



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



Progress report on

Joint Consultation on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation

18 April 2017

AGENDA

- A. Background
- B. Rationale for the enhancements
- C. Objectives of the enhancements
- D. Key proposals
- E. Preliminary summary of responses
- F. Next steps

A. BACKGROUND

- 17 June 2016 - SFC and SEHK launched a joint consultation on proposed enhancements to the SEHK's decision-making and governance structure for listing regulation
- 18 November 2016 - consultation period ended after a 2-month extension

B. RATIONALE FOR THE ENHANCEMENTS

- The market has become increasingly large and complex, and carries a greater variety of risks
- Coordinated regulatory efforts on different fronts, strategic foresight in policy formulation and constant vigilance are required to address emerging market developments
- Accordingly, now is the right time to revisit the current decision-making structure for listing regulation and propose enhancements that would enable SFC and SEHK to better coordinate and address future regulatory needs
- The proposals contain structural and procedural enhancements to the way in which listing regulation is carried out

C. OBJECTIVES OF THE ENHANCEMENTS

- Achieve closer coordination and cooperation between SFC and SEHK on listing policy formulation and facilitate SFC's earlier and more direct input on listing policy and listing regulation
- Streamline the processes for important or difficult listing decisions that raise suitability issues or have broader policy implications
- Simplify the process for initial listing applications
- Establish clearer accountability for decision-making in listing regulation

D. KEY PROPOSALS

- Two new SEHK committees
 - **Listing Regulatory Committee (LRC)**
 - ❖ Decide IPOs and post-IPO matters with suitability issues or broader policy implications
 - **Listing Policy Committee (LPC)**
 - ❖ Initiate, steer and decide listing policy
- SEHK remains the frontline regulator of listing matters

E. PRELIMINARY SUMMARY OF RESPONSES

- Over 8,500 submissions received
- Wide spectrum of views expressed
- Significant number of responses without detailed explanation or comments on the proposals
- High-level, preliminary analysis - subject to in-depth study and discussion between the SFC and SEHK; no conclusions at this stage

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

CATEGORIES OF RESPONDENTS

- Companies and related entities
- Investment managers
- Brokerage firms, corporate finance advisers and sponsors
- Accounting firms
- Law firms
- Legislators / political parties / think tanks
- Academia
- Public and regulatory bodies
- Others (including professional associations not included in the above categories)
- Individuals

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

COMPANIES AND RELATED ENTITIES

- Proposed structure inconsistent with existing three-tier regulatory system
- SFC given front- and back-line regulatory authority without check and balance
- Objectives can be achieved under current arrangement
- Compositions of LPC and LRC give SFC dominant control
- LPC's appraisal of LD's performance makes LD a subordinate of SFC
- LC sidelined
- Market problems could be tackled without changing regulatory structure
- Move Hong Kong away from disclosure-based and towards a merit- or regulator-based regime, and stifle market development
- An improvement to the current regulatory regime
- SFC representatives to join LC
- HKEX CE should be re-designated as "adviser" rather than an LC member
- LPC membership should be expanded

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

INVESTMENT MANAGERS

- Proposals timely and imperative amidst market quality concerns
- Urgent need for a more holistic and coordinated regulatory structure
- LPC a suitable framework for incorporating market interests
- Proposals address coordination issues with Mainland and global market regulators
- Increased SFC involvement addresses potential conflicts of interests of HKEX
- Stated objectives could be better achieved by simpler solution
- More streamlined approach could be adopted by adding SFC representatives to LC as observers or regular members
- Regulatory function should ultimately be transferred to SFC or independent regulator

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

BROKERAGE FIRMS, CORPORATE FINANCE ADVISERS AND SPONSORS

- Risks of over-regulation, slowing down of market development, concentration of powers in SFC
- May not achieve stated objectives
- Proposals improve current regulatory regime
- Support establishment of LPC but with expanded membership
- Disagreed with LRC's establishment and LPC's appraisal of LD executives

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

ACCOUNTING FIRMS

- Support objectives to improve the efficiency and effectiveness of listing and policy formulation
- Support establishment of LPC to steer listing policy
- More efficient to involve SFC upfront in policy setting and development
- Power of LC would be significantly reduced
- Detailed guidance on referral to LRC required
- Composition of LPC and LRC should be reviewed / expanded

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

LAW FIRMS

- Proposals would not improve quality of listed companies or efficiency of listing process
- Referrals to LRC might lengthen IPO vetting
- SFC's power significantly increased
- LC sidelined
- Proposals might bypass statutory process for objecting to listing application and for listing applicant to have decision reviewed by SFAT
- Existing regime in place for many years and market has changed, and current system has issues
- LPC and LRC enhance coordination between SFC and SEHK and streamline IPO vetting in most cases
- Regulators should focus on more robust enforcement actions to combat abusive practices such as shell companies and backdoor listings
- Instead of establishing new committees, SFC representatives could join LC or attend LC meetings involving suitability concerns or broader policy implications

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

LEGISLATORS / POLITICAL PARTIES / THINK TANKS

- Current regime working well
- LC sidelined
- Checks and balances lost
- Reduced efficiency of IPO process
- SFC given excessive powers
- LPC's appraisal of LD's performance deprives SEHK of its independence and impact LD's day-to-day operation
- Proposals move in right direction
- Step towards more transparent listing process; closer coordination between regulators on policy matters and regulatory decision-making
- LegCo oral question (9 November 2016) and LegCo motion debate (30 November 2016) discussed the subject

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

ACADEMIA

- Mitigate HKEX's potential conflicts of interests and hence improve Hong Kong's corporate governance
- Legal issues raised: risk weakening SFC's regulatory mandate regarding admission and trading of listed securities; blur roles of SFC and SEHK; bypass statutory checks and balances
- Concerns about new committees: whether proposals consistent with current statutory scheme governing listing regulation; role and size of new committees; referral mechanism from LD to LRC
- Listing function should be transferred to SFC or independent listing authority in the long run

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

PUBLIC AND REGULATORY BODIES

- Proposals would not achieve stated objectives
- LRC adds extra layer to listing process and reduces efficiency
- Proposals enhance dual regulatory structure, facilitate efficient and coordinated approval process; which are in the interest of the public
- HKEX NEDs to join LPC
- LPC should not appraise performance of LD senior executives and staff

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

OTHERS (INCLUDING PROFESSIONAL ASSOCIATIONS NOT INCLUDED IN THE ABOVE CATEGORIES)

- Support proposals and objectives
- Proposals strengthen listing policy and listing regulation
- Proposals undermine current checks and balances and stifle market development
- SFC given excessive powers
- LC's powers substantially reduced; excessive referral to LRC
- New committees reduce efficiency of listing decision-making process
- Prefer LC's roles and responsibilities to remain unchanged and suggest SFC representatives to join LC
- Number of LRC and LPC members should be increased

E. PRELIMINARY SUMMARY OF RESPONSES (CONT'D)

INDIVIDUALS

- Over 8,000 responses received
- Significant number of submissions without detailed explanation or comments
- Large number of template-style submissions
- Opposing and supporting views similar to those outlined in other categories

F. NEXT STEPS

SFC and SEHK will carefully consider and analyse all submissions to prepare the consultation conclusions and decide the way forward