

## **Press release**

### **LCQ3: Vetting of and approval for applications for new listings**

Wednesday, October 9, 2013

Following is a question by the Hon Christopher Cheung Wah-fung and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (October 9):

Question:

It has been reported that Alibaba Group, an Internet giant on the Mainland, has discussed with Hong Kong Exchanges and Clearing Limited (HKEx) earlier about listing in Hong Kong, and proposed that a partnership system be adopted by the company after listing, so that partners holding only minority interests will have the right to nominate a majority of directors. However, this system violates the current listing requirement of "same rights for same shares". It has also been reported that such discussion has rekindled concerns of some market participants about the issues of HKEx having conflicts of interests in performing its function to vet and approve new listings, and of deficiency in the existing regime for vetting and approving listings. In fact, in as early as 2003, the Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure (the Report) had raised numerous issues concerning conflicts of interests and roles on the part of HKEx as both a commercial entity and a regulator, and had put forward a number of recommendations. In this connection, will the Government inform this Council:

(a) how it ensures that HKEx, while seeking more listings of overseas and Mainland companies in Hong Kong, will not neglect its duties to ensure that listed companies are of good quality and investors' interests are safeguarded, and how it ensures that HKEx will make appropriate choices between the two aspects;

(b) whether it has assessed if the existing regulatory mechanism is adequate to ensure that a balance is struck between the interests of HKEx as a commercial entity and as a public body, and whether it will adopt the recommendations put forth in the Report which had not been adopted, including removing the function of HKEx to vet and approve applications for new listings; and

(c) whether it will consult the public on the various forms of shareholding structures available for new listings; if it will, of the details; if not, the reasons for that?

Reply:

President,

My consolidated reply to the three parts of the question is as follows:

Under the three-tier regulatory structure for the securities and futures industry, the Administration, the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx) assume different roles in the operation of the securities market. The Administration formulates overall policies for the development of the financial market. The Stock Exchange of Hong Kong Limited (SEHK), a wholly owned subsidiary of the HKEx and a recognised exchange company under the Securities and Futures Ordinance (SFO), operates and maintains the securities market in Hong Kong. The SEHK is entrusted with the statutory function of ensuring an orderly, informed and fair securities market and must act in the interest of the public, having particular regard to the interest of the investing public. Under the SFO, the SFC, as the statutory regulator of the securities and futures markets, has a statutory duty to supervise, monitor and regulate the SEHK and its performance of its listing-related functions and responsibilities.

To address the concern over potential conflict of interests arising from the roles of the SEHK as a commercial entity and a public body, the SFC and the SEHK signed a Memorandum of Understanding (MoU) in 2003. A number of arrangements were formulated on the basis of the MoU, including:

(a) the SEHK is required to separate its listing function empowered by the SFC from those of the HKEx group. The listing-related functions of the SEHK, which include the establishment and promulgation of the Listing Rules prescribing listing requirements for listing applicants and listed issuers, and the fair and impartial administration of the Listing Rules, are discharged by its Listing Division and Listing Committee. The Listing Division vets materials submitted by listing applicants for compliance with the Listing Rules and prospectus requirements under the Companies Ordinance, and administers the listing approval process together with the Listing Committee;

(b) the SEHK must seek approval from the SFC for all changes to the Listing Rules and policy decisions that have mandatory effect or general application. In developing its proposals for changes to the Listing Rules, the SEHK will consult with the market and

the SFC;

(c) the dual filing arrangement, a requirement stipulated in the Securities and Futures (Stock Market Listing) Rules under the SFO, has been in effect since April 1, 2003. Under this arrangement, listing applicants and listed companies are required to file applications with and disclosure materials to the SFC via the SEHK. This enables both the SFC and the SEHK to assume regulatory roles in decisions on listing applications. The SFC may object to decisions on listing approval made by the SEHK and exercise enforcement powers over persons issuing false or misleading corporate information;

(d) the SFC conducts periodic audits of the SEHK's performance in its regulation of listing-related matters and annual on-site inspections of its listing functions and responsibilities. Executives of the two organisations also meet regularly to discuss listing-related matters; and

(e) the SFC conducts annual review of the performance of the SEHK in its regulation of listing matters. It assesses the procedures and processes of the Listing Division and examines sample cases, with a view to understanding how the Division's policies work in practice and verifying whether the Division's practices follow its policies. The SFC will submit the review reports to the Financial Secretary and make them available for public inspection.

It is mentioned in the question that a number of recommendations on the regulation of listing matters were put forward in the Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure issued in 2003. In response, the Administration worked out a series of improvement measures for public consultation in end 2003. The results showed that the majority of the respondents supported the proposal for giving statutory backing to certain fundamental listing requirements, such as the obligation to disclose price sensitive information. The statutory disclosure regime requiring listed corporations to disclose price sensitive information came into effect on January 1, 2013. Under the regime, listed corporations are obliged to disclose relevant information to the public in a timely manner.

To maintain and consolidate Hong Kong's status as an international financial centre and the premier capital formation centre for the Mainland, we have to keep the regulatory regime governing listing under constant review in tandem with changing market needs and international trends. The Administration, the SFC and the HKEx all strive to keep on improving our regulatory regime. For example, to enhance the quality

of listed corporations, the SFC launched a new sponsor regime in early 2013, aiming to ensure that sponsors have a thorough understanding of the companies seeking to enter Hong Kong's public capital markets before making listing applications for them. The new requirements in the revised Listing Rules and relevant SFC codes apply to listing applications submitted from October 1, 2013. The SFC has also put forward a proposal to the Administration that legislative amendments should be made to clarify sponsors' legal liability under the Companies Ordinance. We are now working on the legislative proposal.

The Administration and the SFC are of the view that the existing regulatory mechanism works well, and have no intention to change the functions and responsibilities of the SEHK in vetting and approving listing applications. The SEHK currently has no plan to consult the public on different forms of shareholding structures proposed for new listings.

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