

HONG KONG ASSOCIATION OF CAPITAL MARKETS PRACTITIONERS
COMMENTS ON
THE SFC CONSULTATION PAPER ON
PROPOSED AMENDMENTS TO THE SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES
OF MARCH 2025

Capitalised terms used have the same meanings as in the Consultation Paper.

Q1. Please comment on the proposal to allow for the imposition of continuing conditions on a listing applicant which will be applicable upon and after listing. Please state and provide reasons for your views.

We strongly oppose this proposal, primarily due to the lack of clarity regarding: the circumstances in which the SFC could exercise this power; the types of continuing conditions that could be imposed; and how the respective powers of the SFC, as the body responsible for ensuring investor protection, and the Stock Exchange, as the front-line regulator of listed companies, would work in parallel.

According to the Consultation Paper, the proposed amendments seek to grant additional powers to the SFC to address gaps and operational limitations in the SMLR.¹ As detailed further below, many of the additional powers sought are already exercisable by the SFC under the Securities and Futures Ordinance (the **SFO**) or are within the purview of the Stock Exchange under the Listing Rules. We are particularly concerned at what appears to be the creation of a second, parallel listing process administered by the SFC, which would operate in addition to the existing process for listing administered by the Stock Exchange's Listing Division and Listing Committee under the Listing Rules.

As indicated by the Consultation Paper's heading, "*SMLR: a tool to prevent or reduce imminent financial harm to [the] investing public*",² the SMLR give the SFC powers to object to an applicant's listing and to require the Stock Exchange to suspend trading in or cancel the listing of a listed issuer's shares in the limited circumstances set out in sections 6(2) and 8(1), respectively, of the SMLR. Essentially, these are circumstances in which the SFC's exercise of the relevant power is necessary to protect investors or ensure the orderliness of the Hong Kong market. The limited nature of the SFC's role on listings is

¹ SFC Consultation Paper, paragraph 1.2

² Ibid. at page 7

further evident in the limitation on its right to object to a listing to the 10 business days following its requesting information (or further information) from the listing applicant. The SMLR do not give the SFC the right to comment throughout the listing process on successive drafts of the listing document; this is the role of the Stock Exchange's Listing Division. The role of the SFC on a listing application is to identify serious concerns in the preliminary stage immediately after submission of a listing application and to step in to prevent the listing at that early stage.

The proposed establishment of a second parallel regulatory regime for listing applicants and listed issuers is not only superfluous, it also risks rendering an already lengthy and costly listing application process even more inefficient and unattractive to overseas listing applicants.

Hong Kong's existing regulatory regime clearly positions the Stock Exchange as the front-line regulator of companies seeking to list and listed issuers. What Hong Kong needs is a streamlined listing application process where applicants deal with one regulator who clearly conveys its listing criteria through a single set of requirements and comments. The proposed amendments, however, only confuse the process by creating a listing application process in which listing applicants may receive comments from two separate regulators, apparently operating independently of one another. Likewise, listed issuers would be subject to regulation both by the Stock Exchange under the Listing Rules and the SFC under the SMLR and the SFO, with both having powers to suspend and cancel listing in identical circumstances. There would then be dual avenues for appeal – to the Listing Review Committee for decisions by the Stock Exchange and to the SFAT for decisions by the SFC. At a time when the Stock Exchange continues to face fierce competition for Chinese listings from New York, the SFC's creation of layers of overlapping regulations not only detract from Hong Kong's attractiveness as an international listing venue, but also risk being perceived by the market as regulatory overreach and an attempt to supplant the Stock Exchange as the front-line regulator of Hong Kong listings and listed issuers.

We are unconvinced that any regulatory gaps in Hong Kong's current framework justify the proposed additional powers for the SFC. If the SFC considers that the Listing Rules are inadequate to enable the Stock Exchange to determine which companies should be permitted to list and remain listed in Hong Kong, surely the solution should be to revise the Listing Rules to give the Stock Exchange the additional powers the SFC considers to be lacking.

The examples the SFC gives in the Consultation Paper at paragraphs 18 and 19 in support of their need to be able to impose conditions that survive listing are not convincing:

- Where a listing applicant has major shareholders with criminal convictions in finance-related areas, we would have expected this to disqualify the company from listing, rather than require the imposition of continuing disclosure-based conditions. Given the impossibility of detaching ownership from management, the exercise of the SFC's existing right to object to listing would seem to be appropriate in this situation, rather than the imposition of additional continuing conditions on the listing applicant.
- Where an IPO lacks a robust, bona fide share placement and price discovery process and/or there are suspicions that high commissions paid to financial intermediaries are used to artificially satisfy the Listing Rules' market capitalisation and/or spread of shareholders requirements, the SFC has the powers to investigate and bring enforcement action against the overall coordinator and capital market intermediaries under paragraph 21 of the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC. These are not problems that could be fixed by imposing continuing conditions on listing applicants after listing, particularly given that price discovery and share placement are complete on listing.

Paragraph 23 of the Consultation Paper suggests that the SFC's proposed new power to impose conditions on listing applicants will require enhanced disclosure "*where certain identified concerns warrant regulatory attention and intervention, but do not constitute statutory grounds for objection to listing*". Yet this proposed power for the SFC to impose conditions on listing applicants in circumstances which are not sufficiently egregious for the SFC to object to listing is contrary to the SFC's statement at paragraph 3 of the Consultation Paper that, "*The SFC focuses on tackling the most serious and egregious behaviour, to prevent or reduce imminent financial harm to the investing public*". The proposed new power appears to give the SFC power to address conduct which is not particularly serious so as to pose a threat to investors, although it is not clear from the Consultation Paper what conduct would warrant the exercise of the additional powers.

Notwithstanding the proposal that listing applicants disclose any continuing conditions imposed by the SFC, we are concerned that investors would be confused as to why a company was considered suitable for listing despite the existence of concerns sufficiently "serious" for the SFC to impose continuing conditions. The SFC's claim to need the power to impose continuing conditions on listing applicants post-listing seems spurious and has the potential to result in the SFC usurping the Exchange's role in the longer term.

If, notwithstanding our opposition to this change to the SMLR, the SFC decides to go ahead with this proposal, we suggest that section 6(3)(b) should be revised to set out the

circumstances in which the SFC may impose conditions and the types of condition it can impose. The Stock Exchange already has the power to impose additional conditions in particular cases under Listing Rule 8.01(b). To avoid regulatory overlap, if the SFC is to have a power to impose conditions on listing applicants that continue after listing, it should instead be empowered to direct the Stock Exchange to impose the conditions under Listing Rule 8.01, or preferably to consult with the Stock Exchange regarding the possible imposition of conditions with the Stock Exchange having the final say in determining whether to impose conditions.

Q2. Please comment on the proposal to allow for a withdrawal of an objection notice under section 6(2) of the SMLR. Please state and provide reasons for your views.

We agree with the proposal to allow the SFC to withdraw a notice objecting to a listing once its concerns have been addressed. This will remove the need for listing applicants to recommence the listing process and save them time and money.

Q3. Please comment on the following proposals:

- (a) to add a new section 7A to the SMLR pursuant to which the SFC may impose conditions on a listed issuer; and**
- (b) the grounds under which conditions could be imposed on a listed issuer under the new section 7A.**

Question 3(a)

We are fundamentally opposed to the proposal to allow the SFC to impose conditions on listed issuers since the SFC already has statutory powers to deal with exactly the situations described in proposed section 7A SMLR under section 214 of the SFO. That section allows the SFC to apply to the courts for a broad range of orders where the SFC considers that a listed company's business or affairs are being conducted in a manner that: (a) is oppressive to some or all of its shareholders; (b) involves fraud or other misconduct to some or all of its shareholders; (c) results in some or all of its shareholders not receiving all the information with respect to the company's business or affairs that they would expect to receive; or (d) is unfairly prejudicial to some or all of its shareholders. These circumstances already give the SFC the power to seek redress in the situations in which proposed section 7A(2) SMLR would give the SFC the power to impose conditions on listed issuers.

Not only is the proposed section 7A(2) power duplicative and unnecessary, it would also enable the SFC to circumvent the court-supervised process mandated under section 214 of the SFO, raising serious concerns from a due process perspective. It would grant the SFC the power to impose conditions based on unfounded suspicions—without conducting a formal investigation, granting the issuer a fair hearing, meeting any evidentiary threshold or disclosing the reasons for its decision.

Question 3(b)

We strongly object to the grounds on which the SFC would have the power to impose conditions on listed issuers. As already noted, we oppose any provision that would allow the SFC to bypass the statutory procedure that already exists under section 214 of the SFO to rectify a situation in which a listed company is acting contrary to the best interests of the listed company and its shareholders.

In addition, the provisions of proposed section 7A are drafted excessively widely giving the SFC unacceptably broad discretion to impose conditions on listed issuers. In particular:

- Section 7A(1) proposes to grant the power to the SFC where “*it appears to the Commission*” that any of the circumstances specified in subsection (2) exists. Under section 214 of the SFC, the Court can impose orders on an issuer where it “*is of the opinion that*” the listed company’s affairs have been conducted in a manner specified in section 214(1). We believe that issuers should be allowed a court hearing and the protections provided by the court process before being subject to directions in these circumstances, rather than being subject to the SFC’s imposition of conditions based on a hunch that the specified circumstances exist;
- Section 7A(2) proposes to allow the SFC to impose conditions where it appears to the SFC that the conduct of a listed company’s business or affairs has involved “*dishonourable or improper practice*” towards the issuer, or all or any of its shareholders. “*Dishonourable or improper practice*” is not defined under Hong Kong laws and has not been the subject of judicial interpretation by the Hong Kong courts. The term is therefore unnecessarily vague and risks encompassing various legitimate business activities. If the SFC is to have the power to impose conditions, it should believe that it would be contrary to investors’ interests and/or the public interest for the issuer to remain listed without being subject to the proposed conditions; and

- The proposed section fails to specify the types of conditions that could be imposed. If the SFC wants to have this power, it should specify the types of conditions it could impose and in what circumstances.

We therefore consider that the scope of conditions that the SFC could impose is unacceptably vague and that the threshold for imposing conditions is unacceptably low. Furthermore, the proposed section fails to give issuers the right to address the SFC's concerns or answer its allegations before the SFC imposes conditions. This is fundamentally unfair. The SFC is also under no obligation to disclose the reasons for imposing conditions and thus the proposed section lacks the transparency that investors in international markets expect.

Q4. Do you think that the explanatory note in Appendix 2 will help issuers and their advisors to understand the scope and purpose of the proposed amendments to the SMLR? Please provide any comments on the draft explanatory note in Appendix 2 to this Consultation Paper.

No. If the SFC does decide to proceed with the proposed amendments, the explanatory note should be expanded to give a detailed account of how the SFC's powers to impose conditions on listing applicants and issuers will operate in practice. In particular, greater clarity is needed on the circumstances in which the SFC will be allowed to impose conditions, and whether the Stock Exchange, as front-line regulator, will have the first call to decide if it wants to investigate a listed issuer's affairs and bring disciplinary action if it sees fit, or whether the SFC will be able to step in ahead of the Stock Exchange, and impose conditions where it considers it necessary without prior consultation with the Stock Exchange or the issuer.

Q5. Please comment on the proposals to add new sections 6(3A)(a), 7A(3) and 9(2)(a) to the SMLR pursuant to which the SFC may amend or revoke any conditions imposed by it and new sections 6(3A)(b) and 9(2)(b) to allow the SFC to impose new conditions. Please state and provide reasons for your views.

Proposed section 6(3A)(a) SMLR: SFC power to amend conditions imposed on listing applicants

As noted in our response to Question 1 above, we believe that it is imperative that the SMLR be amended to set out the circumstances in which the SFC is entitled to impose conditions on listing applicants under existing section 3(b) of the SMLR. While we do not object in principle with the proposed power of the SFC to amend a condition under

proposed section 6(3A)(a), this must be subject to: (i) the grounds for imposing a condition with respect to the SFC's no-objection to listing, as specified in the SMLR, continuing to exist at the date of the amendment; and (ii) there having been a change in the relevant considerations or circumstances rendering a change to the condition necessary.

Proposed Section 7A(3) SMLR: SFC power to amend any condition imposed on a listed issuer

As already noted, we strongly object to the SFC having a power to impose conditions on listed issuers given the existence of a statutory route to address this situation under section 214 of the SFO.

However, if the SFC is minded to give itself this power to amend a condition previously imposed on a listed issuer, it should only be empowered to do so if:

- (i) any of the circumstances for imposing a condition specified in section 7A(2) exists;
- (ii) there has been a change in relevant considerations or circumstances that renders the amendment necessary; and
- (iii) the issuer is given a reasonable opportunity of being heard before the SFC amends the condition.

Proposed Section 9 (2)(a) SMLR: SFC power to amend any condition imposed to allow the resumption of dealings

Following the logic of our response to the previous question, the SFC should only be allowed to amend a condition to the resumption of dealings imposed under section 9(3) where there has been a change in relevant considerations or circumstances that reasonably justify the amendment.

Proposed Section 6(3A)(b) SMLR: SFC Power to impose any new condition on listing applicants

For the same reasons that we object to the SFC having powers to impose continuing conditions on listing applications, we strongly oppose the proposed power for the SFC to impose additional conditions on listing applicants. If the SFC decides to adopt this proposal, it should specify the circumstances in which it can impose conditions under existing section 6(3)(b) to ensure that they are suitably limited, and clearly distinguish between the circumstances when the SFC can object to a listing and when it can impose

conditions on listing. This should bear in mind that the SFC's role on listings is to tackle egregious conduct and not to duplicate the role of the Stock Exchange. In addition, the SMLR should specify that the SFC's right to impose additional conditions is subject to there having been a change in relevant considerations or circumstances since the original conditions were imposed. Listing applicants need clarity as to the requirements they need to satisfy to list. The SFC should therefore have only one bite of the cherry in terms of determining the conditions to which a listing should be subject except where there has been a significant change in circumstances or considerations that warrants the imposition of a new condition. Moreover, the SFC should note that the SMLR give it powers which are exerciseable within strict time limits. Its power to object to a listing lasts only for 10 business days from the date it requests information from the issuer. Likewise, the SFC's power to impose conditions should be limited temporarily, so that once 10 business days from the submission of the listing application have passed, the listing applicant knows that it will not be subjected to any further conditions.

Proposed section 9(2)(b): SFC power to impose new conditions on the recommencement of dealings after suspension

Any power to impose a new condition where the SFC has suspended dealings and proposes to lift the suspension subject to conditions should be limited to the circumstances for imposing conditions in these circumstances listed in section 9(3). The SFC's exercise of such power should also be subject to having given the issuer a reasonable opportunity of being heard beforehand.

Q6. Please comment on the proposals to add a new section 7B to the SMLR under which the SFC may require listed issuers to supply information to the SFC that it may reasonably require for the performance of its functions. Please state and provide reasons for your views.

Listing Rule 2.12A already requires listed issuers to provide the SFC with information in a range of circumstances, including where the SFC requires the information to protect investors, ensure the orderliness of the Hong Kong market or investigate compliance with the SFO. The proposed additional SMLR power for the SFC to require the provision of information is therefore superfluous and should not be adopted.

However, if the SFC is minded to adopt this proposal, it should ensure that, as suggested in our earlier responses, the circumstances in which the SFC's various powers to add or amend conditions are exerciseable are strictly delineated, so that the SFC's proposed

power to require information does not allow the SFC to conduct a fishing expedition into listed companies' affairs.

Q7. Please comment on the following proposals:

- (a) amendments to sections 9 and 10 to (i) simplify and streamline the procedures for lifting a suspension (with or without conditions); and (ii) provide an issuer with a reasonable opportunity of being heard before the SFC makes a decision leading to the refusal of trading resumption or cancellation of listing; and**
- (b) removing the restriction under the current section 9(6) of the SMLR on non-delegability of the SFC's powers under section 9.**

Please state and provide reasons for your views.

Q7(a)(i) Amendments to sections 9 and 10 to simplify and streamline the procedures for lifting a suspension (with or without conditions)

We agree with the proposed simplification of the process for lifting suspension. In the absence of an alternative trading platform for suspended shares, the suspension of trading in listed companies' shares is particularly disadvantageous for minority shareholders since they are deprived of the opportunity to trade out of their positions. The proposed steps, which should shorten the suspension period, are therefore welcome.

Q7(a)(ii) Amendments to sections 9 and 10 to provide an issuer with a reasonable opportunity of being heard before the SFC makes a decision leading to the refusal of trading resumption or cancellation of listing

We agree with this proposal. Giving issuers a reasonable opportunity of being heard before their listing is cancelled or a resumption of trading is refused is both consistent with comparable provisions of the SFO and ensures the fair treatment of listed issuers that overseas applicants will expect.

Q7(b) Removing the restriction under the current section 9(6) of the SMLR on non-delegability of the SFC's powers under section 9.

While we agree with permitting delegation in the situations envisaged in the Consultation Paper, that is where the matter is uncontroversial and delegation is to an SFC Executive Director or Executive Committee, we consider that these powers of delegation should be set out in the SMLR rather than being facilitated through the deletion of the current

restriction on delegation under current section 9(6) SMLR. If that section is simply deleted, there is nothing to prevent the delegation of controversial matters or ensure that delegation is not made to someone at a lower level than an Executive Director or Executive Committee.

Q8. Please comment on the proposal for the SFAT to assume the role of the review body for the SFC's decisions under the SMLR as set out in paragraphs 52 and 53 above. Please state and provide reasons for your views.

We repeat our reservations concerning the creation of a parallel appeals structure adjudicating listings and suspensions, but on the basis that the proposals are implemented as described in the Consultation Paper, we agree with the proposal that the SFAT should be the review body for all SFC decisions under the SMLR. This is consistent with the SFAT being the review body for comparable decisions including the SFC's objection to a listing and direction to the Stock Exchange to cancel an issuer's listing.

Q9. Please comment on the proposal to remove the circumstances relating to pre-emptive issuance pro rata to existing shareholders and exercise of options under employee share option schemes under sections 4(b) and 4(d) of the SMLR so that they would fall within the scope of a "listing application"? Please state and provide reasons for your views.

We do not agree with this proposal. The Stock Exchange's Listing Rules already impose restrictions on rights issues and share option schemes to prevent the dilution of minority shareholders and restrict the level of price discount. The Consultation Paper's proposal would seem to suggest that the SFC considers the Listing Rules to be inadequate to deal with the mischief alleged by the SFC. If that is the case, it should propose revisions to the Listing Rules to address the perceived problem.

It is important that Hong Kong avoids regulation through enforcement, and that listed issuers should be able to conduct rights issues in accordance with the Listing Rules without having to be concerned that the SFC could step in to prevent the planned issue going ahead. For the Hong Kong Stock Exchange to remain an attractive venue to list, listed issuers require certainty as to the rules with which they are required to comply. Any obfuscation of those requirements or ability of the SFC to impose requirements above and beyond what is required under the Listing Rules will only confuse listed issuers and potentially damage the Stock Exchange's reputation. We therefore urge the SFC to work with the Exchange to make appropriate Listing Rule amendments to ensure that rights

issues and employee share options are not exercised to the detriment of minority shareholders.

Q10. Please provide comments on the proposed amendments to the SMLR in the indicative draft at Appendix 1 to this Consultation Paper.

Please see our comments on the proposed amendments to the SMLR in our responses to Questions 1, 5, 6 and 7(b). As noted in those responses, it is imperative that the SMLR describe the precise circumstances in which each of the SFC's powers are exerciseable. We note that the existing SMLR fail to describe the circumstances in which the SFC can impose conditions when not objecting to a listing under section 6(3)(b). Given that the SMLR specify the circumstances in which the SFC can object to listing, and it is envisaged that conditions are imposed in situations that are not sufficiently serious to warrant an objection to listing, it is important that those circumstances are set out in full. Otherwise it will be difficult for investors to understand why a particular company was allowed to list if there are circumstances that are sufficiently serious to warrant the imposition of conditions on its listing.