

Financial Services Branch
Financial Services and the Treasury Bureau
18/F Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

25 November 2003

Dear Sirs

Proposals to Enhance the Regulation of Listing

My opinions on matters raised in the consultation paper are as follows

2.6 Fundamental listing requirements in SEHK's Listing Rules should be statutory provisions in the law.

2.15 The "Dual Filing" arrangements should be extended to address the cases of non-disclosure, late disclosure or selective disclosure of price sensitive or relevant information

2.16 Statutory backing should be extended to rules relating to ongoing obligations of issuers with respect to corporate governance, restrictions on purchases and subscription, obligations to obtain prior shareholder approval for certain connected party transactions etc. The rules aimed at protection of minority shareholders against abuse by controlling shareholders should be strengthened. The definition of a controlling shareholder should be widened to include de facto control. Arguably it is these abuses that most threaten Hong Kong's reputation as a financial centre of integrity, rather than disclosure failures or defects

2.32 The Listing Division should be required to assess the truth and completeness of facts and the plausibility of forecasts "disclosed" in an IPO prospectus. They should also have the right to require simplification of prospectuses where they have deliberately been made complex or over long in order to distract potential investors attention from unfavourable disclosures. If the

Listing Division has any real doubts, it should be able to disallow an IPO. If this is a “merit based” system, then so be it.

2.33 Although full and timely disclosure of price sensitive or relevant information is necessary for market quality, it is not sufficient. Mechanisms must also be put in place to prevent abuse of the interests of minority shareholders by controlling shareholders or management.

2.36 Disinterested shareholder approval of related party and larger transactions and other conduct rules such as directors dealing in securities and other directors duties should be statutorily backed, so that proper investigations can be made and violations can be appropriately punished.

2.38 A full range of penalties should be provided so that appropriate ones can be applied. Particular care needs to be taken over penalties for abuse of minority shareholders rights. The minority shareholders need to be “made whole” by the parties that benefited from the abuse, not by the listed company itself.

2.43 The list should include the requirement for minority shareholders to be “made whole” by the parties that benefited from the abuse.

2.44 & 2.46 There is nothing inherently wrong with a breach of statutory listing rules being a criminal offence. There is little to differentiate abuse of minority shareholders rights from theft.

3.3 to 3.8. HKEx has a statutory duty to put the public interest first and half its directors are appointed by the Financial Secretary. It is perfectly capable of discharging its duties as a front line regulator impartially. The best arrangement will be that outlined in 3.7, a joint venture between the SFC and HKEx.

3.9 A majority of members of the Listing Committee should be personal (as opposed to institutional) investors. These are the parties who suffer when there are violations of the Listing Rules. The present members are largely market intermediaries and listed company representatives having different agendas and motivations from investors.

3.12 It is proper (given past history) that the Board of HKEx does not intervene in individual cases in connection with the Listing Rules. The HKEx Board should however be responsible (with the SFC) for changes to the Listing Rules, for policies in connection with the regulatory function and for ensuring that the Listing Division is appropriately staffed and managed. Any other arrangements will inevitably be contrived and impossible to defend so long as the Listing Division is part of or a subsidiary of HKEx.

3.14 The Listing Committee today is far too involved in individual cases of IPOs and application of the Listing Rules. The workload is impossibly large for unpaid

practitioners with other jobs. As a consequence it is near impossible for them to give proper attention to matters brought before them. The proper use of the Listing Committee is a) to advise the Board of HKEx on policies, practices and procedures in connection with regulation of listed companies and b) to hear appeals from decisions made by the Listing Division. The Listing Division should deal with individual cases, overseen by the SFC and the Board of HKEx.

3.20 to 3.41 The alternatives listed here are only some of those possible. Arguably no change in the regulatory structure is necessary provided that

- Important principles enshrined in the Listing Rules are given statutory backing
- The Listing Committee has a majority of personal investors
- The community and the government make it quite clear that they want those who violate the Listing Rules to be punished severely and promptly
- The SFC is strengthened so as to allow them properly to investigate and prosecute violations of the Listing Rules

Yours faithfully

JE Strickland
(in my personal capacity, not as a Director of HKEx)