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Hong Kong Exchanges and Clearing Limited
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By e-mail: response@hkex.com.hk

Re: Paperless Listing and Documents on Display CP

We refer to the Consultation Paper on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display (**Consultation Paper**) issued by The Stock Exchange of Hong Kong Limited in July 2020.

Unless otherwise defined, all capitalised terms used in this response letter shall have the same meaning as defined in the "Definitions" section of the Consultation Paper.

This response has been prepared by the Equity Capital Markets Committee of the Asia Securities Industry and Financial Markets Association (**ASIFMA**) on behalf of our members, with the assistance of Herbert Smith Freehills. ASIFMA is an independent, regional trade association with over 130 member firms comprising a diverse range of leading financial institutions from both the buy and sell side. Our mission is to promote the development of liquid, deep and broad capital markets in Asia, which is fundamental to the region's economic growth. Our Equity Capital Markets Committee identifies regional issues that hamper the functioning of ECM business in the region and works toward addressing and mitigating them; engages with key market participants, such as exchanges and regulators, to correct or mitigate problems and improve the policy environment; when appropriate, develop standards of best practice for industry participants.

If you have any queries on this response, please do not hesitate to contact Lyndon Chao, Managing Director – Head of Equities and Post Trade (+862 2531 6550; lchao@asifma.org).

We confirm that the HKEX may disclose the identity of ASIFMA to the public and publish a copy of this response on the HKEX website.

Question 1: Do you agree with our proposal to amend the Listing Rules to require (i) all listing documents in a new listing ("New Listing") to be published solely in an online electronic format and cease printed form listing documents; and (ii) except for Mixed Media Offers, all New Listing subscriptions, where applicable, to be made through online electronic channels only? Please give reasons for your views.

Our response:

We strongly support the Exchange's proposal to require all listing documents in a new listing to be published in an online electronic format and for all new listing subscriptions to be made, where applicable, through electronic channels only.

The market statistics set out in the Consultation Paper clearly show that the use of paper application forms to subscribe for Hong Kong IPOs has declined significantly and now represents a very small percentage of overall subscriptions. In addition, the use of technology in society has become commonplace with internet access readily

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available to the public in Hong Kong. We agree that the use of electronic resources is more convenient and efficient for the public. We consider that the Hong Kong market is ready for a paperless approach to new listings.

We also recognise the enormous environmental benefits that will be achieved by eliminating the need for printed copies of the prospectus which currently results in significant paper wastage and other pollutants as a result of mass printing. This is a very welcome step towards a greener and more environmentally-conscious financial market in Hong Kong.

In terms of the listing process, removing the need for printed copies also has other significant benefits for the listing applicant. There are obvious cost savings which will be achieved by eliminating the printing costs. Additionally, not needing to print hard copies of the prospectus will also simplify the post-Listing Committee hearing timetable by eliminating the delay resulting from the print run, which can take up to three business days. Without the printing time, this will shorten the timetable which in turn will reduce the execution risk. The receiving bank process will also be significantly simplified, with potentially reduced costs.

We note that the Exchange is proposing to retain MMO offerings, but believes in time that these proposals will have the effect of reducing the need for an MMO. Given the lack of current adoption of MMO, we query whether MMOs need to be retained at all. When MMOs were first proposed in 2008, they were to enable an issuer to distribute paper application forms without the need for an accompanying paper prospectus. These proposals were made at a time where it was still common for the public to apply for shares using paper application forms. Given the proposals in the current Consultation Paper to a move to a fully electronic system, we invite the Exchange to consider if there is a continued need for the half-way house of the MMO. Contrary to its original purpose of providing a more environmentally-friendly option, the retention of MMOs would conversely represent a less "green" alternative to what would be the standard online application model. If it will no longer serve any meaningful purpose we would suggest that this option is removed from the Listing Rules.

We understand the proposals in the Consultation Paper would still enable preferential offerings, such as employee offerings and assured entitlement offerings to qualified shareholders, to be conducted through existing subscription channels. We agree with this approach. We note that facilities can be (and have been) put in place for eIPO services for applying for assured entitlements such as a Blue Form eIPO service, but note that it may be costly for the issuer to set up such channels for all types of preferential offers. We agree that for such offers, the existing channels should continue to be available for those applicants who are not readily able to adopt an all-electronic model. We believe that in such cases the issuer would arrange for printed copies of the prospectus to accompany the hard copy application form rather than make use of an MMO and, as such, we do not consider this alone to be a reason for retaining MMOs.

Notwithstanding the above, we would like to highlight a concern of our members in respect of the proposal to move to a fully electronic platform for IPOs. The MMO regime includes specific provisions to deal with the situation where there is prolonged, contemporaneous inaccessibility of the electronic listing document for at least four hours on both the issuer's and the HKEx website. In these circumstances, the conditions in section 9A of The Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice would not have been met and the MMO would need to be suspended. We note that the Consultation Paper does not mention the implications to the offer period if there are any issues with access to the electronic prospectus and application forms. We would invite the Exchange (together with the SFC) to issue some guidance to the market on this.

Under the Code of Conduct for Persons Licenced by or Registered with the Securities and Futures Commission (**Code of Conduct**), sponsors are required to act as the overall manager of a public offer to ensure that the public offer is conducted in a fair and orderly manner. The sponsor is required to assess the likely interest in, or the reception of, the offer by the public and put in place "*sufficient arrangements and resources to ensure that the public offer and all matters ancillary thereto are conducted in a fair, timely and orderly manner*". Paragraph 17.13(b) of the Code of Conduct specifically refers to there being sufficient arrangements to ensure that the listing documents (in both electronic and printed form) and application forms (in printed form) are made readily available to the public during the public offer period. It also requires sponsors to have regard to whether sufficient measures have been put in

place to ensure that (a) the distribution of prospectuses and application forms to the public; (b) the collection of completed application forms from the public; and (c) the despatch of unsuccessful applications, refund cheques and share certificates after the public offer period closes, can be made in a timely and orderly fashion. The Code of Conduct will need to be updated if the proposals in the Consultation Paper proceed to reflect the paperless approach to listing applications. We would invite the Exchange to liaise with the SFC as soon as possible on revisions to the Code of Conduct necessitated by a move to an online subscription regime for New Listings. We would request that, in revising the sponsor obligations in the Code of Conduct relating to the management of a public offer, the Exchange and SFC take the opportunity to tailor the Code of Conduct to specifically address and reflect the electronic application medium and clearly set out the regulatory expectations, including in circumstances where there is disruption to the availability of online systems.

We note that in the context of the introduction of the MMO regime, sponsors were advised that their obligations in managing the public offer required sponsors to (i) assess in advance whether the company's website has sufficient capacity to handle likely demand for the prospectus and has appropriate back up facilities, (ii) monitor the website during the offer period and take steps to rectify any failure, and (iii) in the event that the e-prospectus is not available on the company's website, monitor its availability on the HKEx website, and where it isn't available on either website for a period of four consecutive hours, take appropriate steps to suspend the MMO. We would encourage the Exchange and, as necessary, the SFC to provide updated guidance to reflect the regulatory expectations if the proposals in the Consultation Paper are adopted.

We also note that the SFC's "Guidelines for Electronic Public Offerings" require issuers and sponsors to have a contingency plan to deal with emergency situations relating to an eIPO but do not provide any further guidance. We would encourage the Exchange and the SFC to provide further guidance on the types of contingency plans that should be put in place in respect of solely electronic offerings.

Question 2: As a consequence of our proposal in Question 1, do you agree with our proposal to amend the Listing Rules to remove the requirement for listed issuers to make available physical copies of listing documents to the public at the address(es) set out in a formal notice? Please give reasons for your views.

Our response:

We agree with the proposal to remove the requirement for listed issuers to make available physical copies of listing documents to the public at the locations specified in the formal notice. We support the proposals for a fully electronic and paperless subscription regime for new listings for the reasons set out in our response to question 1. Given this, we do not consider it necessary to retain a requirement for printed copies of the listing document to be made available at designated addresses.

We also query whether the formal notice should still be required in a fully electronic offering. The formal notice does contain information beyond the locations where the prospectus can be obtained, and sets out basic information about the company and the listing to alert investors to the publication of the listing document. It may still be seen as a useful summary of the offer for retail investors but is, in our view, becoming of less relevance.

We invite the Exchange to consider if the formal notice could be dispensed with in a fully electronic offer, with investors simply relying on the prospectus itself.

Question 3: Do you agree with our proposal to require issuers to only post documents online on both the Exchange's e-Publication System and the issuer's website ("Online Display Documents") and to remove the requirement for their physical display? Please give reasons for your views.

Our response:

We support the Exchange's proposals to migrate the requirements for the physical display of documents to an online medium. As evidenced by the requirements in other overseas jurisdictions set out in the Consultation Paper, Hong Kong's current requirement for physical display of documents has lagged behind developments elsewhere, including the SFC's requirements. Moving to an online platform for the display of documents will provide far greater ease of access to the documentation for investors.

The social distancing measures introduced as a result of the COVID-19 pandemic have created difficulties for companies in complying with the requirements to physically display documents at a time when offices and businesses have been closed. These requirements have placed barriers to document access for investors given the restrictions placed on people's movements and concerns around public safety. Moving to an online platform would alleviate these issues.

Notwithstanding our support, we would like to highlight a number of issues that may arise as a result of a move to online display of documents where we would request that the Exchange clarify the position. The first relates to concerns regarding data privacy. We note that moving documents from being available for inspection in physical form to making them available by way of an online publication method does not change the data privacy law analysis. However, the information will clearly be more readily available and this may cause greater concerns regarding the publication of an individual's personal privacy.

Where personal data is to be made available either online or through physical inspection of display documents, the consent of the relevant individual is required. In many instances, this will not have been obtained at the time that the personal information was collected (for instance counterparties identifying themselves as signatories or witnesses to a material contract would not have been asked to give their consent to the publication of those details). We would invite the Exchange (and where relevant, the SFC) to issue clear guidance to confirm that such personal information can be redacted, preferably without the need to apply for a waiver each time.

In addition, there are instances currently where documents are put on display as a condition to the grant of a waiver from strict compliance with the Listing Rule requirements and prospectus content requirements in the C(WUMP)O. For example, where a listing applicant has a pre-IPO share option scheme, the listing applicant will commonly apply for a certificate of exemption from strict compliance with paragraph 10 of Part I of the Third Schedule to C(WUMP)O which sets out the requirement to include in the prospectus details of the options granted and grantees. The information required to be disclosed includes the name and address of the option holders. A similar disclosure requirement is set out in paragraph 27 of Appendix 1 A to the Listing Rules. The certificate of exemption and waiver is sought on the basis that the information is irrelevant or unduly burdensome, or unnecessary or inappropriate and that it is too lengthy to include in the prospectus.

There can be a variety of underlying reasons to support the waiver from including the information in the prospectus. Commonly one of the main concern is that the option information is highly sensitive and the disclosure of the confidential individual information relating to the grantees may have a negative impact on the listing applicant's relationship with the grantees and other employees. Typically, as stated in Listing Decision LD11-09, a certificate of exemption is granted by the SFC and a waiver granted by the Exchange on condition that the list of option holders is made available for inspection. Currently, given the lack of physical inspections that actually happen in practice, this approach has generally been acceptable to listing applicants. However, if going forward, the information is to be on display on an online platform, this will have greater readability and may be of greater concern to the listing applicant and the option holders. We would invite the Exchange, in conjunction with the SFC, to consider how it will approach such waivers in an online disclosure regime (and whether that information will be permitted to be excluded from the prospectus without the need to publish it online). We would invite the Exchange and SFC to explore enhancing alternative disclosures instead of imposing a sweeping disclosure requirement for all option details to be available on an online platform or permitting reasonable redaction to the option register. It would be helpful if the Exchange could update the listing decision to clarify the approach if the proposals in the Consultation Paper are adopted.

Another similar example is the approach taken to valuation reports. Where a listing applicant has a lot of property interests such that the valuation report that would be required to be included in the prospectus would be very

lengthy, it is common for the listing applicant to apply for a certificate of exemption from the requirements of paragraph 34(2) of Part II of the Third Schedule of C(WUMP)O to include the full valuation report. A certificate of exemption is typically given on the basis that a summary valuation report is included in the prospectus and the full valuation report in compliance with paragraph 34 is made available for inspection. If the proposals are adopted and the prospectus is only published in electronic form, the length of the prospectus will be less of an issue as there will be no printing costs. The need for a waiver is arguably, therefore, lessened. However, there may still be merit in presenting a summary valuation report to investors for their ease of reading, but this benefit may be less compelling where the full report is made available online in any event. We would again welcome guidance as to how the regulators would approach these types of waiver if the proposals in the Consultation Paper are adopted.

This type of scenario is also one where we consider it may be useful for the Exchange and SFC to explore permitting disclosure by incorporation. Moving to a paperless system with online disclosure of display documents provides an opportunity to expand areas in the prospectus where disclosure could be incorporated by reference to the display documents. This will avoid duplication of information included in the prospectus where it is also readily available online and could be easily referenced. We understand that incorporation by reference in respect of certain disclosure would require legislative change, but we would encourage this approach to be pursued at the next available opportunity.

We note that the Exchange is proposing to reduce the display documents in the context of transactions by listed companies to streamline and avoid duplication. In respect of New Listings, we request that the Exchange also consider removing the requirement for certain documents to be displayed online given that the information will be included in the prospectus. For instance, the summary of provisions of constitutional documents and the summary of relevant overseas statutes are areas where there is current duplication in both the prospectus disclosure and requirement for the documents to be on display which we consider is unnecessary. Similarly, the requirement to display the consolidated audited accounts for the group for the preceding two financial years could also be dispensed with on the basis that equivalent information will be included in the accountant's report in the prospectus.

Question 4: Do you agree that Online Display Documents should be displayed online for a specified period except for those documents that are required by the Listing Rules to be made available on an ongoing basis? Please give reasons for your views.

Our response:

We support and agree with the Exchange's proposal that the Online Display Documents should be on display for the specified periods only (except for those required to be made available on an ongoing basis). The display documents are not continuously relevant to investors. Companies should be permitted to remove the documents from their website and the Exchange's website once the specified period has expired as the documents will cease to be useful and relevant to investors after that time.

Question 5: Do you agree that the Exchange should continue to allow redaction of Online Display Documents in only very limited circumstances? Please give reasons for your views.

Our response:

We foresee that there may be greater sensitivity for companies in respect of some documents which may be required to be on display where such documents are available online instead of for viewing at a physical address. However, we agree that redactions should only be permitted where there are genuine and valid reasons to justify them. We agree that the current approach of the Exchange as set out in the Waiver Guide should continue to apply.

As mentioned in our response to question 3 above, we invite the Exchange (and to the extent necessary, the SFC) to consider whether a standing waiver could be granted such that personal information can be redacted from

information required to be published, preferably without the need to apply for a waiver each time which would create unnecessary work and uncertainty.

We would encourage the Exchange to closely monitor requests for redaction waivers if the proposals in the Consultation Paper are adopted. If there are instances of frequent requests for waivers in similar circumstances, we would invite the Exchange to issue guidance to the market as to its approach to such instances and the conditions to such waivers to keep the market informed.

Question 6: Do you agree that the current definition of “material contract” remains fit for purpose and that the Exchange should continue to apply it under our proposals? Please give reasons for your views.

Our response:

We agree that the current definition of material contract remains fit for purpose and should continue to apply under the Exchange's proposals. As noted in the Consultation Paper, the definition is consistent with the equivalent definitions in the C(WUMP)O and the Takeovers Code.

Question 7: Do you agree that restrictions should not be placed on downloading and/or printing Online Display Documents? Please give reasons for your views.

Our response:

We agree that restrictions do not need to be placed on downloading or printing the documents that would be published online in accordance with the proposals in the Consultation Paper. This is consistent with the approach taken by the SFC in respect of documents on display under the Takeovers Code and we are not aware that this has caused any particular issues or concerns. Were there to be any particular sensitivities, such as in respect of the details of pre-IPO share option grantee referred to above, these could be addressed through the redaction waiver process discussed in question 5 above.

Question 8: Do you agree with our proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses Online Display Documents? Please give reasons for your views.

Our response:

We agree with the proposal not to put in place a system to record and verify the identity of persons who access the Online Display Documents. We agree with the Exchange's view that it would be very difficult to verify the identity of persons viewing or downloading documents given the ease with which online users can disguise themselves. We also note that other regulators do not have such systems in place.

Question 9: In respect of a relevant notifiable transaction, do you agree with our proposal to:
i) **require the issuer to display the contracts pertaining to the transaction only; and**
ii) **remove the requirement to display all material contracts entered into by the issuer within the last two years before the issue of the circular? Please give reasons for your views.**

Our response:

We agree with the proposal to only require contracts pertaining to the transaction to be displayed in respect of notifiable transactions. We also agree that there is no need to display all material contracts entered into with the last two years before the issue of the circular. These proposals would streamline the information that is made available to investors and tailor the disclosures to that which is relevant to the transaction. This will provide better disclosure to the market without confusing investors by requiring information that is not relevant to be published.

Question 10: In respect of a connected transaction that is subject to the shareholders' approval requirement, do you agree with our proposal to:

- i) require the issuer to display the contracts pertaining to the transaction only; and
- ii) remove the requirement to display contracts referred to in the circular and directors' service contracts? Please give reasons for your views.

Our response:

For the same reasons discussed in our response to question 9, we agree with the Exchange's proposals in the context of connected transactions to only require publication of contracts pertaining to the transaction and to remove the requirements to display contract referred to in the circular and directors' service contracts.

Other comments:

We note that Rule 12.06 of the Listing Rules refers to cases where the listing document is published in the newspaper. This rule does not give a definitive timeframe and refers to the listing document being published for a reasonable period, being not less than the offer period. We query whether this rule is still required and whether it should be deleted altogether.

We note that under the proposed amendments to Rule 19A.50 of the Listing Rules which reflect the proposed move to displaying documents in an online environment, a PRC issuer would be required to publish on the Exchange's website and on its own website a complete duplicate register of shareholders. We consider that this could be very onerous for PRC issuers and does not appear to be required by PRC law. PRC special regulation which requires the overseas shareholder register to be available for inspection).

The Special regulation on the overseas equity fund raising and listing of joint stock companies by the State Council (国务院关于股份有限公司境外募集股份及上市的特别规定) provides as follows:

"依据本规定第四条所指的谅解、协议，公司可以将境外上市外资股股东名册正本存放在境外，委托境外代理机构管理；公司应当将境外代理机构制作的境外上市外资股股东名册的副本备置于公司的住所。受委托的境外代理机构应当随时保证境外上市外资股股东名册正本、副本的一致性。"

A company can place its shareholder register for overseas listed foreign shares outside the PRC and entrust an overseas agency to manage such register. A copy of the overseas shareholders register should be placed at the Company's registered address for inspection. The entrusted agency should ensure, from time to time, the consistency between the original and copy of the overseas shareholders register."

In addition, PRC company law confers power on the shareholders to inspect the register of members of the company. There is, however, no requirement for the register to be made available online. It is unduly burdensome and not practical for PRC issuers to publish its shareholders register on a real-time basis. We suggest that the register of members continue to be made available for inspection, and could perhaps be dealt with in a similar way to the meeting minutes in the proposed new Rule 19A.50A.

In relation to the proposals, we envisage that companies will need to be given sufficient time to comply with the move to an online publication requirement to ensure that they are able to comply. For instance, companies will need to review the confidentiality clauses in their material contracts with counterparties to ensure that they permit the disclosure of the relevant contract online. The formulation of confidentiality clauses is commonly tailored to the current Listing Rules and provides for physical inspection to be permitted. Those clauses would need to be renegotiated to the extent that such documents may need to be made available online.

We note in the Consultation Paper the references to the other paperless initiatives that are to be pursued by the Exchange. In respect of the proposed GM e-Form, we note at paragraph 46 of the Consultation Paper that this form will not be published on the HKEX website. Given this, we query what purpose this form will serve.

We also note at paragraph 49 of the Consultation Paper that the Exchange plans to move to an electronic communication approach and to no longer require paper-based documents to be filed. We strongly support this initiative.

Lastly, please note that ASIFMA is in the process of preparing a report which will address other operational challenges in the capital markets (including those relating to listings and IPO processes) that are due to a lack of electronic solutions and we intend to reach out to you in due course. It suggests, among other things, permitting electronic submission of documents to the Exchange and dispensing with the need for certain physical documents.