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The Securities and Futures Commission
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By Email

20 December 2012

Dear Sirs

Consultation Paper on proposals to enhance the regulatory regime for non-corporate listed entities (the "Consultation Paper")

We are grateful for the opportunity to comment on the Consultation Paper.

The only section which on which we wish to comment is "Excluding from the disclosure of interests regime under Part XV of the SFO entities whose only listed securities are debentures".

We agree with, and welcome, the SFC's view expressed in Paragraph 52 that an entity that is listed only by virtue of its debentures being listed on the Hong Kong Stock Exchange ("HKSE") ("listed debenture issuer") should be excluded from the disclosure of interests regime under Part XV of the Securities and Futures Ordinance (Cap 571) ("SFO") for all the reasons set out in the Consultation Paper.

However, we disagree with the SFC's views in Paragraph 54 marked in bold that,

"Some debentures can be convertible into shares/units of the listed debenture issuer or shares/units of another entity related to the listed debenture issuer. All investors, including holders of these convertible debentures who have an interest in the shares/units into which the debentures may be converted, would benefit from disclosure of interests information concerning the listed debenture issuer. **Accordingly, the exclusion should not apply where the listed debentures are convertible into the shares/units of the listed debenture issuer or an entity related to the listed debenture issuer.**"

- We consider that in the case of a convertible bond issue where the bonds are convertible into shares listed on a stock exchange other than Hong Kong (an "overseas exchange") of the issuer or related company, the rules relating to disclosure of interests of the jurisdiction in which the overseas exchange is located should be applicable. Bondholders will be looking to that jurisdiction for disclosure of economic interests in and control of the shares. There is no reason to

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suppose that shareholders would look to Hong Kong to supplement the disclosure regime of the overseas jurisdiction if that jurisdiction itself did not require disclosure of interests in shares issuable on conversion of bonds. We understand that the SFC may be concerned that the overseas jurisdiction would not provide the same transparency in relation to disclosure of interests as Hong Kong. However, when the Bonds are converted into shares, the Bondholders (now shareholders) will be subject to this regime in any event. In addition, if such change was implemented, the continuing disclosure obligations of the overseas exchange would apply with respect to other matters such as connected transactions and acquisitions/disposals. This would therefore result in an inconsistent approach where for some purposes the HKSE disclosure obligations apply and for other purposes they do not. We do not consider it is logical or appropriate for the directors and substantial shareholders of the issuer to be subject to Part XV disclosure as an interim measure before the bonds are converted.

- It would be onerous for the directors of the issuer and its substantial shareholders to have to make disclosure of their interests in the shares or debentures of the issuer following the Part XV regime in Hong Kong as well as in the overseas jurisdiction, and as such it would be a disincentive to overseas issuers to list their convertible bonds in Hong Kong. Other major exchanges in jurisdictions such as London, Luxembourg and Singapore do not impose such a requirement. Although to date there have been relatively few Hong Kong listed convertible bond issues convertible into shares listed on an overseas exchange, as the SFC remarks in paragraph 51, "since 2010 the number of listings of debentures has increased significantly". The HKSE is making a concerted effort to market itself as a convenient listing venue for overseas bond issuers and this requirement would be a significant deterrent to an overseas issuer of convertible bonds choosing to list in Hong Kong. (Singapore is currently the most popular listing venue in Asia for convertible bonds.)
- Convertible bonds are invariably marketed to professional investors in Hong Kong (or else a Companies Ordinance prospectus would need to be prepared). Professional (normally institutional) investors do not need the same level of protection as retail investors and are able to monitor disclosure of interests in the jurisdiction of the overseas exchange themselves; disclosing the same or similar information in Hong Kong would be superfluous. Assuming the SFC will be able to grant exemption from compliance with Part XV in accordance with Section 309(2) of the SFO, we anticipate that all issuers of bonds convertible into shares listed on an overseas exchange will apply for an exemption as is currently the case. It is likely that the application letter will ask the SFC to take into account that the Bonds are traded on the OTC market and are listed for portfolio requirements of institutional investors rather than to provide liquidity, a trading market or a price quotation system for the Bonds. If the SFC will routinely grant the exemption, as it does now, we respectfully submit that the SFC should include this category of bonds in the exclusion.
- Currently the Guidelines for the Exemption of Listed Corporations from Part XV state that the SFC will take into account whether the securities that an issuer proposes to issue are convertible into shares of the issuer or a member of the issuer's group. There is no distinction between whether the securities are listed on Hong Kong or an overseas exchange and it seems inconsistent to introduce this concept now.

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So in conclusion we welcome the SFC's proposal to exclude from the disclosure of interests regime under Part XV of the SFO any listed debenture issuer which is an entity that is listed only by virtue of its debentures being listed on the SEHK, but we would urge that all convertible bond issues be excluded from the regime, not only those which are convertible into shares listed on the HKSE.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Linklaters', written in a cursive style.

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