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Panel on Financial Affairs
Meeting on 6 March 2006

Background Brief
on consultation on the new structure for listing decision-making
— Composition changes to the Listing Committee

Purpose

This paper sets out the background of the consultation conducted by the Hong Kong Exchanges and Clearing Limited (HKEx) on the new structure for listing decision-making and its recent amendments to the Listing Rules concerning composition changes to the Listing Committee. It also summarizes the major views expressed by Members on the operation of the Listing Committee at the meeting of the Panel on Financial Affairs (FA Panel) on 2 April 2004.

Background

2. In 1991, following the report of the Securities Review Committee, a three-tier regulatory framework comprising the Government, Securities and Futures Commission (SFC), and Stock Exchange of Hong Kong Limited (SEHK) was established for the securities and futures markets. SEHK was assigned the frontline regulatory responsibility for listing matters. In this connection, the Board of SEHK, through Chapter 2A of the Main Board Listing Rules, delegated all of its powers and functions relating to listing matters to the Listing Committee.

3. In March 1999, the Government decided that it would be in Hong Kong's best interest to see that SEHK, Hong Kong Futures Exchange Limited and Hong Kong Securities Clearing Company Limited merged, demutualized and listed to form the new entity, HKEx. In July 1999, the Government published a policy paper entitled "Hong Kong Exchanges and Clearing Limited: Reinforcing Hong Kong as a Global Financial Centre", recommending for the structural reform of the Listing Committee. In 2002, SEHK, in consultation with SFC, worked out a proposed structure to implement the Government's proposals. However,

development of the proposed new structure was put on hold by SEHK in the light of subsequent events.

4. On 31 July 2002, the Financial Secretary (FS) announced the appointment of a Panel of Inquiry on the Penny Stocks Incident (PIPSI) to look into the circumstances surrounding the incident happened on 26 July 2002. In its report submitted to FS on 9 September 2002, the PIPSI recommended, among other things, that the Government should review the three-tier regulatory structure of the securities and futures markets over listing matters, with a view to increasing the effectiveness, efficiency, clarity, fairness and credibility of the regulatory system. The report also recommended a review on whether, and if so, how the existing structure, roles, and operation of the Listing Committee could be improved.

5. On 26 September 2002, FS announced the appointment of the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure (Expert Group) to take forward the PIPSI's recommendations. In its report submitted to FS on 21 March 2003, the Expert Group recommended, among other things, that Listing Rules be given statutory backing and listing functions be transferred from HKEx to a new division set up under SFC.

6. In view of the far-reaching implications of the Expert Group's recommendations and to ensure effective implementation, FS announced on 10 April 2003 that the community would be consulted on how the recommendations should be taken forward. On 3 October 2003, the Administration published the "Consultation Paper on Proposals to Enhance the Regulation of Listing" to consult the public on a number of proposals, including the proposal for giving statutory backing to major listing requirements, and ways for improving the regulatory structure governing the performance of listing functions. When the FA Panel was briefed on the Consultation Conclusions at its meeting on 2 April 2004, members noted that the Administration had received a number of suggestions for improving the operation of the Listing Committee, and had invited HKEx and SFC to consider whether, and if so, how the suggestions should be pursued. Members also urged the Administration to review the system for appointing members to the Listing Committee.

7. On 18 February 2005, HKEx published the "Consultation Paper on New Structure for Listing Decision-making", inviting views on the proposed new structure for listing decision-making and setting out draft amendments to the Main Board and Growth Enterprise Market (GEM) Listing Rules for implementation of the new structure. The proposals in the consultation paper aimed at putting in place a clearer and more efficient administrative framework for decision-making in listing matters, whilst preserving the checks and balances necessary to minimize and manage regulatory risk including real or potential conflicts of interest within HKEx. The consultation period ended on 22 April 2005.

8. On 13 May 2005, SEHK announced the re-appointment of some serving members of the Listing Committee (Main Board) and the GEM Listing

Committee to provide continuity in the period up to the introduction of the new structure for the Listing Committee. On the following day, the Chairman and Deputy Chairman of the FA Panel received a written submission expressing concern about the repeated extension of the term limits of members of the Listing Committee (**Appendix I**). The Chairman and Deputy Chairman then invited the Administration, SFC and HKEx to consider how the concerns raised in the submission could be addressed, and brief the Panel on the consultation conclusions on the new structure for listing decision-making and the related Listing Rule amendments in due course.

9. On 3 February 2006, HKEx announced that it had received 18 submissions in response to the “Consultation Paper on New Structure for Listing Decision-making”, and its decision to implement the first phase rule amendments relating to the size and composition of the Listing Committee. The Administration, SFC and HKEx will brief the FA Panel on the subject on 6 March 2006.

Operation of the Listing Committee

Composition

10. The Listing Rules provide that the Listing Committee (Main Board) and GEM Listing Committee shall consist of 25 and 21 members respectively, comprising the following categories of members:

	<u>Main Board</u> <u>Listing Committee</u>	<u>GEM Listing</u> <u>Committee</u>
Exchange participants	6	4
Listed company representatives	6	4
Market practitioners and users ^{Note 1}	12	12
Ex officio ^{Note 2}	1	1
Total number of members	25	21

11. Since 2003, the two Listing Committees have operated as an integrated committee. Indeed, most members are appointed as members of the two Committees.

Appointment of members

12. Members are appointed to the Listing Committee annually or to fill casual vacancies by the Board of SEHK based on the nominations made by the Listing Nominating Committee (LNC). The LNC consists of the Chief Executive of

^{Note 1} The “Market practitioners and users” include lawyers, accountants, fund managers and others well versed in market practice and the Listing Rules.

^{Note 2} The ex officio member is the Chief Executive of HKEx, or in his absence, the Chief Executive of SEHK.

SEHK, two members of the Board of HKEx, and the Chairman and two executive directors of SFC.

13. Main Board Listing Rule 2A.25^{Note 3} provides that members of the Listing Committee may only remain in office for a maximum of three consecutive years. Any person who serves as the Chairman or the Deputy Chairman may remain in office for a total of four years. A member (including the Chairman and Deputy Chairman) who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of two years from the date on which he last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the LNC shall have the discretion to nominate a person for re-appointment at any time before the lapse of two years from the date such person vacates office and the Board of SEHK shall have the power to appoint such person.

14. Members of the Listing Committee are not remunerated. They provide their services for free.

15. A more detailed description of the role and mode of operation of the Listing Committee and its approach in handling conflict of interests is set out in **Appendix II**.

Proposals to improve the operation of the Listing Committee

Suggestions received during the Administration's consultation on the proposals to enhance the regulation of listing (October to December 2003)

16. The major suggestions for improving the operation of the Listing Committee received during the public consultation from October to December 2003 are summarized as follows:

- (a) To expand the membership of the Listing Committee by including more representatives of the investing public;
- (b) The Listing Committee should be restructured to enhance its operational efficiency. It is suggested that separate Listing Committee, Listing Policy and Appeals Committee, and Disciplinary Appeals Committee be set up for making decisions on listing applications, handling appeals against listing decisions and considering policy matters, and handling appeals against disciplinary decisions respectively;
- (c) It is important to avoid possible conflict of interests on the part of individual Listing Committee members so that the listing process could be, and is seen to be, done in a fair and independent manner; and

^{Note 3}

GEM Listing Rule 3.26 has the same provision for the GEM Listing Committee.

- (d) There should be some form of documentation which clearly defines the roles, powers and responsibilities of the Listing Committee, its chairman or its members, and their relationship with staff of the Listing Unit of HKEx.

Members' major views on the suggestions (April 2004)

17. At the FA Panel meeting on 2 April 2004, members noted the suggestions mentioned in paragraph 16 above. In order to address the concern about the need to avoid possible conflict of interests on the part of the members of the Listing Committee so that the listing process could be, and is seen to be, done in a fair and independent manner, some members considered that the Administration should review the system for appointing members to the Committee, and that reference should be made to the appointment systems adopted by other jurisdictions, such as that by the Financial Services Authority in the United Kingdom. The extract of the minutes of the FA Panel meeting is in **Appendix III**.

Proposals set out in HKEx's Consultation Paper on New Structure for Listing Decision-making (February 2005)

18. The major proposals on non-disciplinary issues of the Listing Committee are summarized as follows:

- (a) The current committee structure comprising the Listing Committee, GEM Listing Committee, Listing (Review) Committee and Listing Appeals Committee would be replaced with new decision-makers as follows:
- a Listing Policy Committee (LPC);
 - a Listing Decisions Panel (LDP);
 - a Listing Review Panel (LRP);
 - an Adjudicator; and
 - a Disciplinary Review Panel (DRP).
- (b) The new LPC would have up to 28 members including one chairman and two deputy chairmen, the Chief Executive of HKEx, and at least eight investor representatives. It would be responsible for:
- advising on and, as necessary, approving policy concerning listing matters including disciplinary listing matters;
 - considering and approving Rule amendments; and
 - approving material Rule waivers or modifications that are intended to have general effect.
- (c) Each LDP would be drawn from the pool of members of the LPC excluding the LPC chairman and deputy chairmen. The LDP would be responsible for significant first instance listing application and

delisting decisions. The Listing Division would make all other first instance listing-related decisions.

- (d) Each LRP would consist of one of the chairman or deputy chairmen of the LPC and four members from the LDP pool. The LRP would be the sole review body for all non-disciplinary decisions, unlike the current arrangements, which provide in certain cases for two stages of review from an initial decision.
- (e) The Listing Committee's existing oversight role would be modified. Specifically, it is proposed that the Rules be amended so that the Board of SEHK delegates certain decision-making power directly to the Listing Division, subject to revised oversight mechanisms.
- (f) All members of the LPC, LDP and LRP would be eligible for a daily (or per diem) allowance for time spent, for example, for preparing for and in the conduct of meetings or hearings.

Rule amendments related to the size and composition of the Listing Committee

19. On 3 February 2006, HKEx announced that it had received 18 submissions in response to the Consultation Paper on New Structure for Listing Decision-making. However, given the current uncertainties arising from a judicial review^{Note 4} concerning the procedures of the Listing Committee and the consideration regarding which of the current obligations set out in the Main Board and GEM Listing Rules will be given statutory backing, HKEx decided to address the consultation proposals in two phases, as follows:

First Phase

- (a) The first phase will involve a number of amendments to the Listing Rules addressing the most significant concerns raised by respondents to the consultation paper, namely the size and composition of the Listing Committee. Most significantly the Listing Rules will be amended to -
 - (i) expand the Listing Committee and the GEM Listing Committee to at least 28 members;
 - (ii) change the composition of the Listing Committee and the GEM Listing Committee to include at least eight investor

^{Note 4}

In May 2005, the Court of Appeal issued its judgment in the New World Development Company Limited and others (New World) judicial review appeal case. The Court allowed the appeal and quashed the direction of the Chairman of the Listing (Disciplinary) Committee in the New World disciplinary proceedings that legal advisers not be permitted to address the Listing (Disciplinary) Committee. SEHK has been granted leave to appeal to the Court of Final Appeal. The hearing is set down for 21 and 22 March 2006. The decision of the Court of Final Appeal may have an impact on the future model of hearings and procedures to be adopted by SEHK.

representatives, Chief Executive of HKEx, and 19 individuals who will be a suitable balance of representatives of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and Exchange Participants or officers of Exchange Participants;

- (iii) change the maximum term for Listing Committee and GEM Listing Committee members from the current term of three years for members and four years for the Chairman and Deputy Chairman to six years, in recognition of the fact that members may become more effective as they gain experience on the Committee; and
- (iv) change the composition of the LNC such that the HKEx representatives are three non-executive members of the HKEx Board rather than two members of the HKEx Board and the Chief Executive of SEHK.

- (b) The rule amendments described in item (iv) above has become effective on 3 February 2006. The amendments described in items (i), (ii) and (iii) above will become effective on expiry of the current term of office of the Listing Committee members, which is likely to be in May 2006.

Second Phase

- (c) In the second phase, the Listing Committee will revisit the other consultation proposals set out in the consultation paper. This phase will be commenced once the relevant judicial review is resolved and further progress is made in settling the content of the proposed Stock Market Listing Rules, which will give statutory backing to some of the Listing Rules.

References

- 20. A list of relevant papers is in **Appendix IV**.

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Nothing happened on that restructuring, and on 3-May-01, all the existing members of the main board LC apart from Betty Ho were reappointed, and Fong Hup was added to fill the vacancy. By this stage, several members had already been in office well beyond the term limits.

On 7-May-02, the Rule was further amended to allow the LNC to make re-appointments before expiry of the 2-year cooling-off period, including immediate reappointments which amount to term extensions, "in exceptional circumstances". The reason given was "pending the implementation of the recently announced proposed structures concerning listing matters" which had been announced the previous day. The proposed structure largely followed the 1999 proposals, on which no progress had been made for 3 years.

On 24-Jul-02, Fred Ma, newly-appointed as SFST, announced that the proposed structure was wrong, and HKEx announced revised proposals to retain and merge the Listing Committees. This was followed the next day by the Penny Stocks proposals, which led to the PIPSI report, then the Expert Group Report, then the PERL report on the regulatory structure.

On 16-May-03, there was an overhaul of the LCs, indicating that circumstances were no longer regarded as "exceptional". Many whose limit had expired retired, while there were a number of new appointments (16, I believe). Even so, several members of the LC had their term limits waived, being Moses Cheng and V-Nee Yeh (who had then served over 6 years), Peter Wong and Anthony Lo (over 4 years) and Angelina Lee (over 3 years). No justification was publicly stated for this.

On 30-Apr-04, all the members except one who did not seek reappointment were reappointed.

On 12-May-05 (last Friday), the terms of the 5 overstayed members, including the new Chairman were again extended. In addition, Carlson Tong, the new Deputy Chairman, has already served 4 years, and Henry Cheong has served 3 years. So there are 7 over-stayers on the committee, or a quarter of the membership. We now have a situation in which 2 members, including the Chairman, have served nearly 9 years. Next year they will qualify for a gold watch, if I understand the HKEx long-service policy correctly. This really makes a mockery of the 3-year term limit.

On the GEM Listing Committee, there are 4 over-stayers, being Allan Lam, Peter Wong and Angelina Lee (each having served almost 6 years) and Henry Cheong (3 years)

I am well aware that the structure of the committees is again under review, but it has been under review for 6 years, and in the meantime we have a market to protect and regulate. The circumstances might have been regarded as "exceptional" in 1999, but "exceptions" by definition cannot happen all the time, and the continual review of the structure now makes the circumstances unexceptional. Besides, there is no longer a proposed abolition of the committees which would make new appointments necessarily short-dated. In short, I see no justification for Friday's extension of term limits.

The repeated extensions of members' terms from 2000 onwards has in essence eliminated the term limits.

Please do not renew the membership of anyone whose term-limit has expired when the new structure is implemented, and if that is not done by May next year, then please do not further extend the terms.

Regards

David

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2005/5/17

THE LISTING COMMITTEE
ANNUAL REPORT
2005

Listing Committee

1. Members are appointed to the Listing Committee by the Board of the Exchange based on nominations that have been made by the Listing Nominating Committee. The Listing Nominating Committee consists of the Chief Executive of the Exchange, two members of the Board of HKEx and the Chairman and two executive directors of the SFC.
2. The Composition of the Main Board and GEM Committees is prescribed by the relevant set of Listing Rules as shown in the table below.

Category:	Main Board	GEM
Exchange Participants	6	4
Listed Company	6	4
Market Practitioner & Users (note)	12	12
Ex Officio (note)	1	1
Total Members	24	21

Note: Market practitioners and users include lawyers, accountants, fund managers and others well versed in market practice and the Listing Rules.

The Chief Executive of HKEx is the ex officio member. The Chief Executive of SEHK is the designated alternate.

3. Members are appointed annually. Unless re-appointed their term of office ends no later than 30 days after the first board meeting of SEHK following the annual general meeting after members have been appointed. Consequently the term of office of members covered by this report commenced on 1st May 2004 and ended on 13th May 2005. In the previous period members were appointed for the 49 weeks ended 30th April 2004.
4. To provide consistency and continuity across the Committees most members are appointed as members of the GEM and Main Board Committees. Reflecting that committee's larger size certain members are appointed to the Main Board Committee only.
5. The overlap in membership enables the two Committees to be operated as one committee for most purposes and much of the routine business of the Committees is conducted at combined meetings. This approach is not adopted for disciplinary meetings nor is adopted for meetings at which decisions of the Listing Division or the Listing Committee are reviewed

Listing Appeals Committee

6. The Listing Appeals Committee consists of three members of the HKEx Board: the Chairman of HKEx, who chairs the committee; one member appointed by the Chairman as deputy chairman of the Committee for the term of his office as a director of HKEx; and one member appointed by the Chairman when the Committee is called upon to consider a case. Appropriate modifications to membership are made where conflicts of interest arise.
7. A Memorandum of Understanding was entered into between SEHK and the SFC on 6th March 2001 pursuant to which the SEHK continued to be responsible for the day-to-day administration of all listing-related matters. It also provided for decision-making power to be delegated by the Board of SEHK.
8. The Board of SEHK retains the power to make and amend its Listing Rules subject to the approval of the SFC. All of its other powers and functions in respect of all listing matters are discharged by those to whom the powers have been delegated including the Listing Committee, the Listing Division and the Chief Executive of the Exchange. This arrangement is reflected in the Listing Rules (see Main Board Rule 2A.01 and GEM Rule 3.01).
9. The arrangements in place recognise as a practical matter it is not possible for formal decision making to be taken by the Listing Committee on the very substantial number of matters arising from the day-to-day administration of the Listing Rules.
10. Equally to avoid jeopardising the independence of the Listing Committee it is not desirable for the Committee to become involved in an executive role directing the day-to-day affairs of the Listing Division. Accordingly the Listing Committee has reserved the power to take those decisions that are of material significance for the listed companies, sponsor firms and individuals concerned.
11. The relevant decisions include: granting approval for listing of new equity applicants; approval of the cancellation of listing; approval of GEM Sponsor firms and their supervisory staff; the finding of a breach of the Listing Rules and the imposition of disciplinary sanctions or remedial conditions; the endorsement, variation or modification of decisions made by the Listing Division and in some circumstances the Listing Committee on application for a review; the approval of a specified category of waiver; approval of significant policies and Listing Rule amendments.
12. In all other areas the Listing Division interprets, administers and enforces the Listing Rules, subject to the review of the Listing Committee under procedures set out in the

Listing Rules. For each decision to be made by the Listing Committee the Listing Division will make a recommendation and prepare report with suitable analysis to assist Committee members reaching an informed decision on the relevant matter.

13. The Secretary to the Committee, who is also Head of the Listing Division, sets the agenda of Listing Committee meetings and determines the priorities of Listing Division and the allocation of its resources. Decisions of the Listing Committee, particularly in a policy context often have an operational impact for the Listing Division and inform decisions made by the Head of Listing about the priorities of the Listing Division. However the Listing Committee does not determine the strategic objectives, or the annual operating plan and budget or the level of resources of the Listing Division. Similarly the Listing Committee is not involved in the appointment and terms and conditions of Listing Division staff. These operational matters are handled by the staff of HKEx. The Board of HKEx approves the Exchange's strategic plans and its annual operating plan and budget including that of the Listing Division.

Mode of Operation

14. The principal mode of operation of the Committee is through meetings at which a quorum of members is present. Meetings held by the Committee fall into the following categories: regular meetings, generally held each week; review meetings, to review decisions made by either the Committee or Division; disciplinary hearings, to consider disciplinary action brought by the Division and also including disciplinary review meetings, where the Committee reviews decisions taken at disciplinary meetings of the Committee; and policy meetings, at which policy issues are discussed. The quorum for meetings of the Committee is five members present in person. Where a Committee meeting is convened to review a decision of its own or of the Division the Chief Executive may not count in that quorum.
15. A pooling arrangement is operated to help reduce the workload involved for individual members attending regular meetings, and also to provide a pool of members from which to draw if a decision made by the Committee is required to be reviewed at a subsequent meeting. Under the pooling arrangements all members, except the Chairman, Deputy Chairman and the ex officio member are "paired" with another member, generally from the same membership category. Under the pooling arrangement a member will be designated as the primary or secondary member for a particular week's regular meeting, and the member with whom he or she is paired will be designated as secondary or primary as appropriate. Members are designated as primary or secondary on a fifty-fifty basis. Thus, over the course of the year, a member would be on primary for

approximately half of the Committee's regular meetings. The pooling arrangement does not apply to disciplinary, review and policy meetings.

16. Regular meetings of the Listing Committee are normally held each week with breaks at Lunar New Year, Easter, Christmas and New Year. If the volume of work so demands, additional regular meetings are scheduled. Disciplinary meetings and Review meetings, to consider reviews of decisions reached by the Committee or the Division are held as required. Policy meetings are normally held quarterly with supplementary meetings as necessary.

Handling Conflicts of Interest

17. The Rules governing the proceedings of the Listing Committee incorporate specific requirements relating to the handling of conflicts of interests. These provisions require that a member who is in any way, whether directly or indirectly, materially interested in a matter to be discussed at a meeting must declare any such material interest to the Secretary prior to the meeting or to those present at the meeting and, whenever appropriate and practicable, return all relevant papers to the Secretary as soon as he becomes aware of the conflict. If the member attends the meeting at which the matter is to be considered he must leave the meeting immediately when such matter comes up for discussion and only return after it has been dealt with. The arrangements preclude a member with a material conflict of interest from participating in the deliberation of the issue or counting as part of the quorum present at the meeting. The minutes of Listing Committee meetings record all declared conflicts of interest.

**Extract from the minutes of meeting
of the Panel on Financial Affairs on 2 April 2004**

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IV. Regulation of listing

(LC Paper No. CB(1)1393/03-04(03) — Information note on “Consultation conclusions on proposals to enhance the regulation of listing”

LC Paper No. CB(1)2545/02-03 — Consultation paper on proposals to enhance the regulation of listing

LC Paper No. CB(1)1393/03-04(04) — Extract of the minutes (Item II) of the special meeting of the Panel on 13 June 2003

LC Paper No. CB(1)1199/02-03 — Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure

LC Paper No. CB(1)1908/02-03(03) — Information paper provided by the Administration)

Briefing by the Administration

6. The Chairman informed members that at the Panel meeting on 13 June 2003, the Administration had briefed members on its plan to conduct public consultation on the major recommendations concerning regulation of listing in the Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure. On 3 October 2003, the Administration published a consultation paper to invite public views on the proposals to enhance the regulation of listing (the Consultation Paper). The Administration then released the Consultation Conclusions on 26 March 2004.

7. Upon invitation by the Chairman, the Secretary for Financial Services and the Treasury (SFST) briefed members on the recommendations in the Consultation Conclusions and the Administration’s proposed way forward. He pointed out that there had been support from the market and the public for upgrading market quality,

in particular the recommendation to give the more important listing requirements statutory backing. He also highlighted the major recommendations in the Consultation Conclusions and the implementation roadmap, as follows:

- (a) To give the more important listing requirements statutory backing
This proposal included those important listing requirements relating to financial reporting and other periodic disclosure, disclosure of price-sensitive information and shareholders' approval for notifiable transactions. This would be achieved by subsidiary legislation to be made by the Securities and Futures Commission (SFC) under section 36 of the Securities and Futures Ordinance (SFO) (Cap. 571).
- (b) To make breaches of statutory listing requirements a new type of market misconduct under SFO
Any persons who breached the statutory listing requirements could either be subject to civil sanctions imposed by the Market Misconduct Tribunal (MMT) under Part XIII of SFO, or criminal sanctions under Part XIV of SFO following prosecution. The SFC would be empowered to impose direct civil sanctions, namely reprimands and disqualification orders, on issuers, directors and corporate officers who were primarily accountable for corporate disclosure and other corporate activities under the listing regime. The Administration would take forward the proposals by introducing a Securities and Futures (Amendment) Bill (the Amendment Bill) into LegCo in early 2005. To facilitate consideration of the Amendment Bill by LegCo and to gauge the views of the public, SFC would endeavour to consult the market and the public on the draft rules on the more important listing requirements before end of 2004.
- (c) To expand the existing dual filing system
The Stock Exchange of Hong Kong (SEHK) would continue to receive listing applications at the frontline, and no securities would be listed on SEHK unless they were approved by the SEHK Listing Committee. SFC would detect any non-compliance with the statutory listing requirements and assess whether it should exercise its statutory power to object to the listing applications.
- (d) To enhance the transparency and accountability of the performance of listing functions of SFC and the Hong Kong Exchange and Clearing Limited (HKEx) through a series of measures
The measures included enhancing disclosure of decisions relating to listing, articulating in a public statement the division of responsibilities between SFC and HKEx relating to listing, publication of SFC's reports on annual audit of HKEx's performance of listing functions, and inviting the Independent Commission Against Corruption to study respective procedures and practices of SFC and HKEx for the

performance of listing functions under the dual filing system. SFC and HKEx had been invited to implement these measures by phases from the second quarter of 2004 onwards.

8. SFST pointed out that the above proposed improvement measures would contribute to the enhancement of the quality of the market and further strengthen Hong Kong's position as the premier capital formation centre for the Mainland and a major international financial centre. The Administration would work closely with SFC, HKEx and all market users in taking forward the proposals with a view to achieving these common goals.

Discussion

Proposals for enhancing the regulation of listing

9. Mr Henry WU said that while market participants welcomed the major recommendations in the Consultation Conclusions, they urged that implementation of the proposals should cater for the needs of the local market and be conducive to its future development. As details of the proposals had yet to be worked out, Mr WU stressed the importance for the Administration to consult the market on the draft rules and the Amendment Bill before presenting them to LegCo. On improving the regulatory structure for listing, Mr WU conveyed the market's support for expanding the dual filing system but he stressed that there should be a clear division of responsibilities between SFC and HKEx in administering the listing functions so as to avoid possible regulatory overlaps or gaps.

10. In response, SFST pointed out that there would be a clear division of responsibilities between SFC and HKEx in administering the listing functions and dual filing system. Under the proposal, SFC would be responsible for enforcing the new statutory listing requirements while HKEx would continue to enforce the non-statutory listing rules. SEHK would continue to receive initial public offer applications at the frontline and be responsible for administering the listing process. All documents filed with SEHK were also to be filed with SFC. In this way, SFC would be in a position to detect any breaches of the statutory listing requirements and to exercise its statutory power to object to listing applications. All applications remained to be approved by the SEHK Listing Committee. As regards the monitoring of the ongoing compliance by listed companies, the same division of labour would apply. SFC would be able to exercise statutory enforcement powers where it had reasons to believe that there were breaches of the statutory listing requirements.

11. On the proposal of empowering SFC to impose direct sanctions on issuers, directors and corporate officers for breaches of the statutory listing requirements relating to information disclosure, Mr Henry WU opined that there should be a limit on the period within which these relevant persons should be held liable for corporate disclosure. He further suggested that consideration be given to providing appropriate exemption for independent non-executive directors because they were not closely

involved in decision making and management of the company. In this connection, Mr WU expressed concern about whether there would be different treatment for government officials or their representatives who were appointed as directors of listed companies. In particular, he was concerned whether they would be subject to the same sanctions for breaching of the statutory requirements as other directors, including civil sanctions imposed by SFC, and the criminal and civil sanctions under SFO.

12. SFST took note of Mr Henry WU's view and responded that there would be opportunities for members to study the draft rules and the Amendment Bill in detail when they were submitted to LegCo. As regards the question on the liability of government officials appointed as directors to listed companies, SFST agreed to provide a written response after the meeting.

(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(1)1639/03-04(02) on 27 April 2004.)

Monitoring of the operation of SFC and HKEx

13. Mr Henry WU recalled that when discussing the SFC budget for 2004-05 at the Panel meeting on 1 March 2004, members had expressed concern about the proposed increase in the staff establishment of SFC despite the general trend of downsizing in the public and private sectors. Members had also noted that the Administration had expressed the same concern to SFC but it finally accepted SFC's view that the proposed increase in staff establishment was necessary to cope with the increase in workload from dual filing, and to cope with new market and product developments. Mr WU enquired how SFC would recover the additional cost. He also pointed out the need to strengthen the existing monitoring system over SFC to ensure the cost-effective deployment of its resources and to enhance checks on its powers.

14. In reply, SFST said that it remained the Administration's position that public funded bodies should, same as Government departments, exercise stringent control on their expenditure and explore measures to cut costs. As such, the Administration had urged SFC to be more vigilant in managing its staff resources. He also pointed out that under the existing arrangement, HKEx provided \$20 million per year to SFC for implementing the work relating to the dual filing system. As regards monitoring of SFC, SFST informed members that SFC consisted of executive and non-executive directors, the latter being members from the market, the business community, the academies or members of the public appointed by the Government. Hence, there was adequate public scrutiny over the operation of SFC. Moreover, SFC presented its annual budget to the Panel for information before presenting it to the Financial Secretary (FS) for approval and tabling it at LegCo. In examining SFC's budget, the Administration had sought to find out the reasons for any increases in expenditure and to ensure that SFC would carry out its functions in a cost-effective manner.

15. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FST(FS)) stressed that the Administration attached great importance to enhancing the transparency of the operation of SFC and HKEx. Building on the existing administrative arrangement for SFC to conduct regular reviews on HKEx's performance of listing functions, it was recommended in the Consultation Conclusions that SFC should prepare and submit these annual audit reports to FS, who should cause the reports to be published. Moreover, in order to ensure the procedural fairness and reasonableness in conducting the audit reviews, it was also recommended in the Consultation Conclusions that SFC's regulatory oversight of HKEx's performance of listing functions, including the conduct of annual audits, be a subject of regular review by the Process Review Panel (PRP). Through the publication of PRP reports and SFC's audit review reports on HKEx, the public would be better able to judge SFC's performance in overseeing and supervising HKEx's performance of listing-related functions.

16. Mr Henry WU pointed out that PRP's terms of reference was only limited to conducting review of SFC's internal operational procedures to ensure that the procedures were fair and reasonable, and examining whether SFC had followed the procedures in making its decisions. PRP was not empowered to take actions on any unfair decisions made by SFC. DS/FST(FS) advised that any persons who were aggrieved by SFC's decisions might apply to the Securities and Futures Appeals Tribunal (SFAT) for a review of the decisions.

17. Whilst expressing support for the recommendations for improving regulation of listing, Mr Albert HO saw the need to strengthen the oversight of SFC's regulatory power. In this connection, he enquired about the mechanism for lodging appeals against SFC's decisions to object listings under the dual filing system and to impose civil sanctions directly on the issuers, directors and corporate officers, i.e. the "primary targets", who had breached the statutory listing requirements.

18. DS/FST(FS) advised that persons who were aggrieved by SFC's decisions to object to listings under the dual filing system might apply to SFAT for a review of the decisions. As regards the appeal mechanism for persons who had breached the statutory listing requirements, the Permanent Secretary for Financial Services and the Treasury (Financial Services) (PS/FST(FS)) referred members to the three-pronged approach outlined in paragraphs 3.30 to 3.35 of the Consultation Conclusions. In brief, the first prong involved civil sanctions imposed by SFC on the "primary targets" and the SFC's decisions were subject to review by SFAT. The second prong involved civil sanctions imposed by MMT on any persons who engaged in market misconduct including, but not limited to, the "primary targets". MMT's decisions were subject to appeal to the Court of Appeal. The third prong involved criminal sanctions imposed by the Court of First Instance on persons who had committed market misconduct including, but not limited to, the "primary targets". Such decisions were also subject to appeal to the Court of Appeal.

19. Given the increase in duties and responsibilities of SFC, Mr Albert HO

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suggested that the Administration should consider expanding the membership of PRP. PS/FST(FS) undertook to consider the suggestion.

Improvement of the operation of the Listing Committee

20. Mr SIN Chung-kai expressed support for the recommendations in the Consultation Conclusions. Referring to the suggestions for improving the operation of the SEHK Listing Committee outlined in paragraphs 4.30 to 4.33 of the Consultation Conclusions, Mr SIN opined that the Administration should proactively work out concrete proposals to strengthen the listing regime rather than leaving it to SFC and HKEx to decide how to take forward the suggestions. For example, in order to address the concern about the need to avoid possible conflict of interests on the part of the members of the Listing Committee so that the listing process could be, and was seen to be, done in a fair and independent manner, the Administration should review the existing system for appointing members to the Listing Committee.

21. In reply, SFST stressed that the Administration kept an open mind on the suggestions put forward in the public consultation to improve the operation of the Listing Committee. He assured members that SFC, as the regulator of the securities market, and HKEx, as the operator of the market, would study the suggestions carefully and work out improvement proposals. SFST also pointed out that a number of changes initiated by SFC and HKEx, had already been introduced to the Listing Committee in the past ten years. For example, its composition had changed over time with more members from the investing public. Moreover, common membership for the main board and the growth enterprises market Listing Committees had been introduced a year before with the aim to achieving greater consistencies in the decisions relating to listings. SFC and HKEx should continue to work out concrete proposals for improving the listing regime.

22. Whilst appreciating that a number of changes had been introduced to the Listing Committee in the past, Mr SIN Chung-kai considered that there was room for further improvement, such as in the system for appointing its members. He reiterated that the Administration should review the appointment system. In this connection, he suggested that reference be made to the appointment systems adopted by other jurisdictions. For example, members of the Financial Services Authority in the United Kingdom (UK) were appointed through self-nomination and formal selection processes. SFST undertook to convey Mr SIN's views to SFC and HKEx.

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New structure for listing decision-making

List of relevant papers
(Position as at 3 March 2006)

Paper	LC Paper No.
Administration's Consultation Paper on Proposals to Enhance the Regulation of Listing	CB(1)2545/02-03 <i>(discussed at the FA Panel meeting on 2 April 2004)</i>
Administration's paper on "Consultation Conclusions on Proposals to Enhance the Regulation of Listing" (with the Consultation Conclusions)	CB(1)1393/03-04(03) <i>(discussed at the FA Panel meeting on 2 April 2004)</i>
Minutes of the FA Panel meeting on 2 April 2004	CB(1)2084/03-04
HKEx's Consultation paper on New Structure for Listing Decision-making (published in February 2005)	—
Administration's paper on "Proposals to Give Statutory Backing to Major Listing Requirements"	CB(1)1160/04-05(04) <i>(discussed at the FA Panel meeting on 4 April 2005)</i>
Background Brief on proposal to give statutory backing to major listing requirements (prepared by the LegCo Secretariat)	CB(1)1160/04-05(05) <i>(discussed at the FA Panel meeting on 4 April 2005)</i>
Minutes of the FA Panel meeting on 4 April 2005	CB(1)1677/04-05