

**Paper for Bills Committee comparing the performance of regulatory functions by the Listing Division/GEM Division of The Stock Exchange of Hong Kong Limited and the Securities and Futures Commission before and after the proposed merger of the Exchanges and Clearing Houses**

**A. Before the Merger**

1. The SEHK is, in general terms, the front-line regulator of listed companies and of matters under the Listing Rules. The performance by SEHK of its functions relating to listing matters and the separation of these functions between SEHK and SFC is governed by the Memorandum of Understanding governing listing matters entered into between SFC and SEHK on 20 November 1991 (“MOU”). The objective of this MOU was to avoid overlap and duplication of functions (save to the extent necessary in the context of that arrangement). The MOU was prepared in the context of the Main Board of the SEHK and is in the process of being supplemented to apply the same structure specifically in relation to the Growth Enterprise Market of SEHK (the “GEM”) and the special unit at the SEHK (the “GEM Unit”) which is responsible for the GEM.
2. The Listing Division of the SEHK comprises two principal departments, namely the Corporate Finance Department and Accountancy & Prospectus Vetting Department. The functions of the Corporate Finance Department of the Listing Division in summary relate to the following: (a) New listings – review of the new listings and vetting of the listing documentation and associated documentation; (b) Ongoing compliance with the Listing Rules, including review of announcements and circulars; (c) Market surveillance in connection with listed issuers and their activities, focusing in particular in relation to the possible need for listed issuers to keep the market informed; (d) Policy projects; (e) Mainland support; (f) Disciplinary matters; and (g) Listing Rules review.
3. The functions of the Accountancy & Prospectus Vetting Department of the Listing Division in summary relate to the following: (a) Accounting issues relating to new listings and ongoing compliance; (b) Prospectus vetting for the purposes of the Companies Ordinance and authorisation for registration under the Companies Ordinance; (c) Listing matters relating to debt securities and derivatives; (d) Policy in relation to the above areas.
4. The GEM Unit carries out a number of the same functions and also relies on the Listing Division in respect of many of the technical areas of their functions.
5. The activities of the SFC in the area of listing matters fall within the Corporate Finance Division of the SFC (“CFD”). CFD handles a variety of policy matters and administer the Takeovers Code. There is continuous liaison between CFD and the Listing Division in relation to market surveillance, transactions involving a takeover element, policy matters, accounting matters and Listing Rules review, although, in practice, relatively few staff at CFD are involved in these areas.

**B. After the Merger**

6. As mentioned above, the purpose, and indeed the effect, of the MOU was to reduce the areas of overlap between the Listing Division and the SFC. This has been largely successful but an element of overlap inevitably remains in the oversight and review processes which the SFC undertakes in respect of the performance by the Listing Division of its functions. It is intended that, in the context of the profit-oriented nature of HKEC, it will be possible to streamline the areas of overlap and achieve greater flexibility and efficiency in these areas.
7. The division of functions will remain substantially as at present, albeit with improvements in efficiency within the SEHK and in the coordination of functions undertaken by both the SFC and SEHK. This will necessarily involve a re-examination of the allocation of resources within the SEHK Listing Division and GEM Unit and an examination of their functions and work processes. The SFC contemplates entering into a new MOU with SEHK (and/or HKEC) which would clarify the standards to be met by SEHK (and HKEC) in performing its functions in this area and provide for greater interaction between the two bodies.
8. Additionally, in order to remove the conflict of interest which would arise if SEHK were to supervise its own holding company, the SFC will be responsible for all matters regarding HKEC which would, in the case of any other listed company, be dealt with by the Listing Division. This is reflected in clauses 13 and 14 of the Exchanges and Clearing Houses (Merger) Bill.

Securities and Futures Commission  
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