

30th December 2003

Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Admiralty Centre Tower I
18 Harcourt Road
Admiralty
Hong Kong

Dear Sirs,

Re: Proposals to Enhance the Regulation of Listing

As financial analysts, our primary concern is that Hong Kong continues to flourish as a financial centre and continues to offer career opportunities to professional market practitioners. We feel that Hong Kong has the potential to be the primary financial market in the greater China region, and indeed is on the verge of becoming a mature market in terms of structure and operation. The regulatory structure is a key area that needs to be addressed quickly in order for Hong Kong to retain its competitive position.

One of the hallmarks of a mature market is the proper functioning of a “caveat emptor” system whereby market participants have all relevant information on listed companies available to them, and make their own decisions regarding the suitability of listed companies for investment. The investor accepts all risks involved in his investment decisions. However, for such a system to function properly, market regulators must ensure that listed companies provide accurate, full and timely disclosure of relevant financial and operational information. Moreover, regulators must have the ability to vigorously pursue listed companies that fail to meet disclosure rules and must be backed up by the civil code such that they can apply civil penalties to offenders. Such penalties must be material enough to be a true deterrent. We thus believe that any enhancement of the current regulation of listing must take these key points into consideration, and that any new regulatory framework is established in such a way that it functions smoothly in practice.

We are aware that some people worry that Hong Kong is not yet “mature” enough to be able to handle such a caveat emptor system as functions in other countries. However, we disagree. The rapid rise of CFA[®] charterholders in Hong Kong is testament to the growing professionalism of the industry. Further, retail investors do sometimes behave in a “herd mentality” but no less in our view than they do in other countries. Retail investors also have at their disposal many sources of information to make their decisions. Finally, we believe that if the regulators act as if the market is not mature, participants will never increase their standards of behavior and practice. The attitude of regulators towards market participants is in our view a key element in a successful regulatory regime. The consultation paper seeks a “reasonable balance between market savvy and regulatory expertise, with a view to protecting investors and facilitating market development.” The well intentioned vetting process has however led to a very unbalanced due diligence process whereby the Exchange is too involved, investors do not get adequate disclosure, and there are no effective means to censure companies that breach the rules.

The starting point must therefore be that disclosure requirements are improved to meet international standards, and while it is not in the auspices of this paper to comment on specific aspects of disclosure, we strongly feel that there are significant improvements still to be made in this area, and have commented on them extensively in other consultation paper responses. The other key point is that the regulatory structure must be transparent, efficient and must involve people with market knowledge. It must not be bureaucratic or perceived to have any conflicts or indeed have any political constraints.

With those points in mind, we are of the view that an enhancement of the current dual filing system is the most appropriate for Hong Kong. However, before such a system, as envisioned in the consultation paper (option d) can function effectively, the government must ensure the following:

- a) That disclosure requirements are strengthened to international standards and are enforced by the law (statutory backing) such that violators face civil penalties of a material amount.
- b) That the supervision and enforcement of such disclosure be vested with the SFC and that the SFC be given powers to levy civil penalties for non disclosure.
- c) That the vetting process be simplified to focus on disclosure issues and the meeting of minimum listing requirements set by the Stock Exchange of Hong Kong.
- d) That the SFC recognize the entrepreneurial nature of business and ensure that the application of regulations is done in a way that does not hamper legitimate business pursuits.
- e) That the composition of the Listing Committee be altered such that representatives of investors make up the majority.

We believe that as a public company, with outside shareholders and a listing on the stock exchange, the Stock Exchange itself does have a conflict of interest in pursuing and enforcing the kind of regulatory framework that we support. The Exchange's role should be clearly focused on enhancing its competitiveness and providing a truly superior trading platform, in our view.

In answer to the question posed in the consultation paper section 2.29, on page 19, we answer as follows:

- a) Yes
- b) No
- c) No
- d) Yes
- e) No
- f) Yes
- g) Yes
- h) Yes
- i) Yes
- j) Yes

We believe that this consultation paper is a golden opportunity for Hong Kong to show that it is a mature financial centre that is able to be the main financial platform for the Greater China Area. With the level of scrutiny on corporate governance and disclosure around the world intensifying, it is indeed an opportunity for Hong Kong to demonstrate that it is a leader, not a follower in this area. In our view, it is important that vested interest groups not be able to overly influence this process for their own benefit. Rather, wider long term issues of development of our financial market for the benefit of all participants should be the guiding force of this process. We look forward to a progressive and dynamic set of recommendations from the Financial Services Branch on this very important issue.

Yours faithfully,
For and on behalf of
The Board of The Hong Kong Society of Financial Analysts



Richard Mak, CFA
President