

Press Release

LCQ2: Proposed enhancements to decision-making and governance structure for listing regulation

Wednesday, November 9, 2016

Following is a question by the Hon Regina Ip and a reply by the Acting Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (November 9):

Question:

The Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (SEHK) issued a joint consultation paper on proposed enhancements to SEHK's decision-making and governance structure for listing regulation in June this year. Some members of the financial services industry have reacted strongly to the proposals put forth in the consultation paper. They are of the view that the existing structure has all along been working well in the recent 30 years or so. However, the proposed new Listing Regulatory Committee and Listing Policy Committee, each with less than 10 members, may make decisions overriding those of the existing Listing Committee which is broadly representative, allegedly weakening the latter's power to vet and approve listings. Also, the Financial Services Development Council, Hong Kong has recently indicated that the proposals concerned simply cannot achieve the objectives set out in the consultation paper. In this connection, will the Government inform this Council:

(1) as the objectives of the proposals put forth in the consultation paper include the establishment of a more efficient decision-making structure to address various regulatory issues (including stock price manipulation, corporate governance shortfalls, disclosure problems and other misconduct which prejudices public investors), whether the Government knows the respective numbers of cases in which SFC conducted investigations and instituted prosecutions in respect of such issues and the number of convictions concerned, in each year during the period from 2011 to September this year, with a tabulated breakdown by regulatory issue, as well as the percentage of the number of companies investigated in the total number of listed companies;

(2) as the Chief Executive Officer of SFC has indicated that there is no Plan B

for the consultation, how the authorities will deal with the situation where the proposals concerned are not accepted by the industry; whether the authorities have assessed if the proposals concerned have violated the market participant-based regulatory principle set out in the Davison Report, which has been adopted by the authorities since 1988; whether the Government will request SFC to revise the proposals concerned so as to garner more support from members of the industry; if it will, of the details; and

(3) as some members of the industry have indicated that the proposals put forth in the consultation paper, if implemented, will increase the costs and time required for listing, impact on the development of the industry and undermine the competitiveness of Hong Kong, whether the Government knows the time generally required for completing the entire initial public offering (IPO) process currently; how the time for vetting and approving listing applications in Hong Kong compares with the relevant time in other major securities markets; as Hong Kong ranked first globally in terms of IPO funds raised last year, whether the Government has assessed the impact of the implementation of the proposals concerned on the competitiveness of Hong Kong as an international financial centre; if it has assessed, of the details; if not, the reasons for that?

Reply:

President,

As pointed out by the Financial Secretary in the 2016-17 Budget, given the size and complexity of the securities market, we need to constantly review the relevant regulatory regimes, streamline procedures and enhance market efficiency and quality to reinforce Hong Kong's status as the premier capital formation centre. The joint consultation of the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEX) aims to enable the listing regulatory structure and procedures to respond to rapid developments in the market.

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

(1) The numbers of cases that the SFC commenced investigations in relation to corporate governance deficiencies and disclosure issues, insider dealing and market manipulation during the period from 2011 to September 2016, as well

as the number of companies involved as a percentage of the total number of listed companies are set out in the Annex. For most of these cases, the SFC would seek non-criminal rulings from the Market Misconduct Tribunal, or initiate civil proceedings in the Court of First Instance, instead of treating criminal prosecutions as the ultimate destination. The SFC enhances Hong Kong's market quality in a comprehensive manner, through combating wrongdoings by way of various different types of enforcement actions. The relevant statistics are also provided at Chart 2 of Annex for reference.

(2) The SFC has clarified earlier that the remarks of the Chief Executive Officer of the SFC on no "Plan B" for the consultation simply meant that the consultation was a genuine consultation and that there was not any fallback or alternative proposal. The SFC and the HKEX will keep an open mind and listen to market views.

Since the launch of the consultation, various stakeholders have been providing a wide range of views. The Government is pleased to see the industry's overwhelming responses. In fact, the SFC and the HKEX have extended the deadline for response to the consultation by two months to end on November 18, 2016, allowing a five-month consultation period. This gives various parties more time to file their submissions.

The question asked whether the consultation proposals have violated the practitioner-based regulatory principle as set out in the Davison Report in 1988. Since the days of the Davison Report, the Hong Kong listing market has transformed tremendously in terms of scale and complexity. The Stock Exchange of Hong Kong (SEHK) was demutualised and became a listed company after the release of the Report. Therefore, there is a need to put in place vetting and approval procedures and structure that are appropriate to effectively deal with the current market environment. The SFC and the HKEX's joint consultation paper proposes to establish two new committees to focus on important listing policies and decisions. At the same time, it proposes that a large majority of initial listing applications will continue to be vetted and decided by the Listing Committee, while the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. That means that the related vetting and approval work would continue to rely on market participants, i.e. representatives on the Listing Committee. Therefore, the relevant proposals do not deviate from the

practitioner-based regulatory principle.

(3) According to information provided by the HKEX, regarding the vetting time from the date of submission of listing application to the Listing Committee hearing, the SEHK completed the vetting of around 90 per cent of the listing applications within 180 calendar days in 2015, and the vetting of most of these cases were completed within 120 calendar days. The SEHK's performance was comparable to that of the Securities and Exchange Commission in the US. The Financial Conduct Authority in the UK does not publish information on the time taken to vet a listing application.

Regarding the impact of the consultation proposals on Hong Kong's competitiveness as an international financial centre, I would like to reiterate that the consultation paper aims to introduce further one-stop processing and provide a more focused platform for the SFC and the SEHK to concentrate on policies and decisions that are significant to the quality, competitiveness and development of the market at an earlier stage. The consultation paper also aims to simplify the process for initial listing applications, including the proposal that the SFC would no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. This would make the vetting process more efficient and strengthen Hong Kong's competitiveness as an international financial centre. As pointed out in my reply in part (2), the SFC and the HKEX will keep an open mind and listen to market views.

Ends