

MEMORANDUM OF UNDERSTANDING

for the listing of

Hong Kong Exchanges and Clearing Limited

on

The Stock Exchange of Hong Kong Limited

BETWEEN

Securities and Futures Commission

Hong Kong Exchanges and Clearing Limited

and

The Stock Exchange of Hong Kong Limited

22nd August 2001

Table of Contents

	Page
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Construction	2
2. STATUS OF THE PARTIES AND THIS MOU	3
2.1 Status of the parties	3
2.2 Purposes of this MOU	3
2.3 Status of this MOU	5
2.4 Amendment	6
3. LISTING ARRANGEMENTS	6
3.1 General power and rights	6
3.2 Listing of HKEx	6
3.3 Ongoing listing procedures	7
3.4 Company announcement procedures	8
3.5 Listing Rule waiver procedures	9
3.6 Fees and expenses	9
4. CONFLICTS OF INTEREST AND MARKET INTEGRITY	10
4.1 Conflicts of interest	10
4.2 Market integrity	10
5. MARKET SURVEILLANCE	10
6. MISCELLANEOUS	11
6.1 Confidentiality	11
6.2 Strategic review	11
6.3 Operational meeting	11
6.4 Amendment	11
6.5 General co-operation and assistance	11
6.6 Effect on other arrangements	13
6.7 SFC may delegate powers and functions	13
7. EFFECTIVE DATE AND TERMINATION OF MOU	13

APPENDICES

Appendix 1 – Section 13 of the Exchanges and Clearing Houses (Merger) Ordinance

Appendix 2 – Part A - Chapter 38 of the Rules Governing the Listing of Securities on
The Stock Exchange of Hong Kong Limited

Part B - Chapter 36 of the Rules Governing the Listing of Securities on the
Growth Enterprise Market of The Stock Exchange of Hong Kong
Limited

Appendix 3 – Procedures to deal with conflicts of interest

**MEMORANDUM OF UNDERSTANDING
FOR THE LISTING OF HKEX ON SEHK**

- BETWEEN:**
- (1) **Securities and Futures Commission** of
12th Floor, Edinburgh Tower, The Landmark, 15 Queen’s Road
Central, Hong Kong (“**SFC**”);
 - (2) **Hong Kong Exchanges and Clearing Limited** of
12th Floor, One International Finance Centre, 1 Harbour View
Street, Central, Hong Kong (“**HKEx**”); and
 - (3) **The Stock Exchange of Hong Kong Limited** of
1st Floor, One and Two Exchange Square, Central, Hong Kong
(“**SEHK**”).

WHEREAS:

- A.** HKEx is the holding company of SEHK and a recognized exchange controller within the meaning of the Merger Ordinance (as defined below). SEHK is a company of which HKEx is the controller within the meaning of the Merger Ordinance.
- B.** In the context of the listing of HKEx on the Main Board of SEHK, and as contemplated by section 13 of the Merger Ordinance, the SFC, HKEx and SEHK entered into a Memorandum of Understanding for the listing of Hong Kong Exchanges and Clearing Limited on The Stock Exchange of Hong Kong Limited on 19 June 2000 (“**First MOU**”).
- C.** The SFC, HKEx and SEHK, parties to the First MOU, wish to amend the terms of the First MOU and have agreed to enter into this MOU to replace and supersede the First MOU. The amendments provide for the extension of the scope of the First MOU to cover GEM as well as the Main Board of SEHK and remove or bring up-to-date certain provisions of the First MOU which had become spent by passage of time.

1. INTERPRETATION

1.1 Definitions

- 1.1.1 Unless the context otherwise requires, the following expressions shall have the following respective meanings:

GEM	the Growth Enterprise Market operated by SEHK
GEM Listing Rules	Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited

Listing Rules	Main Board Listing Rules and/or GEM Listing Rules, as the context or nature of the applicant or issuer may require
Main Board	the stock market operated by SEHK prior to the establishment of GEM (excluding the options market) and which stock market continues to be operated by SEHK in parallel with GEM, and for the avoidance of doubt the Main Board excludes GEM
Main Board Listing Rules	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited
Merger Ordinance	The Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555)
MOU	This Memorandum of Understanding
Relevant Listing Rules	Chapter 38 of the Main Board Listing Rules and Chapter 36 of the GEM Listing Rules
Relevant Ordinances	The Securities and Futures Commission Ordinance (Cap. 24), Part II of the Companies Ordinance (Cap. 32) (insofar as that part relates, whether directly or indirectly, to the performance of functions by the SFC in relation to prospectuses and purchase by a company of its own shares) and part XII of that Ordinance (insofar as that part relates, whether directly or indirectly, to the performance of functions by the SFC in relation to prospectuses), the Securities Ordinance (Cap. 333), the Commodity Exchanges (Prohibition) Ordinance (Cap. 82), the Commodities Trading Ordinance (Cap. 250), the Merger Ordinance, the Protection of Investors Ordinance (Cap. 335), the Stock Exchanges Unification Ordinance (Cap. 361), the Securities and Futures (Clearing Houses) Ordinance (Cap. 420), the Securities (Disclosure of Interests) Ordinance (Cap. 396) and the Securities (Insider Dealing) Ordinance (Cap. 395)

1.2 Construction

1.2.1 In this MOU, where the context admits:

- (a) words and expressions, the definitions of which are contained or referred to in the Merger Ordinance or the Listing Rules, shall be construed as having the meanings so attributed to them and when a word or an expression is defined differently in the Main Board Listing Rules and the GEM Listing

Rules, then the context in which the word or expression is used shall determine which definition applies;

- (b) references to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date hereof) from time to time and shall include any provisions of which they are a re-enactment (whether with or without modification); and
- (c) words importing the singular meaning include the plural meaning and vice versa and words of one gender include both other genders, and words denoting natural persons include corporations and firms and vice versa.

2. STATUS OF THE PARTIES AND THIS MOU

2.1 Status of the parties

- 2.1.1 The SFC is the statutory regulator of the securities and futures markets in Hong Kong. The Relevant Ordinances include provisions allowing the SFC to oversee the operations of HKEx and SEHK. The Merger Ordinance provides, inter alia, for the SFC to perform certain functions and exercise certain powers in the event of HKEx's listing.
- 2.1.2 HKEx is a recognized exchange controller and SEHK is a company of which HKEx is the controller, in each case within the meaning given to that expression in the Merger Ordinance.
- 2.1.3 SEHK is a wholly owned subsidiary of HKEx. It is an Exchange Company (within the meaning given to that expression in the Merger Ordinance) which operates the Stock Exchange of Hong Kong and is the front line regulator of listed companies in Hong Kong.

2.2 Purposes of this MOU

- 2.2.1 Pursuant to section 13 of the Merger Ordinance, HKEx may become a listed company provided that the requirements of the section are complied with. In particular, listing may not take place until the SFC is satisfied that:
 - (a) rules made under section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) adequately deal with possible conflicts of interest that might arise if HKEx were to be a listed company; and
 - (b) HKEx has entered into arrangements with the SFC that adequately ensure, inter alia, the integrity of the securities and futures market on the relevant Exchange Company (within the meaning given to that expression in the Merger Ordinance) and the compliance with obligations as a listed company which would fall on HKEx if it were to become a listed company.

Section 13(4) of the Merger Ordinance provides that the SFC shall have such powers and functions as are provided for it under rules and arrangements referred to in paragraphs (a) and (b) above respectively. The provisions of section 13 are set out in *Appendix 1*.

2.2.2 This MOU sets out arrangements agreed between the parties, as contemplated by section 13 of the Merger Ordinance. SEHK is a party to this MOU to facilitate the implementation of those arrangements. The SFC has the powers and functions provided in this MOU.

2.2.3 The parties recognise that it is important that there be consistency of outcome and timing as far as possible between:

- (a) SEHK in its administration and enforcement of the Rules of the Exchange in relation to HKEx's securities and other securities;
- (b) SEHK in its administration and enforcement of the Listing Rules in relation to all applicants for listing on the Main Board or GEM and listed issuers of the Main Board or GEM other than HKEx ("**other applicants and issuers**"); and
- (c) the SFC in its administration and enforcement of the Listing Rules in relation to HKEx.

2.2.4 Provisions of this MOU set out the way the parties will relate to each other in relation to:

- (a) HKEx's and other applicants' and issuers' compliance with the Listing Rules;
- (b) SEHK's enforcement of the Rules of the Exchange in relation to HKEx's securities and those of other applicants and issuers;
- (c) the SFC's supervision and regulation of HKEx as a listed issuer and, where a conflict of interest arises, other applicants and issuers;
- (d) conflicts of interest which may arise between the interests of HKEx as a listed company and companies of which it is the controller, and the interests of such companies in the proper performance of regulatory functions; and
- (e) market integrity.

2.2.5 This MOU records arrangements between the parties acting in different capacities and reflecting various relationships, including:

- (a) the SFC acting as the statutory regulator of Hong Kong's securities and futures markets and (with respect to HKEx and other persons where a

conflict of interest may arise) as the front line regulator of users of those markets;

- (b) SEHK acting as the front line regulator of listed issuers and (with respect to trading and clearing matters) Exchange Participants (except with respect to HKEx and other persons where a conflict of interest may arise) and as a securities exchange;
- (c) HKEx acting in the capacity of a listed issuer and as the holding company of SEHK and other companies of which HKEx is the controller; and
- (d) companies of which HKEx is the controller in the capacity of subsidiaries of a listed issuer and as companies performing regulatory functions and exercising regulatory powers.

2.2.6 Pursuant to this MOU and the Relevant Listing Rules (referred to in clause 3.3.2 below) SEHK shall, at the written request of the SFC, within a reasonable time take actions or make decisions with respect to HKEx and other applicants and issuers. Any such action or decision by SEHK may involve the exercise of powers or functions of a securities regulator or securities exchange and, unless the parties otherwise agree, shall be regarded as being taken or made by SEHK acting in the relevant capacity on behalf of the SFC.

2.3 Status of this MOU

2.3.1 The parties acknowledge and agree that:

- (a) this MOU is entered into by the parties in good faith and for the purpose of facilitating a co-operative working relationship between the parties in the context of the listing of HKEx on the Stock Exchange of Hong Kong;
- (b) in the interpretation of any of the provisions of this MOU such provisions shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the objects of this MOU according to its true intent, meaning and spirit;
- (c) this MOU shall not give rise to any rights, direct or indirect, on the part of third parties, nor shall such third parties be entitled to require compliance by any party hereto with any of its respective obligations arising hereunder;
- (d) nothing in this MOU shall affect the rights of the SFC to exercise any of its powers or perform any of its functions under any of the Relevant Ordinances or the Listing Rules;
- (e) save as expressly provided for in this MOU and the Relevant Listing Rules, the rights of HKEx and SEHK to exercise any of their respective powers or functions under any of the Relevant Ordinances or the Listing Rules shall be unaffected; and

- (f) this MOU shall be a public document and the contents hereof may be disclosed and copies may be furnished by any party to any third party without the consent of the other parties.

2.4 Amendment

- 2.4.1 This MOU may be varied, amended or supplemented at any time by an addendum signed by all parties (“**Addendum**”).

3. LISTING ARRANGEMENTS

3.1 General powers and rights

- 3.1.1 The SFC shall, instead of SEHK, take all actions and make all decisions in relation to HKEx that would be taken by SEHK in the case of other applicants and issuers except in the case of any action or decision in respect of which the SFC states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by SEHK.

- 3.1.2 Without prejudice to the terms of this MOU, the parties shall have the powers and functions, rights and obligations (as the case may be) provided for them respectively in the Relevant Listing Rules. The powers and functions of the SFC referred to in this MOU (including those in the Relevant Listing Rules) are hereinafter referred to as “**SFC (HKEx Listing) Powers**”.

3.2 Listing of HKEx

- 3.2.1 Pursuant to the terms of the First MOU, the SFC had the power to receive and consider HKEx’s application for listing on the Stock Exchange of Hong Kong and any pre-application documents. The SFC also had the power, subject to HKEx’s rights of appeal, to reject HKEx’s application or approve (with or without conditions) the application. Upon approval of the application, the SFC would be responsible for the supervision of HKEx’s compliance with the Listing Rules as a listed issuer.

- 3.2.2 Pursuant to the terms of the First MOU, the SFC, in relation to HKEx’s application for listing, could advise SEHK of any administrative steps it reasonably required SEHK to take on its behalf. The SFC could not require SEHK to take steps which SEHK would not take with respect to other applicants for listing. SEHK was required to carry out the administrative steps within the time period and in a like way to that which it would do with respect to other applicants for listing.

- 3.2.3 In exercise of its power under the First MOU, the SFC approved HKEx’s application for listing and HKEx became a listed company on the Main Board on 27 June 2000.

3.3 Ongoing listing procedures

- 3.3.1 Upon and from HKEx's listing, the SFC shall, in relation to HKEx, have all the powers and functions that SEHK has in relation to a listed issuer, except SEHK's power to make Listing Rules pursuant to section 34 (1) of the Stock Exchanges Unification Ordinance (Cap. 361). SEHK shall have, and be entitled to exercise, its normal powers and functions in the case of any action or decision in respect of which the SFC has stated in writing that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by SEHK.
- 3.3.2 The SFC has established a framework for exercising those SFC (HKEx Listing) Powers which are concerned with listing matters. Such framework has been set out in the Relevant Listing Rules. The provisions of the Relevant Listing Rules are set out in *Appendix 2*. The parties acknowledge that the Relevant Listing Rules may be changed pursuant to section 34 of the Stock Exchanges Unification Ordinance (Cap. 361). The version of the Relevant Listing Rules appended hereto is attached for ease of reference only and any change to the Relevant Listing Rules after the entry into force of this MOU will not constitute an amendment of this MOU requiring an Addendum.
- 3.3.3 SEHK will not, unless requested by the SFC and agreed by SEHK:
- (a) be bound to monitor the Listing Rules in relation to HKEx;
 - (b) enforce the Listing Rules in relation to HKEx; or
 - (c) except as provided in clause 5, make any referral under its statutory obligations to the SFC in relation to HKEx.
- 3.3.4 SEHK will nominate the person or persons in the Listing Division who:
- (a) from time to time, may be contacted by the SFC to discuss Listing Rule policy or administration or any other matters in relation to HKEx as a listed issuer (e.g., enforcement issues or general waiver policy); and
 - (b) will give the SFC the information referred to in clause 3.5.1.
- 3.3.5 All communications and contacts between the Listing Division and the SFC in relation to any matters referred to in clause 3.3.4 are deemed confidential and shall not be disclosed to any third party by SEHK (other than its internal and external legal or other professional advisers for the purposes of obtaining advice, or under compulsion of law) without the SFC's prior written consent. The SFC acknowledges that the relevant persons in the Listing Division may also perform functions for HKEx as the parent company of SEHK. However, the Listing Division shall not disclose the communications and contacts with the SFC in relation to HKEx to other personnel of HKEx other than the Chief Executive of HKEx who shall thereupon be subject to the same confidentiality obligation.

3.3.6 SEHK will take action as required by the SFC in relation to:

- (a) the admission to, suspension or removal from, listing on the Stock Exchange of Hong Kong of HKEx's securities; and
- (b) the suspension or resumption on SEHK's trading system of trading in HKEx's securities.

SEHK will do so within the respective time limits as reasonably prescribed by the SFC or in lieu thereof in a timely manner, and in the way as reasonably prescribed by the SFC or in lieu thereof and to the extent practicable, in a like way to that which it would do with respect to other listed issuers.

3.3.7 In relation to HKEx as a listed issuer, the SFC will advise SEHK of any administrative steps it reasonably requires SEHK to take on its behalf. The SFC shall not require SEHK to take steps which SEHK would not take with respect to other listed issuers. SEHK will carry out the administrative steps within the time period and in a like way to that which it would do in respect of other listed issuers.

3.4 Company announcement procedures

3.4.1 The SFC will advise SEHK of any administrative steps it reasonably requires SEHK to take on its behalf in relation to any division of the decision-making and administrative steps involved in HKEx issuing company announcements. The SFC shall not require SEHK to take steps which SEHK would not take with respect to other listed issuers. SEHK will carry out the administrative steps within the time period and in a like way to that which it would do with respect to other listed issuers.

3.4.2 If a document for release to the market is served on SEHK that should have been served on the SFC acting in the place of SEHK as the regulator of HKEx in respect of listing matters, SEHK will:

- (a) as soon as reasonably practicable, give the document to the SFC; and
- (b) not release or otherwise deal with the document or copy thereof except in accordance with administrative steps specified by the SFC pursuant to this clause 3.4.

However, unless otherwise agreed between SEHK and the SFC, third party disclosures that are made under the Listing Rules and any of the Relevant Ordinances (e.g., a notice by any person pursuant to the Securities (Disclosure of Interests) Ordinance (Cap. 396)) are not affected by this clause, and SEHK will deal with any such release in accordance with its normal procedures with respect to listed issuers.

3.4.3 The SFC may specify documents, or classes of documents, required by the Relevant Ordinances to be served on a securities exchange that will not be subject to this clause 3.4.

3.5 Listing Rule waiver procedures

3.5.1 When the SFC receives a waiver application from HKEx in respect of the Listing Rules, the Listing Division shall at the request of the SFC as soon as reasonably practicable provide the SFC with the following:

- (a) access to SEHK's internal waivers database;
- (b) if asked, background papers retained by SEHK in relation to the waiver decisions in (a); and
- (c) if asked, advice on SEHK's policy, or administration, in relation to the relevant Listing Rule.

The above information may be provided wholly or in part by way of a direct data link.

3.5.2 Regulatory information given to the SFC in connection with an application for a waiver will be treated confidentially by the SFC.

3.5.3 Waivers granted and not granted to HKEx will be recorded by SEHK in its internal database. The SFC will give SEHK a copy of the entry to be recorded.

3.6 Fees and expenses

3.6.1 HKEx will pay the SFC the following fees:

- (a) in relation to HKEx's listing application, and ongoing listing, any fees required by the Listing Rules; and
- (b) in comparable circumstances applying to HKEx, any fee that would have been payable to SEHK by other applicants and issuers in connection with their listing on the Stock Exchange of Hong Kong.

3.6.2 The SFC will invoice HKEx and otherwise use the same timing and procedures that SEHK uses in relation to the payment of fees by other listed issuers.

3.6.3 The SFC will pay to SEHK, on written request from SEHK accompanied by adequate supporting information, its reasonable costs and out of pocket expenses incurred in performing administrative steps for the SFC hereunder. The aggregate amounts payable by the SFC shall not exceed the amount of the fees it receives from HKEx under clause 3.6.1.

4. CONFLICTS OF INTEREST AND MARKET INTEGRITY

4.1 Conflicts of interest

4.1.1 Section 13(2)(a) of the Merger Ordinance requires the SFC to be satisfied that HKEx has put in place procedures (detailing among other things the powers and functions, rights and obligations of the SFC and HKEx respectively) to deal with conflicts of interest that may arise between, on the one hand, the interests of HKEx as a listed company and/or the companies of which it is the controller, and on the other hand, the interests of the proper performance of regulatory functions by such companies. The parties have agreed those procedures as are set out in *Appendix 3*.

4.2 Market integrity

4.2.1 In the First MOU, HKEx and the SFC acknowledged that, with the coming into effect of the Merger Ordinance, there was a need to formalize new arrangements as soon as reasonably practicable for the effective discharge of their respective responsibilities in relation to SFC oversight of HKEx and its subsidiaries, supervision of Exchange Participants and market surveillance to reduce any areas of duplication of function, to facilitate a smooth and cooperative working relationship and to enable the SFC more effectively to discharge its statutory obligation of supervision and that the SFC had supplied HKEx with a draft of a proposed Memorandum of Understanding covering these matters as a basis of further discussions. The parties agreed to work together in good faith and in a spirit of mutual cooperation to consider that draft and to finalize as quickly as reasonably practicable an appropriate Memorandum of Understanding.

4.2.2 Before the signing of the Memorandum of Understanding referred to in clause 4.2.1, the parties agreed that each of them would continue to observe the then existing Memoranda of Understanding, arrangements and practices delineating their respective areas of operation and the information-sharing arrangements between them, including those arrived at in an exchange of correspondence in relation to disciplinary arrangements and information-sharing immediately prior to the coming into force of the Merger Ordinance.

4.2.3 Pursuant to a Memorandum of Understanding dated 20 February 2001, the SFC and HKEx established arrangements between them with respect to SFC oversight and supervision of Exchange Participants and market surveillance.

5. MARKET SURVEILLANCE

5.1 Where SEHK, in the course of its surveillance of Exchange Participants (in relation to trading and clearing matters) and listed issuers or as a result of complaints or market intelligence, detects unusual market activity (whether of an Exchange Participant, their representative or clients) involving HKEx's securities which reveals a possible breach of any of the Relevant Ordinances, business rules or conditions of a licence, SEHK will immediately inform the SFC. This clause 5.1

does not require SEHK to undertake surveillance functions or actions which it does not already undertake at the date hereof.

- 5.2 If SEHK informs the SFC under clause 5.1, it will then inform the SFC of SEHK's findings.

6. MISCELLANEOUS

6.1 Confidentiality

- 6.1.1 None of the parties will disclose any confidential information obtained under this MOU to a third party unless:

- (a) prior written consent of the other parties is obtained; or
- (b) it is required or authorised by law to disclose the information; or
- (c) the information has come into the public domain otherwise than as a result of its breach of this clause.

6.2 Strategic review

- 6.2.1 A strategic review of this MOU will take place once each year at a place, date and time to be agreed. It will be conducted by senior executive officers of the parties. It will address any matters that any party regards as necessary or desirable to review.

6.3 Operational meeting

- 6.3.1 The parties will meet at the request of any party to discuss the operation of this MOU, any systems access, information access, and any other operational matters that any party regards as important to discuss.
- 6.3.2 Nothing in this MOU should be construed as restricting the ability of the SFC to raise with HKEx, or HKEx to raise with the SFC, any measures that seem necessary or desirable to enhance the operation of this MOU.

6.4 Amendment

- 6.4.1 If it becomes apparent that it is necessary or desirable to amend this MOU or any Addendum each of the parties will use its reasonable endeavours to agree on appropriate amendments as soon as practicable thereafter.

6.5 General co-operation and assistance

- 6.5.1 HKEx, SEHK and the SFC will provide each other with such co-operation and assistance in good faith as is necessary or desirable to achieve the objectives of section 13 of the Merger Ordinance, this MOU and the Relevant Listing Rules.

6.5.2 The parties acknowledge that:

- (a) the SFC may determine at any time that it is necessary or desirable to change or supplement the rules in the Relevant Listing Rules; or
- (b) either the SFC or HKEx may determine at any time that it is necessary or desirable to change or supplement the arrangements in this MOU,

in order to continue to satisfy the requirements of section 13 of the Merger Ordinance. In such event, the parties will co-operate to ensure that the new or revised rules are made and the new or revised arrangements are entered into. Nothing in this sub-clause shall derogate from SEHK's general rule making powers under section 34 of the Stock Exchanges Unification Ordinance (Cap. 361).

6.5.3 In the course of exercising its powers and functions under section 13 of the Merger Ordinance, the SFC may request that SEHK (or another company of which HKEx is the controller) perform such administrative tasks on its behalf as the SFC reasonably considers appropriate for the purposes of that section, the Relevant Listing Rules, this MOU or any Addendum. HKEx shall procure that the relevant company will properly perform such tasks within the respective time limits as reasonably prescribed by the SFC or in lieu thereof in a timely manner, and in the way as reasonably prescribed by the SFC or in lieu thereof and to the extent practicable in a like way to that which it would do with respect to other listed issuers.

6.5.4 In relation to any request of the SFC under paragraph 6.5.3:

- (a) the SFC will state in writing that it is satisfied that a conflict of interest will not arise if that task is performed by the relevant company; and
- (b) HKEx will inform the SFC if the relevant task is not one which the relevant company would perform with respect to other persons it regulates and the SFC and HKEx will thereupon discuss whether and how the task should be performed.

6.5.5 HKEx shall procure that SEHK shall comply with the provisions of and promptly perform its obligations under this MOU.

6.5.6 As soon as reasonably practicable following a request of the SFC:

- (a) SEHK will provide to the SFC information relating to HKEx and its securities (and/or where a conflict of interest may exist, those of any company regulated by SEHK) which is in the possession or control of SEHK; and
- (b) HKEx will provide to the SFC information relating to holders of voting rights in HKEx which is in its possession or control.

6.6 Effect on other arrangements

- 6.6.1 The Amended and Restated Memorandum of Understanding Governing Listing Matters and the Amended and Restated Addendum to the Memorandum of Understanding Governing Listing Matters both dated 6 March 2000 between the SFC and SEHK shall have effect subject to any conflicting provisions of this MOU or of the Relevant Listing Rules.
- 6.6.2 With effect from the date of this MOU, this MOU will supersede, repeal and replace the First MOU in its entirety.
- 6.6.3 In the event of there being any conflict between the provisions of this MOU and/or the Relevant Listing Rules and any other arrangements entered into between the SFC and HKEx and/or SEHK with respect to listing matters, the provisions of this MOU and/or the Relevant Listing Rules shall prevail.

6.7 SFC may delegate powers and functions

- 6.7.1 The SFC may delegate its powers and functions under this MOU and the Relevant Listing Rules pursuant to section 9 of the Securities and Futures Commission Ordinance (Cap. 24).

7. EFFECTIVE DATE AND TERMINATION OF MOU

- 7.1 This MOU shall come into force on the date hereof or such other date as may be agreed in writing between the SFC and HKEx.
- 7.2 This MOU will continue in force until:
- (a) HKEx ceases to be a listed issuer for the purposes of the Listing Rules, or
 - (b) subject to the Merger Ordinance, all parties agree in writing to terminate this MOU; or
 - (c) terminated by the SFC pursuant to clause 7.3.

Provided that the termination shall be without prejudice to any rights which any party may have against any other party arising prior to such termination.

- 7.3 In case of a failure or refusal on the part of HKEx or SEHK to comply fully with the provisions of, or to perform its respective obligations under this MOU, then the SFC may, in its absolute discretion, take any action it considers necessary or desirable, and in particular the SFC may (in addition and without prejudice to its statutory powers) unilaterally terminate this MOU by giving not less than 14 days written notice (which shall include the reason or reasons for such termination) to HKEx and SEHK respectively.

DATED this 22nd day of August 2001

SIGNED FOR AND ON BEHALF OF THE)
SECURITIES AND FUTURES COMMISSION)
BY Mr. Andrew L T Sheng) *Sgd. A. Sheng*
authorised so to do by resolution of the)
Securities and Futures Commission)
on 20th August 2001)

SIGNED FOR AND ON BEHALF OF)
HONG KONG EXCHANGES AND CLEARING LIMITED)
BY Mr. Kwong Ki Chi) *Sgd. K.C. Kwong*
authorised so to do by resolution of its Board of Directors)
on 15th August 2001)

SIGNED FOR AND ON BEHALF OF)
THE STOCK EXCHANGE OF HONG KONG LIMITED)
BY Mr. Fok Kwong Man) *Sgd. K.M. Fok*
authorised so to do by resolution of its Board of Directors)
on 17th August 2001)

Appendix 1

Section 13 of the Exchanges and Clearing Houses (Merger) Ordinance

13. Provisions applicable where recognized exchange controller, etc, seeks to be listed company

(1) In this section -

“listed company” means a listed company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

“relevant company” means a company of which the relevant recognized exchange controller is the controller;

“relevant recognized exchange controller” means a recognized exchange controller which is the controller of the Stock Exchange Company;

“Stock Exchange Company” means the Stock Exchange Company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24).

(2) The relevant recognized exchange controller, or a relevant company, shall not become a listed company unless and until the Commission states in writing that it is satisfied that –

- (a) subject to subsection (3), rules made under section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant company, as the case may be, were to be a listed company; and
- (b) the relevant recognized exchange controller or relevant company, as the case may be, has entered into arrangements with the Commission that adequately ensure –
 - (i) the integrity of the market in securities or futures contracts traded on or through the Exchange Company concerned; and
 - (ii) the compliance with obligations as a listed company which would fall on the relevant recognized exchange controller or relevant company, as the case may be, if it were to become a listed company.

(3) Rules referred to in subsection (2)(a) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant company that would be taken by the Stock Exchange Company in the case of a company that was neither a recognized exchange controller nor a relevant company except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by the Stock Exchange Company.

(4) By virtue of this section, the Commission shall have such powers and functions as are provided for it under –

(a) rules made for the purposes of subsections (2)(a) and (3);

(b) arrangements referred to in subsection (2)(b).

(5) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made, as the case may be, by the Commission by virtue of subsections (2)(a) and (3), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to the Commission in any case where the Commission takes that action or makes that decision, as the case may be, by virtue of those subsections.

Appendix 2

Part A

Chapter 38 of the Main Board Listing Rules

Chapter 38

LISTING OF HKEC

- 38.01 This Chapter sets out requirements that must be satisfied for the securities of HKEC to be listed on the Exchange. HKEC is the holding company of the Exchange and a recognized exchange controller within the meaning of the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (the “Merger Ordinance”). The Exchange is a company of which HKEC is the controller within the meaning of the Merger Ordinance.
- 38.02 In the context of the listing of HKEC, and as contemplated by section 13 of the Merger Ordinance:
- (1) the Exchange has included this chapter in the Exchange Listing Rules; and
 - (2) HKEC and the Exchange have entered into a memorandum of understanding with the Commission.

Powers and functions of the Commission and the Exchange

- 38.03 Without limitation of the Commission’s general powers and functions in relation to listing matters, the Commission has the following powers and functions in relation to HKEC’s application for listing and status as a listed issuer:
- (1) the powers and functions that the Exchange has in relation to an applicant for listing. The Exchange must not exercise powers or perform functions in relation to HKEC’s own application, except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action were taken or decision made by the Exchange;
 - (2) if HKEC’s application for listing is approved, the powers and functions that the Exchange has in relation to a listed issuer, except the power to make listing rules. The Exchange must not exercise powers or perform functions that this rule gives to the Commission, except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action were taken or decision made by the Exchange.
- 38.04 In circumstances where the Commission has stated in writing that a conflict of interest will not arise if an action or decision were to be taken or made by the

Exchange, the Exchange shall have, and be entitled to exercise, its normal powers and functions in taking the relevant action or making the relevant decision.

The SFC (HKEC Listing) Committee, SFC (HKEC Listing) Appeals Committee and SFC (HKEC Listing) Executive

38.05 The Commission has established a framework for exercising its listing related powers and functions with respect to HKEC. The framework comprises committees established by the Commission pursuant to section 6 of the Securities and Futures Commission Ordinance (Cap. 24) and persons who will exercise with respect to HKEC applicable powers and functions, in so far as is practicable and applicable, in a like manner to the Listing Committee, Listing Appeals Committee, Listing Division and the Chief Executive of the Exchange, respectively. The relevant committees and persons are:

- (1) the SFC (HKEC Listing) Committee, which shall exercise applicable powers and functions equivalent to those of the Listing Committee including applicable powers and functions equivalent to those of the Listing (Review) Committee;
- (2) the SFC (HKEC Listing) Appeals Committee, which shall exercise applicable powers and functions equivalent to those of the Listing Appeals Committee;
- (3) the SFC (HKEC Listing) Executive, comprising the Executive Director in charge of the Corporate Finance Division of the Commission and members of staff of the Corporate Finance Division of the Commission, which shall exercise applicable powers and functions equivalent to those of the Listing Division;
- (4) the Executive Director in charge of the Corporate Finance Division of the Commission, who shall exercise applicable powers and functions equivalent to those of the Executive Director – Listing and the Chief Executive of the Exchange; and
- (5) the Secretary to the SFC (HKEC Listing) Committee and/or to the SFC (HKEC Listing) Appeals Committee, who shall exercise applicable powers and functions equivalent to those of the Secretary to the Listing Committee and/or Listing Appeals Committee.

38.06 The SFC (HKEC Listing) Committee shall consist of all Executive Directors of the Commission (except the Chairman of the Commission and the Executive Director in charge of the Corporate Finance Division) and an equal number of individuals (not being directors or employees of the Commission) with experience of the securities market in Hong Kong appointed by the Commission (each of the latter individuals being a “market representative”). The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Committee shall be three individuals including at least one Executive Director of

the Commission and one market representative. Any meeting of the SFC (HKEC Listing) Committee convened to review an earlier decision or ruling of the SFC (HKEC Listing) Committee (i.e. where the SFC (HKEC Listing) Committee is performing a role equivalent to that of the Listing (Review) Committee) shall consist of members who were not present at the meeting which made the earlier decision or ruling.

- 38.07 The SFC (HKEC Listing) Appeals Committee shall consist of the Chairman of the Commission and the non-Executive Directors of the Commission. The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Appeals Committee shall be the Chairman of the Commission and two non-Executive Directors of the Commission or, in the absence of the Chairman of the Commission from Hong Kong, three non-Executive Directors of the Commission.
- 38.08 Each of the SFC (HKEC Listing) Committee and the SFC (HKEC Listing) Appeals Committee may elect any of its members to be chairman and may regulate its own procedures and business subject to any directions given to it by the Commission for this purpose. In so doing, each such committee may have regard to (but shall not be bound by) the practices and procedures of the Listing Committee or Listing Appeals Committee as set out in Chapters 2A and 2B, as the case may be. The Chairman of the Commission shall from time to time appoint a person or persons, who may be an employee or employees of the Commission, to act as Secretary of the SFC (HKEC Listing) Committee and/or SFC (HKEC Listing) Appeals Committee.

Rights and obligations of HKEC as an applicant for listing and listed issuer

- 38.09 HKEC as an applicant for listing has all the rights and obligations that any other applicant for listing has, except that the Commission acts in the place of the Exchange.
- 38.10 HKEC as a listed issuer has all the rights and obligations that any other listed issuer has, except that the Commission acts in the place of the Exchange.

Rights and obligations of the Commission

- 38.11 The Commission acting in the place of the Exchange has all the rights and obligations in relation to HKEC that the Exchange has in relation to any other applicant for listing or listed issuer.

Procedures regarding forms, information and documents

- 38.12 HKEC must complete any form, application or other document under the Exchange Listing Rules that it gives to the Commission with any necessary adaptation including to reflect that the Commission is acting in the place of the Exchange.
- 38.13 Where the Exchange Listing Rules require documents or information to be filed with or delivered to the Exchange, such documents or information shall be filed

with or delivered to both the Commission and the Exchange in accordance with any procedures issued by them respectively from time to time.

The Commission's role in relation to other applicants for listing and listed issuers

- 38.14 Conflicts of interest may arise between the Exchange and persons whom the Exchange regulates, including applicants for listing and listed issuers. Any person that considers a conflict of interest may exist or may come into existence, or may have existed and may continue or be repeated, between the interests of HKEC, the Exchange or any other company of which HKEC is the controller and the interests of the proper performance of any regulatory function performed by the Exchange should bring the facts of the matter to the attention of the Executive Director in charge of the Corporate Finance Division of the Commission.

The Commission's powers and functions in the event of a conflict of interest

- 38.15 Pursuant to section 13 of the Merger Ordinance the Commission shall have those powers and functions in relation to conflicts of interests or potential conflicts of interest as are set out in this chapter and in the memorandum of understanding referred to in rule 38.02(2).
- 38.16 Where, pursuant to section 13 of the Merger Ordinance and this Chapter, the Commission exercises powers and functions with respect to other applicants for listing or listed issuers in place of the Exchange:
- (1) the provisions of rules 38.03, 38.04 and 38.09 to 38.13 shall apply as between the Commission and the Exchange and such applicant or issuer as if references to HKEC were replaced with references to the relevant applicant or issuer;
 - (2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08.

Appendix 2

Part B

Chapter 36 of the GEM Listing Rules

Chapter 36

Listing of HKEC

- 36.01 In the context of the listing of HKEC on the Main Board, and as contemplated by section 13 of the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (the “Merger Ordinance”):
- (1) the Exchange has included this Chapter in the GEM Listing Rules; and
 - (2) HKEC and the Exchange have entered into a memorandum of understanding with the Commission.

The Commission’s role in relation to applicants for listing and listed issuers

- 36.02 Conflicts of interest may arise between the Exchange and persons whom the Exchange regulates, including applicants for listing and listed issuers. Any person that considers a conflict of interest may exist or may come into existence, or may have existed and may continue or be repeated, between the interests of HKEC, the Exchange or any other company of which HKEC is the controller and the interests of the proper performance of any regulatory function performed by the Exchange should bring the facts of the matter to the attention of the Executive Director in charge of the Corporate Finance Division of the Commission.

The Commission’s powers and functions in the event of a conflict of interest

- 36.03 Pursuant to section 13 of the Merger Ordinance the Commission shall have those powers and functions in relation to conflicts of interests or potential conflicts of interest as are set out in this Chapter and in the memorandum of understanding referred to in rule 36.01(2).
- 36.04 Where, pursuant to section 13 of the Merger Ordinance and this Chapter, the Commission exercises powers and functions with respect to applicants for listing or listed issuers in place of the Exchange:
- (1) the provisions of rules 38.03, 38.04 and 38.09 to 38.13 of the Main Board Listing Rules shall apply as between the Commission and the Exchange and such applicant or issuer as if any references to HKEC were replaced with references to the relevant applicant or issuer; and

(2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08 of the Main Board Listing Rules as if:

- (a) references to “HKEC” were replaced with references to “the relevant applicant or issuer”;
- (b) references to “Listing Committee” were replaced with “GEM Listing Committee”;
- (c) references to “Listing (Review) Committee” were replaced with “GEM Listing (Review) Committee”;
- (d) references to “Listing Division” were replaced with “GEM Listing Division”;
- (e) references to “the Executive Director – Listing” were replaced with “the Executive Director – GEM Listing Division”; and
- (f) references to “Chapters 2A and 2B” were replaced with “Chapters 3 and 4”.

Appendix 3

Procedures to deal with conflicts of interest

Introduction

1. Set out below are the procedures, powers and functions that will be adopted and/or exercised by the Securities and Futures Commission (the “SFC”), Hong Kong Exchanges and Clearing Limited (“HKEx”) and/or The Stock Exchange of Hong Kong Limited (“SEHK”) with respect to conflicts of interest or potential conflicts of interest following HKEx’s listing.

Definitions

2. For the purposes of these Procedures the following expressions shall have the following meanings:

Commission means the executive and non-executive directors, including the chairman, of the SFC appointed pursuant to section 5 of the Securities and Futures Commission Ordinance (Cap. 24) acting as a quorate body.

Conflict Committee Secretary means the Head, Listing Regulation and Risk Management from time to time of HKEx, or his or her equivalent. The Conflict Committee Secretary may not be a Committee Member.

Conflict Committee means a committee nominated by the Board of HKEx to consider conflicts of interest or potential conflicts of interest and comprising not less than 3 employees of HKEx (each a “Committee Member”) **provided that** at least two Committee Members shall be Senior Executives. A meeting of the Conflict Committee may be effected by telephone or such other form of communication as the Committee Members may from time to time decide provided that all Committee Members participating in the meeting are able effectively to communicate with each other.

Minimal Value means a sum equal to 3% of the most recently reported book value of net tangible assets of HKEx.

Senior Executive means any of

- (a) the Chief Executive of HKEx;
- (b) the Chief Operating Officer of HKEx;
- (c) the Chief Executive of SEHK; and
- (d) the Chief Executive of the Hong Kong Futures Exchange Limited.

SFC Representatives means any one or more director, manager or other executive of the SFC from time to time nominated by the SFC for the purposes of these Procedures.

In these Procedures, unless provided for above, where the context admits words and expressions the definitions of which are contained or referred to in the Exchanges and Clearing Houses (Merger) Ordinance shall be construed as having the meanings so attributed to them.

The Conflict Committee

3. HKEx shall use its best endeavours to ensure that staff within HKEx and companies of which it is the controller are alert to, and identify, conflicts of interest or potential conflicts of interest which may arise in the course of the performance of regulatory functions. All relevant facts giving rise to any significant conflict of interest or significant potential conflict of interest shall be brought to the attention of the Conflict Committee Secretary at the earliest possible opportunity. For these purposes, “significant” shall mean facts which a reasonable person would regard as giving rise to a conflict of interest or potential conflict of interest. A conflict of interest or potential conflict of interest involving any relevant contract, arrangement or other proposal which involves sums exceeding the Minimal Value shall always be referred to the Conflict Committee Secretary. The Conflict Committee Secretary shall convene a meeting of the Conflict Committee as soon as practicable after a conflict of interest or potential conflict of interest has been brought to his or her attention.
4. The Conflict Committee shall on such a referral consider the facts and determine whether a conflict of interest or potential conflict of interest does or may arise. It will then proceed as follows depending on the circumstances:
 - 4.1 If the Conflict Committee determines that a conflict of interest or potential conflict of interest does not and will not arise in the circumstances, a brief written record of that determination will be made and placed on file.
 - 4.2 If the Conflict Committee determines that a conflict of interest or potential conflict of interest does or may arise but considers that the matter can be resolved in a manner which assures the proper performance of any regulatory functions, it shall make written proposals to that effect to be considered in turn by the SFC.
 - 4.3 If the Conflict Committee determines that a conflict of interest or potential conflict of interest does or may arise and considers that the matter cannot be resolved in a manner which assures the proper performance of any regulatory function, it shall notify the SFC accordingly which may then exercise the powers and functions set out at paragraph 11.

Resolution of conflicts of interest

5. Where the Conflict Committee has determined that a conflict of interest or potential conflict of interest does or may arise it shall notify the SFC Representatives of all relevant facts including any proposals for resolving the matter in a manner which assures the proper performance of any relevant regulatory function. The SFC Representatives shall then consider the circumstances of the case and determine whether in their opinion the regulatory function can be discharged without the intervention of the SFC. HKEx shall provide any further particulars that the SFC Representatives reasonably require.
6. If the SFC Representatives are satisfied that any proposal made by the Conflict Committee (incorporating, as applicable, any recommendation of the SFC Representatives) will assure the proper performance of any relevant regulatory functions, then HKEx shall implement such proposal, incorporating, as applicable, any such recommendation of the SFC Representatives.
7. If the SFC Representatives are not satisfied that action taken by HKEx (or a company of which it is the controller) will assure the proper performance of any relevant regulatory function then the SFC shall have the powers and functions provided pursuant to paragraph 11.

Appeal to the Commission

8. If the Conflict Committee disagrees in any respect with the approach taken by the SFC Representatives, the two parties will discuss the differences between them for a period of not more than 5 business days with a view to resolving their differences and reaching an agreed position as regards the conflict of interest or potential conflict of interest. On the expiry of such period if the differences have not been resolved the matter will be referred to the Commission and each of the Conflict Committee and the SFC Representatives shall prepare brief written statements of their respective views and the reasons for adopting those views for submission to the Commission.
9. The Commission shall within 5 business days of receiving such statements provide a written determination setting out (with reasons where applicable) (i) whether in its opinion the relevant facts do give rise to a conflict of interest or potential conflict of interest and, (ii) if so, the proposals, if any, it considers should be made for resolving the matter in a way which assures the proper performance of any relevant regulatory function in order to obviate the need for the SFC to intervene, or (iii) its conclusion that such intervention is unavoidable pursuant to paragraph 11 below.
10. The determination of the Commission shall be final and binding on all relevant parties. The Commission shall act as experts and not as arbitrators.

The Role of the SFC

11. Where it has been determined or agreed in accordance with these Procedures that a conflict of interest or potential conflict of interest does or may exist, the SFC shall have the following powers and functions with respect to the performance of regulatory powers and functions by HKEx or any company of which it is the controller:
 - 11.1 the power to require HKEx to provide information with respect to its present and proposed interest and all those of any company of which HKEx is the controller;
 - 11.2 the power to give a direction to HKEx and/or any company of which it is the controller (and HKEx shall forthwith comply with such direction and procure compliance with such direction by any such company);
 - 11.3 the power to exercise all or any of the powers and functions of any company of which HKEx is the controller, and in such event the SFC shall have and be entitled to exercise such powers and functions to the exclusion of any such company.
12. Save in circumstances of mutual agreement prior to a determination by the Commission pursuant to paragraph 9, the SFC shall not exercise its powers and functions pursuant to paragraph 11 unless and until:
 - 12.1 the SFC Representatives notify HKEx in writing of (i) the powers and functions the SFC intends to exercise and, (ii) the date on which such notice is to take effect; and
 - 12.2 HKEx has been given the opportunity to exercise its rights under paragraph 8.

No preferential treatment

13. With effect from its listing and for so long as it is a listed issuer on the Stock Exchange of Hong Kong, HKEx shall not ask or require (or purport to ask or require) any company of which it is the controller to exercise regulatory powers or functions, take regulatory actions or make regulatory decisions which a reasonable person would regard as being intended either:
 - 13.1 to place HKEx (or any company of which it is the controller) in an advantageous position as compared with any person regulated by any such company; or
 - 13.2 to place any person regulated by any such company in a disadvantageous position as compared with HKEx (or any company of which it is the controller).

14. The prohibited behaviour in paragraph 13 shall be regarded as extending to persons with which HKEx (or any company of which it is the controller) has or proposes to have a business relationship or a person with which HKEx (or a company of which it is the controller) has entered into or proposes to enter into a business arrangement.
15. For the purposes of ensuring compliance with paragraphs 13 or 14, if the SFC has concerns at any time as to the proper performance of regulatory functions with respect to any particular person regulated by HKEx or companies of which it is the controller, the SFC shall be entitled to ask HKEx to provide reasonable particulars of any current and proposed business relationships and business arrangements between HKEx and companies of which it is the controller and that person and HKEx shall comply with such request as soon as reasonably practicable following receipt of such request.
16. HKEx shall procure that any company of which it is the controller shall take such actions, make such decisions and exercise such powers and functions in such a way as to avoid any occurrence as is contemplated in paragraphs 13 or 14.

Co-operation regarding conflicts of interest

17. HKEx shall procure that any company of which it is the controller shall comply with the provisions of these Procedures.
18. HKEx shall work with the SFC when the SFC has concerns regarding conflicts of interest, and shall implement any procedures which the SFC reasonably believes will enhance the operation of matters referred to in these Procedures.