a matter of technical clarification of an established interpretation of existing laws, SFC would agree with the suggestion. However, as the issue also relates to stamp duty, SFC would need to seek confirmation from the Inland Revenue Department. It will make the appropriate amendment to the draft Rules accordingly.

Securities and Futures Commission
July 2002

Profile of respondents	Annex
<u>Nature of business</u>	<u>Number</u>
Legal advisers (<i>Note</i>)	2
Accounting firms	2
Financial institutions	1
Professional bodies	5
Other organizations	1
	<hr/> 11

Note: One legal adviser made its submission on behalf of 4 financial institutions

**Draft Securities and Futures (Stock Market Listing) Rules
Summary of comments received and SFC's response***

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
(a) Overall view				
1	General		<p><i>Respondent A/ISD/HKSI/HKICS/HSBC/PWC/Respondent B</i></p> <p>Support and welcome the proposals.</p> <p><i>ISD/ HKICS</i></p> <p>Positive regulatory measure to enhance transparency of listed companies and corporate governance in Hong Kong.</p> <p><i>Respondent A</i></p> <p>Will enhance transparency, credibility, and competitiveness of our securities market.</p> <p>Will facilitate and enhance the role of the Exchange as the frontline regulator of listing matters, while allowing the market to continue to enjoy benefits of the flexibility of non-statutory Listing Rules of the Stock Exchange.</p> <p><i>HKSI/ Respondent B</i></p> <p>In addition to the proposals, the SFC should take on entirely the prospectus vetting and listing regulatory functions, which would be in line with overseas development.</p>	Noted

* SFC received no public comments on the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
			<p><i>Respondent B</i></p> <p>With the proposed abolition of the Listing Committee, a vital check and balance within the Exchange will be removed.</p> <p><i>HKSPA</i></p> <p>Support prosecution of persons who intentionally or recklessly provide false or misleading information to the public, but object to duplication of work between SFC and the Exchange.</p>	<p>Decision has been made to reform the listing process so as to combine and enlarge the Main Board and GEM Listing Committees.</p> <p>With the “deemed filing” provisions in the draft Rules, the Exchange will remain the point of contact with listing applicants and will conduct the frontline review. Arrangements will be made between the SFC and the Exchange to ensure consistency of comments given to the listing applicant.</p>
<p>(b) Scope of the Rules – criminal liability on provision of false or misleading information</p>				

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
2	5 & 6	<p>Filing of listing materials and ongoing disclosure documents with the SFC.</p> <p>SFO section 384 imposes criminal liability on any person who intentionally or recklessly provides false or misleading information to the SFC.</p>	<p>HKICS</p> <p>Agree there is a need for attaching statutory liability to anyone who provides false or misleading information to the public.</p> <p>Linklaters</p> <p>There already exist various civil and criminal provisions under the SFO and Companies Ordinance dealing with false and misleading statements or communications concerning securities and futures contracts. Under the proposals, SFC would not need to give warning (of potential liability) before receiving filings. Query whether statutory filing of disclosure documents with SFC would provide any greater investor protection.</p> <p>Want to confirm that the Rules will never apply to sponsors.</p> <p>Freshfields</p> <p>False or misleading disclosure under section 384 of the SFO has lower threshold for liability than offences under sections 277 and 298 of the SFO.</p>	<p>Noted</p> <p>Our securities market is founded on proper disclosure of reliable information. Intentional and reckless provision of false or misleading information to the public undermines this principle. Those responsible should be held to account. Indeed, everyone expects so. It would be wrong to require a specific warning before each filing.</p> <p>Existing provisions of the SFO, such as sections 277 and 298, do not deal directly with the obligation for truthful disclosure by listing applicants and listed companies.</p> <p>Sponsors (of listings) are not “applicants” or “issuers”. However, intermediaries must satisfy their responsibilities, many of which are set out in SFC Corporate Finance Adviser Code of Conduct and in Stock Exchange Listing Rules. Failure to comply could lead to disciplinary action.</p>

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
(c) Definitions				
3	2 Definitions "applicant" "issuer"	<p>"Applicant" means a corporation that has made an application under section 3.</p> <p>"Issuer" means a corporation whose securities are listed or to be listed on the Exchange.</p>	<p>Respondent A/ Linklaters</p> <p>"Applicant" should also include entities other than corporations since it is possible that securities issued by a governmental organisation, unit trust, limited partnership will be listed.</p> <p>Respondent A</p> <p>Unclear why the ranges of persons who may fall within the definitions of "applicant" and "issuer" are different and why the definition of "issuer" refers to securities proposed to be listed.</p>	<p>Agreed. The draft Rules have been amended.</p> <p>Agreed. The draft Rules have been amended.</p>
4	2 Definitions "application"	<p>"Application" means all documents in support of or in connection with an application.</p>	<p>Respondent A/ Linklaters</p> <p>Definition is too wide and would include any communication from an issuer in response to a request from the Exchange for additional information, clarification or elaboration in connection with an application.</p> <p>Respondent A</p> <p>There should be a cut-off time.</p>	<p>The applicant is applying for access to the public market and to raise funds from public investors. Information it provides to the public or to the regulator in order to gain this access is crucially important. Those who intentionally or recklessly provide false or misleading information (i.e., those who lie) should be held liable.</p> <p>Agreed. The draft Rules have been amended to specify when the SFC will not seek further information from a listing applicant.</p>

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
5	3	As in existing rules, clause 3 sets out a list of requirements for an application.	<p>Respondent A/ Linklaters</p> <p>The specific items that must be included in the application should be a matter for the Listing Rules of the Stock Exchange and, where appropriate, the Third Schedule of the Companies Ordinance. Certain paragraphs under the section may not be always relevant to different types of listed products.</p>	Agreed. The draft Rules have been amended.
6	4	As in existing rules, clause 4 sets out a list of exemptions.	<p>Respondent A</p> <p>Exemptions too limited. Section 4 should be expanded and also give SFC flexibility in providing for more exemptions in light of future market development.</p> <p>HSBC</p> <p>Block listings of shares resulting from employee share plans should be exempted.</p>	<p>Agreed. The list of exemptions will be reviewed from time to time and amended in light of market development.</p> <p>Agreed. The draft Rules have been amended.</p>
(d) Dual filing and vetting by the Stock Exchange and SFC				
7	5	Dual filing of listing materials with SFC and the Stock Exchange. SFC may require applicant to supply further information within 10 business days. SFC may object to listing for inadequate disclosure or in the public interest.	<p>HKSA/ Linklaters/ Freshfields</p> <p>Duplication of effort between SFC and the Exchange in reviewing application documents.</p> <p>Creates uncertainty as to the regulatory role of the SFC.</p> <p>Potential increase in compliance costs.</p> <p>Respondent B</p> <p>Duplication unnecessary. SFC should take on entirely the prospectus vetting and listing regulatory functions.</p>	<p>With “deemed filing” provisions in the draft Rules, the Exchange will remain the point of contact with listing applicants and will conduct the frontline review.</p> <p>Arrangements will be made between SFC and the Exchange to ensure consistency of comments given to listing applicant.</p> <p>Compliance efforts of listing</p>

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
				applicant will not be increased by the dual-filing proposal.
8	as above	as above	<p>Respondent A</p> <p>Applicant should be responsible for supplying an extra copy of each document to the Exchange to pass on to SFC.</p> <p>Some flexibility should be afforded to the Exchange as to extent and timing of the information to be provided to SFC.</p> <p>Applicant should provide the further information required by SFC to the Exchange for forwarding to SFC.</p> <p>ISD/ HKICS</p> <p>Welcome the cost-saving measures proposed by SFC to allow listing applicants and listed companies to authorise the Exchange to make the statutory filings on their behalf.</p> <p>HKSA/ Respondent B</p> <p>Issuers should be allowed to give one-off authorisation to the Exchange to file listing/on-going disclosure materials with SFC on their behalf.</p>	<p>Agreed this can be an option for the applicant.</p> <p>The draft Rules relieve listing applicants and listed issuers of their obligation once they file with the Exchange, if they have authorized the Exchange to forward the materials. Arrangements between the Exchange and SFC are matters for the two organizations.</p> <p>Noted. The provisions are aimed at exactly this cost-saving objective.</p> <p>The draft Rules already provide so.</p> <p>Indeed, since the Exchange is moving towards having listed issuers submit their documents electronically, forwarding of information can be costless, automatic, and instantaneous. By using FinNet, the communication</p>

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
				will also be secure.
9	5(3)&(4)	as above	<p>Respondent A/ HKSA / Linklaters</p> <p>10-day period for SFC to request for further information is too long and might lead to delay in listing process as additional documents are submitted in response to requests from the Exchange or SFC.</p> <p>In particular, the period should be shortened for derivative warrants and structured products whose listing process is usually only a few days.</p> <p>Respondent A</p> <p>SFC should discuss with the Exchange any need for further information and should channel any requests for further information via the Exchange.</p>	<p>Period will run concurrently with the Exchange's vetting timetable, which takes a minimum of 25 clear business days. It will not prolong the listing approval process.</p> <p>Agreed. SFC will take into account the special nature of different products and confirms its "no objection" to the listing in as short a timeframe as possible.</p> <p>Arrangements will be made between SFC and the Exchange to ensure consistency of comments given to listing applicant.</p> <p>Compliance efforts of listing applicant will not be affected.</p>
10	as above	as above	<p>HKSA/ Respondent B</p> <p>The new MOU between SFC and the Exchange should be exposed for public consultation as soon as possible.</p>	<p>The new MOU will be made public as soon as it is ready and in any case before the commencement of the SFO.</p>
(e) Objection to listing applications				

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
11	5(6)(a)	as above	<p>Respondent B/ HKSA/ HKSI</p> <p>Unclear what active steps the SFC will have to take to be in an informed position to consider whether to object to a listing.</p>	<p>The draft Rules provide that SFC may ask listing applicant for further information. This is standard practice in all developed markets and part and parcel of disclosure-based regulation.</p>
12	5(6)(d)	SFC may object to a listing if the listing would not be in the interest of the investing public or in the public interest.	<p>Linklaters/ Freshfields</p> <p>Appears to contradict statement in the Consultation Paper that SFC will not be looking at the merit of a transaction and will give SFC extensive scope to conduct merit-based assessment. Not clear what power SFC would rely on to collect evidence on the suitability of a listing.</p> <p>HKSA/ Respondent B</p> <p>Circumstances under which this provision is to be invoked should be set out in the draft Rules.</p>	<p>The SFC will not attempt to assess the commercial merits of each listing applicant. The SFC will however ensure that the public receives timely, accurate and full disclosure to make the best informed decisions. The clause does not imply the SFC would conduct merit-based regulation.</p> <p>This clause also mirrors clause 7(1)(c) of the draft Rules, which is based on a similar provision in the existing Stock Exchange Listing Rules empowering the SFC to suspend dealings in any securities if it is in the interest of the investing public or in the public interest.</p>
13	5		<p>PWC</p> <p>Need to clarify follow-up actions or consequences arising from objection by SFC. Subsequent procedures should be spelt out.</p>	<p>In the event that SFC makes an objection, the applicant will have a</p>

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
				full right of appeal to the independent Securities and Futures Appeals Tribunal (SFAT) for a fresh review. The procedures are set out in Part XI of the SFO and the right of appeal will be specified by way of subsidiary legislation being prepared.
(f) Suspension of dealings				
14	8 & 9	Issuers whose securities have been suspended from dealing may make representations to SFC.	<i>Linklaters</i> Sponsor, arranger or lead manager to a transaction should have ability to make representations to SFC with respect to a particular listing application.	Clauses 8 and 9 deal with suspension of dealings of listed issuers, not listing applications. Financial advisors will, of course, be allowed to make representations on behalf of the issuers.
15	17	Exchange to inform SFC of intention to suspend dealing or to permit recommencement.	<i>Respondent A</i> Exchange should have flexibility in informing SFC of a suspension as soon as reasonably practicable.	The draft Rules already provide that, if it is not reasonably practicable for the Exchange to inform SFC of its intention to suspend, it needs only inform SFC as soon as possible after the event.
			<i>Linklaters</i> Exchange should be able to permit resumption of trading following a suspension it has itself instigated without prior approval of SFC.	The draft Rules only require the Exchange to give prior notice to SFC. No approval need to be sought.

Item No.	Clause reference	Details of the Rules	Respondent's comments	SFC' response
(g) Share registrar				
16	Part IV	Issuers whose securities are listed or to be listed on the Exchange to maintain register of members in Hong Kong.	<p><i>Respondent A/ Linklaters</i></p> <p>Should make clear that requirement of maintaining a share registrar only applies to issuers whose shares, and not other types of securities, are listed on the Exchange.</p>	<p>To the extent that the issue is, as respondents believe, a matter of technical clarification, SFC agrees it should be made clear. As the issue relates to stamp duty, SFC will seek confirmation from the Inland Revenue Department before making any appropriate amendment to the draft Rules as appropriate.</p>

List of Respondents

Date received	Respondent
5 June 2002	An organisation that wishes to remain anonymous (Respondent A)
6 June 2002	The Hong Kong and Shanghai Banking Corporation Limited (HSBC)
7 June 2002	The Institute of Securities Dealers Ltd. (ISD)
7 June 2002	Hong Kong Securities Institute (HKSI) (Responses based on 4 responses to 180 questionnaire forms sent to its corporate members)
7 June 2002	Freshfields Bruckhaus Deringer (Freshfields)
7 June 2002	Linklaters & Alliance (Linklaters) submitting on behalf of Credit Suisse First Boston (Hong Kong) Limited, Goldman Sachs (Asia) LLC, Morgan Stanley Dean Witter Asia Limited, and Salomon Smith Barney Hong Kong Limited
7 June 2002	PricewaterhouseCoopers (PWC)
7 June 2002	The Hong Kong Institute of Company Secretaries (HKICS)
19 June 2002	A professional firm that wishes to remain anonymous (Respondent B)
19 June 2002	Hong Kong Society of Accountants (HKSA)
21 June 2002	Hong Kong Securities Professionals Association Ltd. (HKSPA)

August 2002