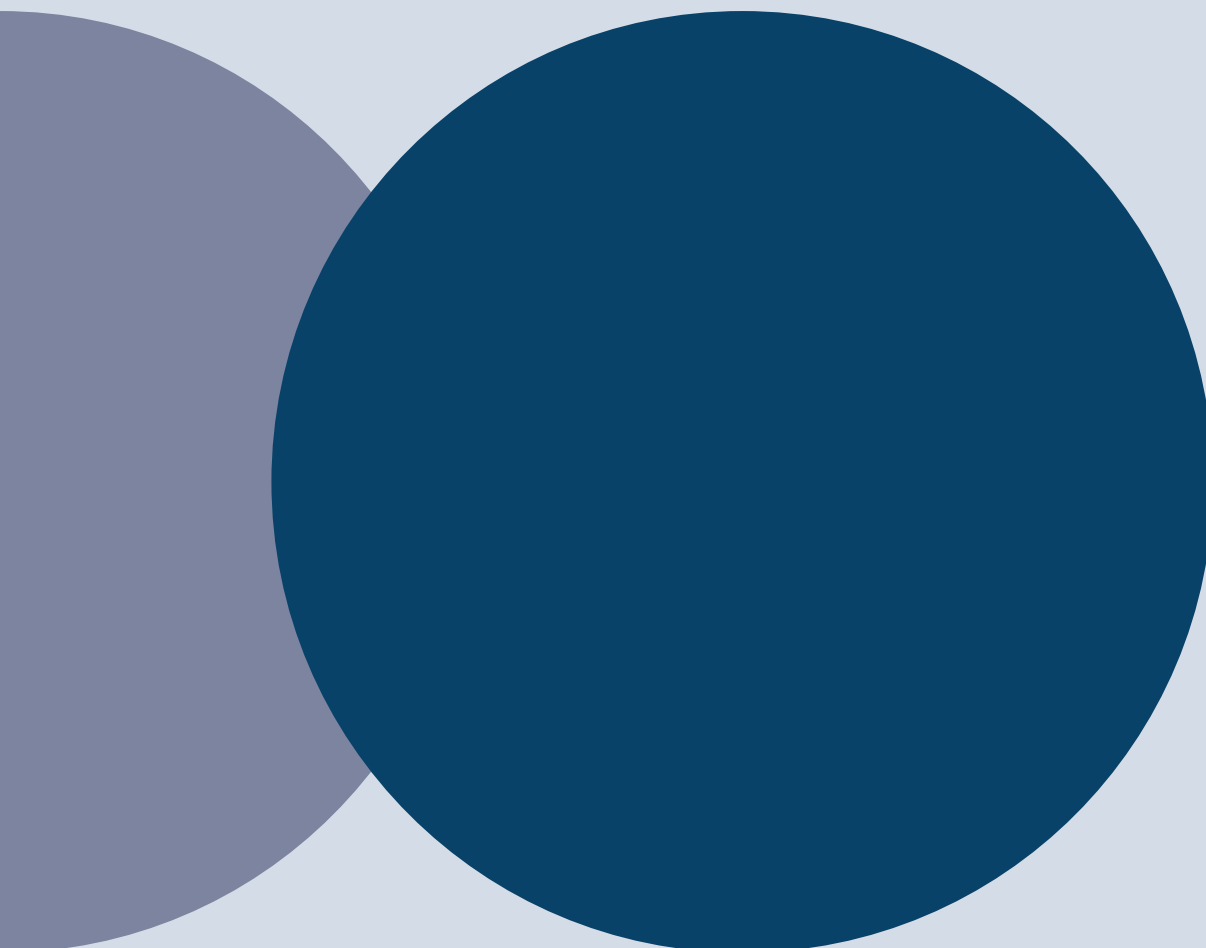


April 2018

## CONSULTATION CONCLUSIONS

### A LISTING REGIME FOR COMPANIES FROM EMERGING AND INNOVATIVE SECTORS



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## DEFINITIONS

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TERM	DEFINITION
<b>“2013 JPS”</b>	The Joint Policy Statement Regarding the Listing of Overseas Companies jointly issued by the SFC and SEHK in September 2013 ( <a href="#">here</a> )
<b>“2015 WVR Concept Paper Conclusions”</b>	Consultation Conclusions to Concept Paper on Weighted Voting Rights published in June 2015 ( <a href="#">here</a> )
<b>“Application Proof”</b>	In the case of a new applicant, a draft Listing Document that is required to be substantially complete and is submitted to the Exchange together with a listing application form for listing of its equity securities under Chapter 9 of the Rules
<b>“Authorised Institution”</b>	An institution, body or committee duly authorised or recognised by, or registered with, a Competent Authority or the European Commission for conducting, assessing and supervising clinical trials in the relevant clinical fields. The Exchange may, at its discretion, recognise another institution, body or committee as an Authorised Institution on a case by case basis.
<b>“biologic”</b>	Large, complex molecules or mixtures of molecules manufactured in a living system such as a microorganism, or plant or animal cells for the use of preventing or treating disease
<b>“Biotech”</b>	The application of science and technology to produce commercial products with a medical or other biological application
<b>“Biotech Company”</b>	A company primarily engaged in the R&D, application and commercialisation of Biotech Products (see also Appendix I, Rule 18A.01).
<b>“Biotech Product”</b>	Biotech products, processes or technologies
<b>“CFDA”</b>	China Food and Drug Administration
<b>“CG Code”</b>	Appendix 14 of the Rules – Corporate Governance Code and Corporate Governance Report
<b>“Competent Authority”</b>	FDA, CFDA, EMA or any other national or supranational authority which the Exchange recognises as a Competent Authority on a case by case basis

TERM	DEFINITION
<b>“Controlling Shareholder”</b>	Any person (including a holder of depositary receipts) who is or group of persons (including any holder of depositary receipts) who are together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer or who is or are in a position to control the composition of a majority of the board of directors of the issuer; or in the case of a PRC issuer, the meaning ascribed to that phrase by Rule 19A.14 provided always that a depositary shall not be a Controlling Shareholder merely by reason of the fact that it is holding shares of the issuer for the benefit of the holders of depositary receipts
<b>“core connected person”</b>	As defined in Rule 1.01
<b>“Core Product”</b>	A Regulated Product that (alone or together with other Regulated Products) forms the basis of a Biotech Company’s listing application under Chapter 18A of the Listing Rules
<b>“Corporate Governance Committee”</b>	A committee of the board of an issuer that has the responsibility for performing the corporate governance duties set out in the terms of reference of CG Code Provision D.3.1
<b>“Country Guides”</b>	Guides published on the Exchange’s website setting out, amongst other things, the methods that an issuer incorporated in a particular jurisdiction can use to meet the Key Shareholder Protection Standards
<b>“EMA”</b>	European Medicines Agency
<b>“Exchange” or “SEHK”</b>	The Stock Exchange of Hong Kong Limited
<b>“FCA”</b>	Financial Conduct Authority of the United Kingdom
<b>“FDA”</b>	US Food and Drug Administration
<b>“Financial Eligibility Tests”</b>	The financial eligibility requirements of the Main Board, being: <ul style="list-style-type: none"> <li>(a) Rule 8.05(1)(a) (profit test);</li> <li>(b) Rule 8.05(2)(d), (e) and (f) (the market capitalisation/revenue/cash flow test); or</li> <li>(c) Rule 8.05(3)(d) and (e) (the market capitalisation/revenue test)</li> </ul>

TERM	DEFINITION
<p><b>“Foreign Private Issuer”</b></p>	<p>A term defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time to time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time to time. The term refers to an issuer incorporated or organised under the laws of a foreign country, except an issuer meeting both of the following conditions:</p> <ul style="list-style-type: none"> <li>(a) more than 50% of the outstanding voting securities of the issuer are directly or indirectly held of record by residents of the United States; and</li> <li>(b) any one of the following: <ul style="list-style-type: none"> <li>(i) the majority of the executive officers or directors of the issuer are United States citizens or residents;</li> <li>(ii) more than 50% of the assets of the issuer are located in the United States; or</li> <li>(iii) the business of the issuer is administered principally in the United States.</li> </ul> </li> </ul>
<p><b>“Grandfathered Greater China Issuers”</b></p>	<p>Greater China Issuers that were primary listed on a Qualifying Exchange on or before the publication of the New Board Concept Paper Conclusions (15 December 2017)</p>
<p><b>“Greater China Issuer”</b></p>	<p>A Qualifying Issuer with a “centre of gravity” in Greater China as set out in the definition of “Greater China Issuer” (Appendix I, Rule 19C.01)</p>
<p><b>“HKEX”</b></p>	<p>Hong Kong Exchanges and Clearing Limited</p>
<p><b>“HKSCC”</b></p>	<p>Hong Kong Securities Clearing Company Limited</p>
<p><b>“INED”</b></p>	<p>Independent non-executive director</p>
<p><b>“IPO”</b></p>	<p>Initial public offering</p>
<p><b>“Key Shareholder Protection Standards”</b></p>	<p>The shareholder protection standards set out in Section 1 of the 2013 JPS (<a href="#">here</a>), which in summary comprise:</p> <ul style="list-style-type: none"> <li>(a) super-majority vote of members is required to approve fundamental matters (material changes to constitutional documents, variation of rights attached to any class of shares and voluntary winding-up);</li> <li>(b) no alteration to the constitutional documents to increase an existing member’s liability unless approved by such member;</li> <li>(c) appointment, removal and the remuneration of</li> </ul>

TERM	DEFINITION
	<p>auditors require the approval of a majority of shareholders or other body independent of the board of directors;</p> <p>(d) issuer must hold an annual general meeting at least every 15 months, give reasonable notice of meetings and members to have the right to speak and vote at the shareholders' meeting;</p> <p>(e) minority shareholders must be allowed to convene an extraordinary general meeting (the level of members' support required to convene a meeting must not be higher than 10%); and</p> <p>(f) HKSCC must be able to appoint proxies.</p>
<b>“Listing Committee”</b>	A committee of the SEHK board of directors that exercises all the powers and functions of the board in relation to listing matters
<b>“Listing Document”</b>	A Prospectus, a circular or any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing
<b>“Listing Rules” or “Rules”</b>	The Rules Governing the Listing of Securities on SEHK (Main Board unless otherwise stated)
<b>“LSE”</b>	London Stock Exchange plc
<b>“Main Board”</b>	The main board of the SEHK
<b>“Mineral Company”</b>	As defined in Rule 18.01
<b>“MOFCOM”</b>	PRC Ministry of Commerce
<b>“NASDAQ”</b>	Nasdaq Stock Market
<b>“New Board Concept Paper”</b>	The Concept Paper on a New Board published on 16 June 2017 ( <a href="#">here</a> )
<b>“New Board Concept Paper Conclusions”</b>	The Conclusions to the New Board Concept Paper published on 15 December 2017 ( <a href="#">here</a> )
<b>“Non-Grandfathered Greater China Issuers”</b>	Greater China Issuers that are primary listed on a Qualifying Exchange after the publication of New Board Concept Paper Conclusions

<b>TERM</b>	<b>DEFINITION</b>
<b>“Non-Greater China Issuer”</b>	A Qualifying Issuer that is not a Greater China Issuer
<b>“Non-WVR Shareholder”</b>	A holder or beneficiary of the listed shares of an issuer with a WVR structure who is not also a beneficiary of WVR
<b>“Notified Body”</b>	An organisation designated by a European Union country (and named in the list of Notified Bodies published by the European Commission) to assess the conformity of certain products with the relevant third party procedures set out in the applicable legislation before such products are sold on the market
<b>“NYSE”</b>	New York Stock Exchange LLC
<b>“Overseas Issuer”</b>	An issuer incorporated or otherwise established outside Hong Kong
<b>“Phase I clinical trials”</b>	Clinical trials on human subjects categorised as Phase I clinical trials by the FDA (or an equivalent process regulated by another Competent Authority)
<b>“Phase II clinical trials”</b>	Clinical trials on human subjects categorised as Phase II clinical trials by the FDA (or an equivalent process regulated by another Competent Authority)
<b>“PHIP”</b>	In the case of a listing of the equity securities of a new applicant, a near-final draft Listing Document for the listing of equity securities published on the Exchange’s website
<b>“PRC” or “Mainland”</b>	The People’s Republic of China
<b>“Prospectus”</b>	A prospectus as defined under Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32. of the Laws of Hong Kong)
<b>“Qualifying Exchange”</b>	NYSE, NASDAQ or the Main Market of the LSE (and belonging to the FCA’s “Premium Listing” segment)
<b>“Qualifying Issuer”</b>	An issuer primary listed on a Qualifying Exchange
<b>“Regulated Product”</b>	A Biotech Product that is required by applicable laws, rules or regulations to be evaluated and approved by a Competent Authority based on data derived from clinical trials (i.e. on human subjects) before it could be marketed and sold in the market regulated by that Competent Authority

<b>TERM</b>	<b>DEFINITION</b>
<b>“Rule Chapters Conclusions Paper”</b>	The Conclusions to the Rule Chapters Consultation Paper (i.e. this paper)
<b>“Rule Chapters Consultation Paper”</b>	The Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors published on 23 February 2018 ( <a href="#">here</a> )
<b>“R&amp;D”</b>	Research and development
<b>“SFC”</b>	Securities and Futures Commission
<b>“SFO”</b>	Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)
<b>“SMLR”</b>	Securities and Futures (Stock Market Listing) Rules (Cap. 571V of the Laws of Hong Kong)
<b>“Sophisticated Investor”</b>	An investor that the Exchange considers to be sophisticated by reference to factors such as net assets or assets under management, relevant investment experience, and the investor’s knowledge and expertise in the relevant field
<b>“Takeovers Code”</b>	The Codes on Takeovers and Mergers and Share Buy-backs
<b>“US”</b>	United States of America
<b>“VIE Guidance”</b>	Guidance issued by the Exchange entitled “Guidance on listed issuers using contractual arrangements for their businesses”, HKEX-GL77-14
<b>“VIE structure”</b>	“Variable Interest Entity Structures” or “Structured Contracts” that allow a foreign company to control and receive the economic benefits of a company owning assets or operating in an industry sector that is subject to foreign investment restrictions
<b>“WVR”</b>	Weighted voting rights
<b>“WVR Companies”</b>	Companies with a WVR structure
<b>“WVR structure”</b>	A structure that results in any party having WVR



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# EXECUTIVE SUMMARY

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## Purpose

1. This Rule Chapters Conclusions Paper sets out conclusions to the consultation on the Exchange's proposals to expand the existing listing regime to facilitate the listing of companies from emerging and innovative sectors, subject to appropriate safeguards.

## Introduction

### Background

2. In the New Board Concept Paper Conclusions (published on 15 December 2017) the Exchange stated that it would proceed to expand the existing listing regime by introducing changes to the Rules to allow the listing of: (a) Biotech Companies which do not meet the Financial Eligibility Tests; and (b) innovative and high growth issuers that have WVR structures, subject to additional disclosure and safeguards<sup>1</sup>. The Exchange also proposed to modify the existing Rules in relation to overseas companies (and make consequential changes to the 2013 JPS) to create a new secondary listing route to attract innovative issuers that are primary listed on a Qualifying Exchange.
3. On 23 February 2018, following discussions with the SFC and stakeholders, the Exchange published the Rule Chapters Consultation Paper in which it presented these proposals in more detail for comment alongside proposed amendments to the Rules to give them effect.

### Feedback

4. The Exchange received 283 responses<sup>2</sup> to the Rule Chapters Consultation Paper from a broad range of respondents that were representative of all stakeholders in the Hong Kong market. The overwhelming majority of responses to the Rule Chapters Consultation Paper supported the Exchange's proposals in general.
5. Many respondents had differing views on particular aspects of the proposals. Some responses commented only on the Biotech chapter, others only on the chapters dealing with WVR and/or secondary listing. Many of these comments pulled in opposite directions – some favoured a relaxation of the restrictions or requirements and others favoured a tightening. Many respondents simply sought clarification of a particular aspect of the proposals. However, there was no broad consensus against the substance of any of the proposals.
6. In light of this, after further consideration of the issues raised and further discussion with the SFC, the Exchange has decided to implement the proposals set out in the Rule Chapters Consultation Paper broadly as proposed with some amendments to reflect comments made by respondents on matters of detail and to clarify the intent of

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<sup>1</sup> The New Board Concept Paper Conclusions are available [here](#). In drafting the proposals on WVR Companies, the Exchange also referred to the 2015 WVR Concept Paper Conclusions.

<sup>2</sup> Nine of these 283 responses were entirely identical in content to another response. An additional three of these 283 responses were supplemental responses to an earlier submission by the same respondent.

some Rules. These amendments and clarifications are highlighted in this Rule Chapters Conclusions Paper.

7. The feedback that the Exchange received to the Rule Chapters Consultation Paper is described in detail within the relevant chapters of the body of this Rule Chapters Conclusions Paper. All the responses are available on the HKEX website ([here](#)) (except those from respondents who indicated that they do not want their response to be published). A list of respondents is set out in Appendix III. The Exchange would like to thank all those who responded.

## Summary

### Biotech Companies

8. The Exchange proposed to allow the listing of Biotech Companies that do not meet the Financial Eligibility Tests (including companies with no revenue or profit) whilst providing appropriate investor protection from the risks associated with such companies. The Exchange proposed to do so through the addition of a new Biotech chapter of the Rules, supplemented with guidance on the factors that the Exchange will take into account when determining an applicant's eligibility and suitability to list under the Biotech chapter.
9. The Exchange will implement its proposals, as set out in the Rule Chapters Consultation Paper with the following amendments:
  - In our guidance letter on "Suitability for Listing of Biotech Companies" (see Appendix II, Part I) we have stated that an applicant must demonstrate some R&D progress of any Core Product that it in-licensed or acquired (see paragraphs 65 to 72).
  - We have provided further guidance on the definition of a "Sophisticated Investor" and "meaningful investment" (see paragraphs 77 to 89).
  - We have provided more flexibility regarding the exclusion of cornerstone investments and subscriptions by existing shareholders from the determination of a public float (see paragraphs 98 to 105).
  - We have removed the word "durable" from the requirement for a Biotech Company listing applicant to have "durable patents" to address concerns that the use of this term caused unnecessary uncertainty and confusion (see paragraphs 111 to 114).
  - We have amended Rule 18A.04 to require disclosures of measures to retain key personnel and relating to the capacity of biologics (see paragraphs 115 to 117).
  - We have made several clarifications some of which resulted in minor amendments to the Rules and relevant guidance (see paragraphs 120 to 130).

### Issuers with WVR Structures

10. The Exchange proposed to implement a new Chapter 8A of the Rules setting out the qualifications for listing of companies with a WVR structure and the safeguards that they must put in place to protect investors on an ongoing basis, supplemented with guidance on the factors that the Exchange will take into account when assessing whether such an applicant is eligible and suitable for listing with a WVR structure.

11. The Exchange will implement its proposals, as set out in the Rule Chapters Consultation Paper with the following amendments:

- We have added a note to Rule 8A.24 to clarify that it is not the Exchange's intention to enable Non-WVR Shareholders to remove or modify an issuer's WVR structure through changing the issuer's constitutional documents (see paragraphs 176 to 184).
- We have decided not to adopt the requirement for a WVR beneficiary, or WVR beneficiaries in aggregate, to hold less than a 50% underlying economic interest in an issuer applying to list with a WVR structure (see paragraphs 185 to 189).
- We have clarified the arrangements that are acceptable regarding holding WVRs through limited partnerships, trusts, private companies and other vehicles (see paragraphs 190 to 196).
- We have added Rule 8A.41 to state that an issuer with a WVR structure must disclose in its Listing Documents and in its annual and interim reports all the circumstances in which the WVRs attached to its shares will cease (see paragraphs 214 and 215).
- We have amended Rule 8A.37 to require an issuer's rationale for having a WVR structure and the associated risks for shareholders to be disclosed prominently only in the issuer's Listing Documents and periodic financial reports (see paragraphs 216 and 217).
- We have amended Rule 8A.31 to require a Corporate Governance Committee to be composed entirely of INEDs (see paragraphs 225 to 232).
- We have amended Rule 8A.30 to require a Corporate Governance Committee to make a recommendation to the issuer's board on conflicts of interests / connected transactions involving WVR beneficiaries and the appointment and removal of a compliance adviser (see paragraphs 225 to 232).
- We have amended Rule 8A.14 such that where a beneficiary of WVR does not take up shares (rights) in a pro rata issue, those shares (rights) not taken up could be transferred to another person provided that the shares (rights) not taken up will not entitle that person to WVR (see paragraph 233).
- We have made several clarifications some of which resulted in minor amendments to the Rules and relevant guidance (see paragraphs 234 to 248).

#### **Secondary Listing of Qualifying Issuers**

12. The Exchange proposed to create a new concessionary route to secondary listing for Qualifying Issuers, whilst preserving the most important protections for Hong Kong investors.

13. The Exchange will implement its proposals, as set out in the Rule Chapters Consultation Paper with the following amendments:

- We have amended Practice Note 22 to enable a new applicant applying for a secondary listing under Chapter 19C is entitled to make a confidential filing of its Application Proof under the terms of the practice note (paragraphs 275 to 280).

- We have clarified how the Exchange will determine whether the majority of trading in a Greater China Issuer's listed shares has moved to the Exchange's markets on a permanent basis (see paragraphs 288 and 289).

#### **Other matters**

14. Certain respondents to the New Board Concept Paper urged the Exchange to make the Rules more appropriate to the characteristics of companies in the emerging and innovative sectors. The Exchange is conducting a review of the existing Rules and guidance and is in discussion with the SFC in relation to this matter and intends to publish further guidance in due course.

### **Corporate WVR Beneficiaries**

15. As stated in the Rule Chapters Consultation Paper, since the publication of the New Board Concept Paper Conclusions, the Exchange engaged in discussions with stakeholders and received feedback from a number of parties that the Exchange should permit corporate entities to benefit from WVRs.
16. Allowing corporate entities to do so would be a significant new development from the proposed way forward in the New Board Concept Paper Conclusions. For this reason, the Exchange plans to launch a separate consultation by 31 July 2018 to explore the option of allowing corporate entities to benefit from WVRs. The consultation paper will ask for feedback on whether and, if so, on what basis corporate entities should be able to benefit from WVRs.

### **Implementation of Rules**

17. The Rules set out in Appendix I of this Rule Chapters Conclusions Paper together with the relevant guidance letters (see Appendix II) will come into effect on Monday 30 April 2018.

#### **Listing Applications / Enquiries**

18. A prospective listing applicant and its sponsor(s) may now submit formal pre-IPO enquiries regarding the interpretation of the Rules set out in this Rule Chapters Conclusions Paper and their application to the prospective listing applicant's circumstances. Companies may submit a formal application for listing under the new regime on and after Monday 30 April 2018.

### **Biotech Advisory Panel**

19. Given the specialised nature of the Biotech sector, the Exchange is in the process of assembling a panel of industry experts to form a Biotech Advisory Panel. The function of the members of this Panel is advisory only and members will be consulted (by the Exchange, the Listing Committee and/or the SFC, as appropriate) on an individual and "as needed" basis. The Exchange will be able to consult this panel from time to time to assist us in reviewing listing applications including Prospectus disclosure and assessing the suitability (including sustainability) of Biotech Companies applying for a listing under Chapter 18A. A list of the members of the Biotech Advisory Panel will be published on the Exchange's website in due course.

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## CHAPTER 1: INTRODUCTION

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### New Board Concept Paper Conclusions

20. Drawing on the feedback received in response to the New Board Concept Paper and subsequent regulatory discussions with the SFC, the Exchange determined in the New Board Concept Paper Conclusions (published on 15 December 2017) to proceed to expand the existing listing regime by introducing changes to the Rules to allow the listing of (a) Biotech Companies which do not meet any of the Financial Eligibility Tests; and (b) issuers from emerging and innovative sectors that have WVR structures, subject to additional disclosure and safeguards.<sup>3</sup> The Exchange also proposed to modify the existing Rules in relation to overseas companies (and make consequential changes to the 2013 JPS) to create a new secondary listing route to attract innovative issuers that are primary listed on a Qualifying Exchange.

### Rule Chapters Consultation Paper

21. The Exchange further refined its views set out in the New Board Concept Paper Conclusions through discussions with the SFC and stakeholders. In particular, the Exchange consulted experts on the proposed definition of a Biotech Company, Biotech regulatory approval bodies and the stages of regulatory approval for certain types of biotechnology products, processes and technologies. The Exchange also sought feedback on the minimum expected market capitalisation requirement for Biotech Companies from selected issuers, institutional investors and market participants.
22. The Rule Chapters Consultation Paper, published on 23 February 2018, proposed amendments and additional chapters to the Listing Rules for comment that would give effect to its proposals.

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<sup>3</sup> The New Board Concept Paper Conclusions are available [here](#). In drafting the proposals on WVR Companies, the Exchange also referred to the 2015 WVR Concept Paper Conclusions.

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## **CHAPTER 2: METHODOLOGY**

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### **Purpose of the Exchange's Methodology**

23. The Exchange's aim in issuing the Rule Chapters Consultation Paper was to elicit feedback from a broad cross-section of the market. The Exchange sought comments on proposals and proposed amendments to the Rules to allow the listing on the Main Board of:
  - (a) Biotech Companies that do not meet any of the Financial Eligibility Tests, including companies that do not have any prior record of revenue or profit;
  - (b) high growth and innovative companies that have WVR structures; and
  - (c) Qualifying Issuers seeking a secondary listing on the Exchange.
24. In reviewing and drawing conclusions from the consultation responses, the Exchange's goal was to ensure that we came to a balanced view in the best interest of the market as a whole and in the public interest.
25. The effectiveness of this process depends on the submission of original responses from a broad range of respondents that give considered and substantive reasons for their views. The Exchange's methodology, accordingly, aims to accurately categorise respondents and identify different viewpoints. In line with the Exchange's past publicly stated practice, this requires a qualitative assessment of the responses in addition to a quantitative assessment.

### **Identifying the Category of Respondent**

26. In this Rule Chapters Conclusions Paper, respondents are categorised according to whether their response represented the view of:
  - (a) an institution or an individual; or
  - (b) one of the following categories that best described the respondent: "Investment Manager", "Individual Investor", "Corporate Finance Firm / Bank", "Listed Company", "Law Firm", "Accountancy Firm", "HKEX Participant", "Professional Body / Industry Association", "Politicians / Political Bodies", "Other" or "Unknown".
27. The Exchange used its best judgment to categorise the respondent using the most appropriate description.
28. The Exchange categorised "Professional Bodies / Industry Associations" as a single group rather than strictly assigning them individually to other categories (e.g. by assigning brokers' associations to the "HKEX Participant" category). This is in line with the Exchange's past practice. Subjective judgment is required to assign professional bodies to other categories and some do not fit easily with other categories of respondents. Nevertheless the Exchange has attempted, in this Rule Chapters Conclusions Paper, to accurately reflect the opinions of various sections of the market by mentioning certain professional bodies in the context of categories to which they are most closely related.

29. It is not the Exchange's practice to categorise "Investment Managers" by their assets under management for the purposes of analysing consultation responses, as the Exchange believes that the size of an institution's global assets does not mean that the Exchange should necessarily attach more insight to their arguments or viewpoint. This would also raise issues as to the treatment of representative bodies that have considerable variances in number and type of members. Similarly, it is not the Exchange's practice to categorise professional bodies by the size and nature of their membership.

## **Qualitative Analysis**

30. The Exchange performed a qualitative analysis to enable it to properly consider the broad spectrum of respondents and their views. A qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the underlying rationale for a respondent's position.

## **Quantitative Analysis**

31. The Exchange performed an analysis to determine the support, in purely numerical terms, for the Rule Chapters Consultation Paper proposals. The result of this analysis forms Appendix III. A number of respondents restricted their response to part of the Exchange's proposal only (for example only in relation to the proposed Biotech chapter or only in relation to the proposed WVR chapter). The Exchange has counted these responses as a response to the relevant chapter(s) only.
32. The Rule Chapters Consultation Paper invited public comments on (a) the substance of the proposals set out in the consultation paper, and (b) the draft Rule changes that would give effect to those proposals (assuming that the proposals were implemented as proposed in the consultation paper).
33. For the purpose of its quantitative analysis, the Exchange placed each response into one of the following four categories based on the content of the response:
- (a) support for the adoption of the proposals and draft Rules without amendment;
  - (b) support for the adoption of the proposals and draft Rules with suggested amendments;
  - (c) opposition to the adoption of the proposals as a whole; or
  - (d) view unknown<sup>4</sup>.

### **Counting Responses not Respondents**

34. For the purposes of its quantitative analysis, the Exchange counted the number of responses received not the number of respondents those submissions represented. This means:

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<sup>4</sup> "Unknown" responses are those that indicated in the heading or body of their response that they are responding to the Rule Chapters Consultation Paper but their view cannot be discerned from their response. For example a response containing the words "thank you" without additional text.

- (a) A submission by a professional body is counted as one response even though that body/association may represent many individual members.
  - (b) A submission representing a group of individuals is counted as one response.
  - (c) A submission by a law firm representing a group of market practitioners (e.g. sponsor firms / banks) is counted as one response
35. However, as indicated in paragraph 30, when undertaking qualitative analysis of responses, the Exchange has taken into account the number and nature of the persons or firms represented by other respondents.
36. The Exchange's method of counting responses, not the respondents they represent, is the Exchange's long established publicly stated policy.

### **Stakeholder Requests for Clarification Made During the Consultation Period and in Responses**

37. During the consultation period, the Exchange received requests from stakeholders to clarify the meaning and intent of its proposals and draft Rules contained in the Rule Chapters Consultation Paper. Some of these requests were made by stakeholders at meetings with the Exchange.
38. Many of the responses to the Rule Chapters Consultation Paper also included such clarification requests. We counted these clarification requests as responses to the Rule Chapters Consultation Paper for the purpose of both our quantitative and qualitative analysis of responses.
39. In this Rule Chapters Conclusions Paper, the Exchange has given responses to the clarification requests it received.

### **Anonymous Responses**

40. 77 respondents requested that their responses be published anonymously (see Appendix II for the number of these respondents by category). We included these responses in the list of responses published on the HKEX website, identified by category only (e.g. "Law Firm").
41. Ten respondents requested that their submission not be published on the HKEX website. For these responses we have not provided a hyperlink to the response. However, we have counted these responses for the purpose of both our quantitative and qualitative assessment of responses.

### **Sharing the Responses with the SFC**

42. Responses to the Rule Chapters Consultation Paper have been shared with the SFC at their request.



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## **CHAPTER 3: BIOTECH COMPANIES**

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### **Proposals**

#### **Structure of Proposals**

43. The Exchange proposed to allow the listing of pre-revenue Biotech Companies through the addition of a new chapter of the Rules (Chapter 18A), supplemented with guidance on the factors that the Exchange would take into account when determining an applicant's eligibility and suitability to list under this chapter.

#### **Suitability to List**

44. The Exchange proposed to open a route to listing for early stage companies that do not meet the Financial Eligibility Tests (including companies with no revenue or profits) which are Biotech Companies.
45. The Exchange proposed that a Biotech Company which did not meet any of the three Financial Eligibility Tests could be suitable to list under Chapter 18A if it could demonstrate certain features set out in paragraphs 74 to 75 of the Rule Chapters Consultation Paper.

#### **Expected Market Capitalisation**

46. Based on analysis of Biotech listings in other markets and subsequent discussions with market practitioners and the SFC, the Exchange proposed that applicants for listing under the Biotech chapter must have a minimum expected market capitalisation at the time of listing on the Exchange of HK\$1.5 billion (see Appendix I, Rule 18A.03(2)).

#### **Track Record**

47. The Exchange proposed that a Biotech Company applicant must have been in operation in its current line of business for at least two financial years prior to listing under substantially the same management (see Appendix I, Rule 18A.03(3)).

#### **Working Capital Requirements**

48. The Exchange proposed that an applicant for listing under the Biotech chapter would be required to have available working capital to cover at least 125% of the group's costs for at least the next 12 months (after taking into account the proceeds of the new applicant's initial listing) (see Appendix I, Rule 18A.03(4)). These costs must substantially consist of the following:—

- (a) general, administrative and operating costs; and
- (b) R&D costs.

We would also expect that a substantive portion of the IPO proceeds will be used to cover these costs.

#### **Enhanced Disclosure Requirements**

49. The Exchange proposed that Biotech Companies applying for a listing on the Exchange under the Biotech chapter must be prominently identified through a unique stock marker "B" at the end of their stock name (see paragraphs 57 and 58).

50. The Exchange also proposed that Biotech Companies be required to provide prominent warning statements and enhanced risk disclosures (see Appendix I, Rules 18A.04(10)&(11), 18A.05 and 18A.08(3)).
51. Biotech Companies would also be required to provide ongoing disclosures regarding their R&D activities in their interim and annual reports (see Appendix I, Rule 18A.08).

#### **Restriction on Cornerstones**

52. The Exchange proposed that shares subscribed for by cornerstone investors would not count towards determining whether the Biotech Company had met the minimum initial public float requirement at the time of listing, and at all times prior to the expiry of the six-month lock-up period from the date of listing that applies to shares subscribed for by cornerstone investors in an IPO (see Appendix I, Rule 18A.07).
53. The Exchange proposed that existing shareholders of the applicant could subscribe for shares in the IPO to avoid a dilution to their shareholdings under the existing regulatory framework<sup>5</sup>. Where an existing shareholder did not meet the conditions under the existing guidance, the Exchange proposed to allow such a shareholder to participate in the IPO of a Biotech Company as a cornerstone investor.
54. The Exchange proposed that shares subscribed for by existing shareholders in the IPO not be counted towards determining whether the Biotech Company has met the minimum initial public float requirement but any shares held by existing shareholders prior to the IPO would be counted towards the public float, provided that the existing shareholder was not a core connected person or otherwise not recognised by the Exchange to be a member of the public in accordance with Rule 8.24<sup>6</sup>.

#### **Measures to Manage Risks Associated with Biotech Companies**

##### *Material Change of Business*

55. The Exchange proposed that a Biotech Company listed under the Biotech chapter would not be allowed to effect any acquisition(s), disposal(s) or other transaction(s) or arrangement(s) that would result in a fundamental change to its principal business without the Exchange's prior consent. The Exchange proposed that such prior consent will normally be given if the Biotech Company listed under the Biotech chapter could satisfy the Exchange that it is engaging in a legitimate business expansion or diversification that forms part of its business strategies.

##### *De-listing Process for Biotech Companies*

56. The Exchange proposed that a Biotech Company listed under the Biotech chapter would be governed by the existing de-listing Rules except where the Exchange considered that such an issuer had failed to meet its continuing obligation to maintain

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<sup>5</sup> See Guidance Letters HKEX-GL-43-12 and HKEX-GL-85-16.

<sup>6</sup> Rule 8.24 provides that the Exchange will not recognise as a member of "the public":

- (1) any person whose acquisition of securities has been financed directly or indirectly by a core connected person;
- (2) any person who is accustomed to take instructions from a core connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.

sufficient operations or assets. In these circumstances, the Exchange proposed to give the issuer a period of up to 12 months to re-comply with the requirement. If the issuer failed to do so, the Exchange would cancel its listing.

#### *Stock Marker*

57. The Exchange proposed to require Biotech Companies listed under the Biotech chapter to be prominently identified through a unique stock marker “B” at the end of their stock name.
58. The Exchange recognised that the above measures (as set out in paragraphs 55 to 57) would no longer be appropriate once a Biotech Company had developed into a profit-making and/or revenue-generating business. Accordingly, the Exchange proposed that upon a Biotech Company’s demonstration that it is able to meet one of the Financial Eligibility Tests, the above measures will no longer apply to it (see Appendix I, Rule 18A.12).

## **Feedback**

### **General Feedback**

59. The overwhelming majority of respondents supported the Exchange’s proposals regarding the introduction of Chapter 18A for Biotech Companies. Respondents made the following substantive comments.

### **Reconsider Restriction to Biotech Companies**

60. Some respondents commented that the proposed regime to allow emerging companies to list should be expanded beyond Biotech Companies. These respondents commented the Exchange’s proposals would mean emerging companies from non-Biotech emerging and innovative sectors (e.g. companies producing electric vehicles or artificial intelligence products) would continue to be limited to raising funds through debt or private equity.
61. On this subject, one respondent noted that Mineral Companies were not subject to any regulatory framework and yet the Exchange allowed such companies to list without meeting the Financial Eligibility Tests.

#### *The Exchange’s response and conclusion*

62. The regulatory regime for the activities undertaken by Biotech Companies sets external milestones on development progress of the Regulated Product(s). Regulation by internationally recognised bodies such as the FDA and the stages involved in their approval processes provide investors with an indication as to the nature of the Biotech Companies and a frame of reference with which to judge the stage of development of the Regulated Products to be produced by these companies, in the absence of usual valuation metrics such as revenue or profit. Emerging companies in other industries may not be subject to such rigorous external validation and consequently, it may be more difficult to ascertain on a more objective standard as to whether a particular product of such companies is beyond concept stage.
63. The Exchange permits Mineral Companies that are unable to satisfy the Financial Eligibility Tests to list if they are able to establish, to the Exchange’s satisfaction, that

its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing.<sup>7</sup> Also, Mineral Companies must establish to the Exchange's satisfaction that they have at least a portfolio of Indicated Resources or Contingent Resources identifiable under a Reporting Standard and substantiated in a Competent Person's Report. This portfolio must be meaningful and of sufficient substance to justify a listing.<sup>8</sup> So, similar to Biotech Companies, Mineral Companies are subject to strict standards set by independent parties that allow investors to more easily estimate a company's future value.

64. For the reasons stated above we have not adopted the suggested amendments to our proposals or the draft Rules.

#### **Listing Eligibility Requirements**

65. Several respondents suggested that we amend our listing eligibility requirements. In particular, some believed that our minimum expected market capitalisation threshold (see paragraph 46) for Biotech Company listing applicants was set too high to allow emerging companies to list.
66. Other respondents suggested that we impose additional eligibility requirements. For example, respondents suggested that the Exchange require a Biotech Company listing applicant to:
- (a) be in the top three of its relevant sub-industry;
  - (b) have at least three products in its pipeline (in addition to the requirement for a Core Product that has passed the concept stage);
  - (c) have Core Products that are "innovative";
  - (d) have Core Products with large addressable markets;
  - (e) have been engaged in R&D of its Core Product for at least 18 months (or longer) rather than the proposed 12 months and demonstrate R&D progress in the case of a Core Product which is in-licensed or acquired from third party; and/or
  - (f) for Biotech Companies to have tangible assets of a certain amount if they do not own the intellectual property in their intended Core Products.

#### *The Exchange's response and conclusion*

67. The Exchange canvassed the views of practitioners within the Biotech industry when determining the eligibility requirements including the market capitalisation threshold. We believe that we have set the requirements at the appropriate level to both facilitate the listing of Biotech Companies and provide sufficient protection for investors.
68. Based on our analysis, in the US, Biotech Companies make up a majority of companies seeking a listing at an early stage of development (that would not meet any

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<sup>7</sup> Rule 18.04.

<sup>8</sup> Rule 18.03(2). All terms used are as defined in Rule 18.01.

of our Financial Eligibility Tests)<sup>9</sup>. The Exchange estimates that, of the Biotech Companies listed in the US since 1 January 2012, 64% would have been able to meet our proposed expected minimum market capitalisation requirement at listing of HK\$1.5 billion. Also, the HK\$1.5 billion expected market capitalisation threshold should limit applicants to those Biotech Companies that are more established and that have experienced management. Accordingly the Exchange does not consider it necessary or appropriate to reduce the expected market capitalisation requirement.

69. The Exchange does not consider it appropriate to impose a bright line requirement for the applicant to demonstrate that it is the top three of its relevant industry as suggested by some respondents. Unlike more mature companies which could be ranked by revenue, number of customers and other objective criteria, it is not reasonably possible to do the same for early stage Biotech Companies based on their technologies and products in development.
70. The Exchange has already included as part of its suitability requirement a need for applicants engaged in the R&D of pharmaceutical or biologic products to have a pipeline of products. In relation to applicants engaged in the R&D of medical devices, the Exchange understands that such applicants typically focus on one device and it may not be feasible to require them to have multiple products. Accordingly the Exchange has not adopted the suggestion to require applicants to demonstrate that they have at least three products.
71. The Exchange considers that the existing suitability requirements for the applicant to be primarily engaged in R&D and for the applicant to have patent(s) and/or intellectual property that are sufficient to restrict eligible applicants to those with a degree of “innovation”. Accordingly the Exchange has not adopted the suggestion for the additional requirement that the Core Product of the applicant must be “innovative”.
72. The requirement for an applicant to be engaged in the R&D of its Core Product for at least 12 months was introduced in the first place to address the possibility of an applicant in-licensing or acquiring a Core Product for the purpose of listing. The Exchange does not consider it necessary to adopt the suggestion to increase the period to 18 months, but agrees that the applicant should demonstrate some R&D progress since the Core Product was in-licensed or acquired. The Exchange has reflected this in the relevant guidance letter.
73. The Exchange will require a Biotech Company to have registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s) to be eligible for listing as an early stage company that does not meet the Financial Eligibility Tests. Substantial tangible assets would be a characteristic of a more conventional listing applicant and so we do not believe they would be an appropriate substitute for patents / intellectual property in relation to Biotech Company applicants (see Appendix II Part I).

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<sup>9</sup> Source: Bloomberg (data as of 29 December 2017). The analysis includes all US listed companies since 1 January 2012 that are in the early stage of development. Early stage of development is defined by reference to those companies which are unable to meet any of the Financial Eligibility Tests. Biotech companies in this paragraph are defined using the Global Industry Classification Standard (GICS) and includes all industries in the health care sector except health care providers & services.

## **Clinical Trials**

74. Some respondents suggested that given the significant failure rate of companies in the post-Phase I stage, the Exchange should limit eligible applicants to those whose Core Product has entered Phase II or Phase III clinical trials. Conversely, a respondent expressed the view that the proposal to require a Core Product to have completed Phase I clinical trials would mean that the Exchange would not be able to capture a number of promising companies (pointing to a number of listings in the US of companies whose lead product is at the pre-clinical or Phase I stage but have attracted strong investor interest and achieved high valuations). The same respondent also stated that the proposed criteria will benefit overseas companies rather than helping to accelerate the growth of Hong Kong's local biotechnology sector. The respondent urged the Exchange to include a qualitative based approach in assessing applicants in order to allow the listing of promising companies in an earlier stage of development.

### *The Exchange's response and conclusion*

75. The feedback that the Exchange has received suggests that a Biotech Company will likely require external funding in order to continue with Phase II and Phase III clinical trials, and requiring an applicant to have already commenced Phase II trials would set too high a requirement for many promising Biotech Companies. The Exchange acknowledges that requiring an applicant to have completed Phase I clinical trials would mean that the Exchange would not be able to accommodate some promising pre-clinical Biotech Companies who may choose to list in the US instead. However, the Exchange remains of the view that given the significant potential risks in early stage Biotech Companies, an applicant should at least have completed Phase I clinical trials to provide investors with a frame of reference to assess the applicant's R&D and Core Product. Accordingly the Exchange does not propose to amend its requirement in this regard.
76. It should be noted that the proposed suitability requirements are not designed to serve as a substitute for investors' own judgment and assessment regarding the business, operations and prospects of a Biotech Company. Investors should exercise due caution given the potential risks in Biotech Companies and make their investment decisions accordingly.

### **Definition of "Sophisticated Investor" and "Meaningful Investment"**

77. The Exchange proposed that, to be eligible for listing, a Biotech Company must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor at least six months before the date of the proposed listing (which must remain at IPO) (paragraph 74(g) of the Rule Chapters Consultation Paper).
78. The Exchange defined Sophisticated Investor in the Rule Chapters Consultation Paper to be an investor that the Exchange considers to be sophisticated by reference to factors such as net asset or assets under management, relevant investment experience and the investor's knowledge and expertise in the relevant field.
79. Some respondents asked us to provide more guidance on the meaning of "Sophisticated Investor" and "meaningful investment" in these circumstances. One

respondent proposed “bright line” monetary thresholds to automatically determine a Sophisticated Investor. The same respondent also put forward particular quantitative tests to determine “meaningful investment” that would vary according to the size of the Biotech Company applicant.

80. A different respondent suggested defining Sophisticated Investor by setting a threshold for the size of the investors’ assets similar to the definition of Professional Investor used in the SFO.<sup>10</sup>
81. One respondent stated that, with respect to the “relevant investment experience” of a Sophisticated Investor, the Exchange should refer to the investment experience of the senior management or management team of the investor. The respondent suggested that we maintain an updated list of accepted Sophisticated Investors that is publicly available on the Exchange’s website.

*The Exchange’s response and conclusion*

82. We are sympathetic to the need of prospective applicants and their advisers to have more certainty as to the definition of a Sophisticated Investor and “meaningful” investment. From the comments received, there was, however, no consensus around what the definitions should be.
83. The Exchange did not propose “bright line” tests for a Sophisticated Investor as we believe that this could vary according to many factors. Investors may have expertise and experience in one field of biotechnology (e.g. pharmaceuticals) but may not have the same level of experience in another (e.g. medical devices). We would, however, agree with the proposition that we should look to the investment experience of the senior management or management team of the investor for the purpose of our assessment of whether an investor is a Sophisticated Investor.
84. The Exchange also did not propose a bright line test as to what would constitute a “meaningful investment” because, as acknowledged by respondents, this could vary greatly according to the circumstances, including the size of the Biotech Company applicant. The Exchange will examine the nature of the investment, the amount invested, the size of the stake taken up and the timing of the investment to determine, on a case by case basis, whether it believes the investment to be “meaningful”.
85. Although the Exchange does not propose to have a bright line test as to who would qualify as a “Sophisticated Investor” and what would constitute “meaningful investment” for the reasons stated above, we agree with the comments made by a number of respondents that it may be useful to provide further guidance and benchmarks to provide more clarity to the market. For this purpose, the Exchange would generally consider:
  - (a) the following as examples, for illustrative purposes only, of types of Sophisticated Investor:
    - (i) a dedicated healthcare or Biotech fund or an established fund with a

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<sup>10</sup> Schedule 1 to the SFO enlarged for certain purposes only by the Securities and Futures (Professional Investor) Rules (the Rules).

division/department that specialises or focuses on investments in the biopharmaceutical sector;

- (ii) a major pharmaceutical/healthcare company;
- (iii) a venture capital fund of a major pharmaceutical/healthcare company; and
- (iv) an investor, investment fund or financial institution with minimum assets under management of HK\$1 billion.

(b) the following benchmark investment amount as a “meaningful investment(s)”:

- (i) for an applicant with a market capitalisation between HK\$1.5 billion to HK\$3 billion, investment(s) of not less than 5% of the issued share capital of the applicant at the time of listing;
- (ii) for an applicant with a market capitalisation between HK\$3 billion to HK\$8 billion, investment(s) of not less than 3% of the issued share capital of the applicant at the time of listing; and
- (iii) for an applicant with a market capitalisation of more than HK\$8 billion, investment(s) of not less than 1% of the issued share capital of the applicant at the time of listing.

It should be noted that the guidance in this paragraph is only provided in relation to the determination of “Sophisticated Investor” and “meaningful investment(s)” for the purpose of determining the suitability of Biotech Companies.

86. The Exchange would also like to clarify, for the avoidance of doubt, that the SFO definition of a “professional investor” is separate and different to the definition of a Sophisticated Investor.
87. The purpose of these proposed requirements is to help ensure that a Biotech Company listing applicant has received a reasonable amount of market acceptance prior to listing. The Exchange will consider the nature of the investor and the nature of the investment, on a case by case basis, to determine whether this requirement has been met.
88. After it has gained more experience vetting Biotech Companies for listing, the Exchange may publish further guidance on these matters. However, we do not propose to maintain a list of accepted Sophisticated Investors on our website. This is because the requirement for Sophisticated Investor participation applies only for the initial listing of a Biotech Company. The Exchange would not track whether an investor continued to qualify as a Sophisticated Investor thereafter. Also, as mentioned above, a Sophisticated Investor may have expertise and experience in one field of biotechnology but not another. Consequently, the inclusion of an investor as a “Sophisticated Investor” for the purposes of the Biotech chapter on such list may mislead rather than inform, and may be misinterpreted as the Exchange’s endorsement of the investor as a “Sophisticated Investor”.
89. For the reasons stated above we have not changed our proposals or the draft Rules to provide a bright line test as we wish to retain the flexibility to consider all the relevant circumstances of an individual case. We have however included in the guidance letter for the Biotech chapter the further guidance described in paragraph 85 above (see



Appendix II, Part I). We expect that further guidance will be provided in due course as our experience develops.

### **Recognition of Other Authorities as a Competent Authority**

90. The Exchange proposed recognising the FDA, the CFDA and the EMA as Competent Authorities for the purpose of the new Biotech chapter (see paragraphs 9 and 76 of the Rule Chapters Consultation Paper). Two respondents suggested that the Exchange should also recognise Canadian and Australian regulatory authorities as Competent Authorities for this purpose as they are quite often used by European and USA based Biotech Companies. Another two respondents suggested that the Exchange should also recognise the Japanese regulatory authority as a Competent Authority as it is a reputable authority within the healthcare community globally.

#### *The Exchange's response and conclusion*

91. Feedback from experts suggested that the majority of potential Biotech Company applicants would have products regulated by the FDA, EMA or the CFDA. The proposed definition of "Competent Authority" specifically provides flexibility for the Exchange to consider other national or supranational authorities in individual cases. We will consider the eligibility for listing of a Biotech Company that is subject to regulatory approval by Canadian, Australian or Japanese regulatory authorities on a case by case basis. If there are a significant number of Biotech Company applicants that use the Canadian, Australian or Japanese regulatory process for the approval of their Biotech Products, we will conduct a review of the regulatory process in these jurisdictions to determine if the Canadian, Australian and/or Japanese regulatory authorities should be added to the definition of Competent Authorities.
92. For the reason stated above we have not adopted the suggested amendments to our proposals or the draft Rules for the time being.

### **Eligibility for Listing of Other Biotech Companies**

93. A number of respondents asked us to note that many Biotech Company listing applicants would not be able to meet the criteria that we had proposed to demonstrate that its Regulatory Product had developed beyond the concept stage and was subject to clinical testing on human subjects.
94. For example, respondents stated that:
- (a) not all intravenous medical devices require regulatory approval to be commercialised;
  - (b) not all Class II medical devices require clinical trials and therefore Biotech Company applicants developing such devices would not be able to meet this requirement;
  - (c) some medical technologies, such as immunotherapies, are not classified as drugs or devices and so would not be accommodated by the Exchange's proposed Rules;
  - (d) drugs developed for use in animals are subject to regulatory approval by competent authorities other than the ones that the Exchange will recognise and, by their nature, are not subject to human trials; and

- (e) Biotech Companies developing agricultural or industrial biotechnology products are not accommodated by the Exchange's proposed Rules.

*The Exchange's response and conclusion*

95. The Exchange is aware that not all types of Biotech Products are automatically accommodated by the Biotech Company chapter. The Exchange will consider on a case by case basis whether Biotech Companies that develop other Biotech Products are suitable for listing. In these circumstances, the Exchange will determine whether the applicant can demonstrate that it is subject to a sufficiently robust regulatory process that would provide investors with sufficient frame of reference in order to make an informed investment assessment as to value.
96. In particular, we wish to clarify that the Exchange may accept, on a case by case basis, Biotech Company listing applicants that conduct clinical trials that do not strictly follow the traditional classification of Phase I and Phase II trials. For example: (a) trials that are equivalent to entering Phase II trials whose results demonstrate an acceptable safety profile and provide preliminary evidence of efficacy; and (b) combined Phase I/II trials.
97. As we already have the "catch all" provision stated above we have not adopted changes to the draft Rules to reflect the suggestions described in paragraphs 93 and 94.

**Excluding Cornerstone Investors from the Public Float**

98. The Exchange proposed that the shares subscribed for by cornerstone investors would not count towards determining whether the Biotech Company had met the minimum initial public float requirement as set out in paragraph 52 above. The Exchange also proposed to exclude shares subscribed by existing shareholders from the public float as set out in paragraph 54 above.
99. Some respondents stated that this restriction was unnecessary and that it may potentially discourage cornerstone investors from participating in IPOs or from providing capital to Biotech Companies at the pre-IPO stage. They suggested that cornerstone investors tend to be highly sophisticated investors, very often with specific industry sector expertise and their agreement to a price or price range was usually a positive endorsement of the reasonableness of the pricing of the shares of an issuer and provided useful guidance to the general investment public regarding the credibility of the listing applicant. The respondents believed this to be especially important in the Biotech sector, a highly technical sector where significant expertise is needed to decipher the extent of possible use, and potential, of the underlying technology of a Biotech Company.
100. Some respondents also expressed the view that the restriction on cornerstones appears to be out of place in light of the higher market capitalisation requirement for Biotech Companies compared with the general market capitalisation requirement for the Main Board, which should mean that the issue of an open market should be less of a concern. Other respondents argued that excluding cornerstones from the public float may in fact adversely affect the price discovery process and unnecessarily dilute existing shareholders as issuers are forced to issue more shares in the IPO to meet the

public float requirement.

101. A separate respondent commented that shares subscribed by existing shareholders pursuant to the Exchange's existing guidance<sup>11</sup> should be counted in the public float as these are not inconsistent with the Exchange's objective of reducing the influence of pre-arranged deals on the bookbuilding process.
102. Another separate respondent asked whether, given the controversial and possibly distorting impact of cornerstone investors on the market generally, there was scope to apply the proposed cornerstone restriction on the market generally.

*The Exchange's response and conclusion*

103. As stated in the Rules Chapters Consultation Paper, the Exchange's proposed restriction on the shares subscribed for by cornerstones is to reduce the influence of pre-arranged deals on the book-building process and to help ensure that the pricing process for the IPOs of such companies is as market-driven as possible. This is particularly important in the case of Biotech Company listing applicants as their expected market capitalisation at listing is the only quantitative eligibility requirement that they are required to meet.
104. As the reason for the restriction on cornerstone investors is particular to the circumstances of a Biotech Company listing applicant, we do not propose to apply this restriction to the market generally at this stage.
105. Given the market concerns in relation to the public float of Biotech Companies, the Exchange has decided to provide some flexibility in this regard for companies above the minimum HK\$1.5 billion market capitalisation requirement. At HK\$1.5 billion, a public float of 25% represents HK\$375 million in value of shares held by the public. The Exchange believes that an applicant should ensure it has at least HK\$375 million of public float at the time of listing, which is exclusive of subscriptions by existing shareholders at IPO and subscriptions through cornerstone investments. As long as the applicant is able to meet this requirement, the Exchange proposes that cornerstone investments and subscriptions by existing shareholders could be included in the determination of a Biotech Company's public float, provided that the existing shareholders or cornerstone investors are not core connected persons or otherwise not recognised by the Exchange to be members of the public in accordance with Rule 8.24.
106. The Exchange has amended the Rules to reflect this approach (see Rule 18A.07). We believe this will address market concerns in the responses around the public float requirement of Biotech Companies while preserving a mechanism to reduce the influence of pre-arranged deals to help ensure a more market-driven pricing process.

**Connected Persons' Post-Listing Anti-Dilution Rights**

107. Some respondents expressed a concern that substantial shareholders of Biotech Companies may be prevented by the Exchange's "connected transaction" Rules from avoiding dilution of their shareholdings by subscribing for shares in a share offering

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<sup>11</sup> See Guidance Letters HKEX-GL43-12 and HKEX-GL85-16.

post-listing. These respondents suggested that Biotech Companies will have ongoing needs for significant funding in order to take their Core Products to commercialisation. Existing investors in a Biotech Company are likely to have subscribed for shares in the company on the basis of their confidence in the company and may wish to be able to continue to participate in the company's fundraisings to prevent dilution to their shareholdings. These respondents point to the fact that, in the US, a significant majority of existing shareholders at IPO will continue to participate in the issuer's fundraisings post-IPO, and expressed concerns that potentially preventing existing shareholders from participating in post-IPO fundraisings to maintain their relative shareholding will adversely affect Biotech Companies and deter them from listing in Hong Kong.

*The Exchange's response and conclusion*

108. A "substantial shareholder" is considered a "connected person" by the Exchange's Rules (Rule 14A.07). The Rules provide an exemption in respect of an issue of new shares to existing shareholders, including "connected persons" if they subscribe for shares in a rights issue or open offer or receive other pro rata entitlements to shares as an existing shareholder (Rule 14A.92(1)).
109. However, a share issue that is not pro-rata to existing shareholdings is not covered by this exemption. This means that a non-pro rata issue of shares to a connected person would be conditional upon shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution (Rule 14A.36).
110. The Exchange considers the connected transaction Rules to be an important feature of shareholder protection of the Hong Kong listing regime. The importance of the protection is particularly important in the context of share issuances given the dilutive effect on existing shareholders. The Exchange also notes that the connected transaction Rules do not prohibit an issuance of shares to substantial shareholders, which could still take place with the support of shareholders who do not have a material interest in the transaction (including possibly other substantial shareholders in the issuer). Accordingly, while the Exchange acknowledges that Biotech Companies listed under Chapter 18A may have significant ongoing funding needs, on balance the Exchange proposes not to change the connected transaction Rules in relation to Biotech Companies at this stage. We will monitor developments in this area as we gain more experience with Biotech Companies listed under Chapter 18A and review the Rules at a later stage if necessary.

**Patents**

111. Some respondents questioned why the Exchange required a Biotech Company listing applicant to have "durable" patents. They stated that the term "durable" does not have any legal meaning with regards to patents and maintaining the requirement may cause unnecessary uncertainty and confusion.
112. Other respondents expressed concerns that the requirement for patents would preclude a number of Biotech Companies from listing since they may not possess the patent itself, but instead had exclusive rights to the commercialisation / research of the product as they possessed the exclusive licence or had certain in-licensing

arrangements with other Biotech Companies.

*The Exchange's response and conclusion*

113. The Exchange has removed the word “durable” from the requirement for the reasons stated by respondents (see the guidance letter for the Biotech chapter in Appendix II, Part I).
114. The Exchange would like to clarify that it is not a mandatory requirement under the proposed suitability requirements that the applicant owns patent rights in relation to its Core Products. However, it is expected to own a sufficient portfolio of intellectual property rights (which may comprise other types of intellectual property rights, e.g. copyright and trade secrets) to demonstrate its eligibility and suitability to list under Chapter 18A. The Exchange will consider the specific facts of each case and decide whether the applicant has satisfied the relevant standards.

**Ongoing Disclosure Requirements**

115. Some respondents suggested that the Exchange should specify the detailed ongoing disclosure requirements that Biotech Companies listed under Chapter 18A will need to comply with (including changes in licensing arrangements, litigation process in relation to intellectual properties and clinical results). One respondent suggested that a Biotech Company seeking a listing under Chapter 18A should also disclose the measures put in place to retain key personnel (e.g. incentivisation measures and/or non-compete clauses). The same respondent also suggested that in the case of an issuer engaged in biologics, the issuer should also disclose its planned capacity and technology details (since elements such as yeasts are difficult to scale up).

*The Exchange's response and conclusion*

116. The Exchange considers it important for issuers to provide an update of the development process of its Core Products in its periodic financial reports in order to keep investors informed even in the absence of significant progress. The Exchange does not consider it necessary to specify other types of disclosures, since these issuers are already subject to obligations under the Listing Rules and the SFO to disclose inside information on a timely basis.
117. However, the Exchange agrees that disclosure on measures to retain key personnel and disclosures relating to the capacity of biologics would be important to investors and have amended the relevant Rules accordingly (see 18A.04).

**Shell Manufacturing**

118. Some respondents expressed concerns that the proposed Biotech chapter may be inappropriately abused for undesirable purposes and expressed the need for Rules to prevent “shell manufacturing” under the Biotech regime.

*The Exchange's response and conclusion*

119. The Exchange acknowledges the concern that Biotech Companies may become shell companies if they do not achieve their business plans and accordingly has included in its proposals a number of safeguards to address the potential shell concerns (see Rules 18A.09 to 18A.10). The Exchange will continue to take a robust approach to address such potential issues in the market.

## Clarification Amendments

### Notified Bodies

120. Some respondents stated that medical devices in the EU are approved by Notified Bodies, not the Competent Authority (the EMA).

*The Exchange's response and conclusion*

121. It is our intention that devices certified by Notified Bodies would be able to meet our proposed requirements provided that the devices are subject to clinical testing. This is the reason for recognising endorsement by Authorised Institutions in addition to Competent Authorities. We have defined an Authorised Institution as follows in the Biotech guidance letter to make this sufficiently clear (see Appendix II, Part I).

*“Authorised Institution” – an institution, body or committee duly authorised or recognised by, or registered with, a Competent Authority or the European Commission for conducting, assessing and supervising clinical trials in the relevant clinical fields. The Exchange may, at its discretion, recognise another institution, body or committee as an Authorised Institution on a case by case basis.”*

### Accountants' Reports

122. Some respondents asked the Exchange to clarify whether a Biotech Company would be required to include an accountants' report covering three financial years of audited financial statements in the Listing Document it produced for the purpose of its application for initial listing as required by the existing Rules.

*The Exchange's response and conclusion*

123. We proposed that a Biotech Company must have been in operation in its current line of business for at least two financial years prior to listing (see Rule 18A.03(3)). For this reason, we would not expect a Biotech Company to include three financial years of audited financial statements in its accountants' report. We have added Rule 18A.06 to make this clear.
124. Biotech Companies applying for a listing under Chapter 18A with an accountants' report covering two financial years are reminded that they must apply for a certificate of exemption from the relevant disclosure requirements under the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong).

### Profit Forecast Memorandum

125. Some respondents asked the Exchange to clarify whether a pre-revenue Biotech Company listing applicant would be required to submit a profit forecast memorandum to the Exchange as part of its listing application.

*The Exchange's response and conclusion*

126. We believe that the profit forecast memorandum would still provide useful information on the manner in which losses are accounted for by the applicant. This is consistent with the Exchange's current practice in relation to mineral companies which may also be pre-profit/pre-revenue. Accordingly we have not amended the existing Rules in

relation to the requirement for a profit forecast memorandum.

### **Working Capital Statement**

127. A respondent asked the Exchange to clarify if the working capital statement requirement for a Biotech Company seeking a listing under Chapter 18A should be modified to reflect the requirement for the applicant to meet 125% of the group's working capital needs.

#### *The Exchange's response and conclusion*

128. The Exchange has added a note to Rule 8.21A and paragraph 36 of Appendix 1 Part A to make it clear that the requirement for working capital statement must be modified to comply with the requirement for the applicant to meet 125% of the group's working capital needs.

### **Sufficiency of Working Capital**

129. The Exchange has clarified that R&D costs must be included in the calculation of sufficiency of working capital for Biotech Companies irrespective of whether such costs are capitalised (see Note 2 to Rule 18A.03).

### **Ownership Continuity of the Applicant**

130. The Exchange will review any change in ownership of the applicant in the 12 months prior to the date of the listing application in assessing the suitability of the applicant for listing.

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## CHAPTER 4: ISSUERS WITH WVR STRUCTURES

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### Proposals

#### Structure of Proposals

131. The Exchange proposed to implement a new Chapter 8A of the Rules setting out the qualifications for listing of companies with a WVR structure and the safeguards that they must put in place to protect investors on an ongoing basis<sup>12</sup> (see Appendix I).

#### Companies Suitable to List with a WVR Structure

132. Applicants would be required to establish that they are both eligible and suitable for listing with a WVR structure. For the purpose of defining suitability to list with a WVR structure, the Exchange proposed to publish guidance setting out the factors that it would take into account when assessing whether such an applicant is eligible and suitable for listing with a WVR structure. These factors were described in the Rule Chapters Consultation Paper (see Rule Chapters Consultation Paper paragraph 106).
133. The Exchange proposed to consider all circumstances in exercising its discretion to find an applicant suitable to list with a WVR structure and would do so only in appropriate cases where the applicant fits the profile of companies targeted by the proposed regime. The Exchange stated that demonstration of any or all of the characteristics set out in paragraph 106 of the Rule Chapters Consultation Paper may not of itself ensure an applicant's suitability to list with a WVR structure. The Exchange would retain absolute discretion to reject an application for listing with a WVR structure even if the applicant met these requirements to ensure that only "bona fide" candidates who fit the target profile are listed.
134. The Exchange also proposed to reserve the right to reject an applicant on suitability grounds if its WVR structure was an extreme case of non-conformance with governance norms (for example if the ordinary shares would carry no voting rights at all).

#### Expected Market Capitalisation

135. The Exchange proposed that, in addition to satisfaction of the relevant criteria under Rule 8.05 (or draft Rule 18A.03 in the case of a Biotech Company eligible for listing under Chapter 18A), the Exchange proposed initially to limit applicants permitted to list with WVR structures to those companies that had an expected market capitalisation at listing of not less than HK\$10 billion. If an applicant with a WVR structure had an expected market capitalisation at listing of less than HK\$40 billion, the Exchange proposed to also require the applicant to have at least HK\$1 billion of revenue in its most recent audited financial year (see Appendix I, Rule 8A.06).

#### Ring-fencing

136. The Exchange proposed that only new applicants would be able to list with a WVR structure (see Appendix I, Rule 8A.05). The note to the draft Rule contained a general

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<sup>12</sup> A consequential modification is proposed to Rule 8.11 of the Rules to create an exception to the general restriction against WVR (see Appendix I).



anti-avoidance provision to prevent companies attempting to use artificial means to circumvent this and other restrictions. The Rule Chapters Consultation Paper stated that any circumvention of or non-compliance with a requirement under the regime for WVR structures may also amount to a contravention of the SMLR and, in these circumstances, the SFC may exercise its powers under the SMLR in relation to the listing applicant or listed issuer (as the case may be).

137. After listing, the Exchange proposed that issuers with WVR structures would be prohibited from increasing the proportion of WVRs in issue or from issuing any further WVR shares (see Appendix I, Rule 8A.13). WVR beneficiaries would have a limited right of pre-emption in the case of a pro rata offering to all shareholders (i.e. a rights issue or open offer) or a pro rata issue of securities by way of scrip dividends, or a stock split (or similar transaction), provided that the proportion of WVRs in issue afterwards were not higher than that in issue immediately before the corporate action (see Appendix I, Rule 8A.14). If a WVR beneficiary chose not to take up any part of a pro rata offer (or rights to shares in that offer) those shares (or rights) not taken up could not be offered or transferred to any other person.
138. The Exchange proposed that issuers with WVR structures be prohibited from changing the rights attached to WVR shares to increase the WVRs attached to those shares (see Appendix I, Rule 8A.16). However, if an issuer wished to change such terms to reduce the WVRs attached to its shares it may do so but must first obtain the prior approval of the Exchange and, if approval is granted, must announce the change (see Appendix I, note to Rule 8A.16).

#### **Minimum and Maximum Economic Interest at Listing**

139. The Exchange proposed to require all the beneficiaries of a company's WVR structure to collectively beneficially own a minimum of at least 10% and a maximum of not more than 50% of the underlying economic interest in the applicant's total issued share capital at the time of listing (see Appendix I, Rule 8A.12). The Exchange did not propose to impose this requirement on an ongoing basis after listing.

#### **WVR Beneficiaries**

140. The Exchange proposed that beneficiaries of WVR would be restricted to those individuals who were directors of the issuer at listing and remain directors afterwards. The WVRs attached to a beneficiary's shares would lapse permanently if a WVR beneficiary: (a) died; (b) ceased to be a director; (c) was deemed by the Exchange to be incapacitated; or (d) was deemed by the Exchange to no longer meet the requirements of a director set out in the Rules (see Appendix I, Rule 8A.17).
141. The Exchange proposed that it would deem a beneficiary of WVRs to no longer meet the requirements of a director if, for the following reasons, the Exchange believed the person no longer has the character and integrity commensurate with the position, namely:
  - (a) the beneficiary was or has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly;
  - (b) a disqualification order is made by a court or tribunal of competent jurisdiction against the beneficiary; or

- (c) the beneficiary was found by the Exchange to have failed to comply with the requirement that certain corporate actions are conducted on a one-share, one-vote basis (see paragraph 147).
142. The Exchange proposed that the WVRs attached to a WVR beneficiary's shares lapse permanently if a WVR beneficiary transferred his beneficial interest or economic interest in those shares, or the voting rights attached to them, to another person (see Appendix I, Rule 8A.18).
143. The Exchange stated that it would consider an arrangement to hold WVR shares through a limited partnership, trust, private company or other vehicle (for example, for estate and/or tax planning purposes) as acceptable and would not cause the WVRs attached to the beneficiary's shares to lapse provided that the Exchange was satisfied that such an arrangement did not result in a circumvention of the restriction against the transfer of WVRs to another person (see Appendix I, Rule 8A.18(2)). A beneficiary would be permitted to put in place, or make amendments to, such a holding arrangement post-listing as long as the amended arrangements also complied with this requirement.

#### **Limits on WVR Powers**

144. The Exchange proposed to require a WVR structure to be attached to a specific class of shares. This class must be unlisted (see Appendix I, Rule 8A.08) and the WVRs attached to them must confer to a beneficiary only enhanced voting power on resolutions tabled at the issuer's general meetings (other than matters required to be decided on a one-share, one-vote basis (see paragraph 147)). The Exchange proposed that the rights attached to WVR shares must be the same in all other respects to those attached to the issuer's ordinary shares other than with regards to voting rights (see Appendix I, Rule 8A.07).
145. The Exchange also proposed to require the voting power attached to WVR shares to be capped to not more than ten times of the voting power of ordinary shares (see Appendix I, Rule 8A.10).

#### **Protecting Non-WVR Shareholders Rights to Vote**

146. The Exchange proposed to require that a listed issuer's WVR structure enable Non-WVR Shareholders to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings. (see Appendix I, Rule 8A.09). The Exchange also proposed to require that Non-WVR Shareholders holding at least 10% of the voting rights on a one-share one-vote basis (or such lower threshold as required under the laws of incorporation of the issuer) must be able to convene a general meeting and to add resolutions to the meeting agenda (see Appendix I, Rule 8A.23).
147. The Exchange proposed to require that the following key matters to be decided on a one-share one-vote basis and WVR beneficiaries would not be able to exercise WVRs on these matters (see Appendix I, Rule 8A.24):
- (a) changes to the issuer's constitutional documents, however framed;
  - (b) variation of rights attached to any class of shares;
  - (c) the appointment or removal of an independent non-executive director;

- (d) the appointment or removal of auditors; and
- (e) the voluntary winding-up of the issuer.

### **Conversion of WVR shares into Ordinary Shares**

- 148. The Exchange proposed that a beneficiary of WVR shares would be able to convert his shares into ordinary shares on a voluntary basis or as mandated by the Rules (e.g. on transfer to another person). The Exchange proposed to require such conversions to occur on a one-to-one ratio (see Appendix I, Rule 8A.21).
- 149. The Exchange proposed that, as part of their initial listing application and whenever new WVR shares are to be issued (e.g. as part of a pro rata offer to prevent the dilution of a WVR beneficiary's holdings), issuers with WVR structures must seek from the Exchange:
  - (a) approval of the issue of WVR shares (see Appendix I, Rule 8A.14); and
  - (b) prior approval of the listing of shares that are issuable upon conversion of the WVR shares (see Appendix I, Note to Rule 8A.21).
- 150. The Exchange proposed that an issuer with a WVR structure must disclose any dilution impact of a potential conversion of WVR shares into ordinary shares in its Listing Documents and in its interim and annual reports (see Appendix I, Rule 8A.40).

### **Enhanced Disclosure Requirements**

- 151. The Exchange proposed to require issuers with WVR structures to be prominently identified through a unique stock marker "W" at the end of their stock name (see Appendix I, Rule 8A.42).
- 152. The Exchange also proposed to require an issuer with a WVR structure to include the warning "*a company controlled through weighted voting rights*" and describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders prominently on the front page of all its Listing Documents, periodic financial reports, circulars, notifications and announcements required by the Rules (see Appendix I, Rule 8A.37). This warning "*a company controlled through weighted voting rights*" must also be prominently disclosed on the documents of title for the listed equity securities of an issuer with a WVR structure (see Appendix I, Rule 8A.38).
- 153. The Exchange proposed that an issuer with a WVR structure must also identify the beneficiaries of its WVR structure in its Listing Documents and its interim and annual reports (Appendix I, Rule 8A.39).

### **Enhanced Corporate Governance**

- 154. The Exchange proposed to require issuers with WVR structures to establish a Corporate Governance Committee comprised of a majority of INEDs and chaired by an INED to ensure that the issuer is operated and managed for the benefit of all shareholders and to help ensure the issuer's compliance with the Rules (including the safeguards described in this Chapter) (see Appendix I, Rules 8A.30 and 8A.31). The terms of reference of the Corporate Governance Committee would have to include the terms set out in Rule 8A.30.
- 155. The Exchange proposed to require an issuer with a WVR structure to include a

summary of the work of its Corporate Governance Committee in the Corporate Governance Report that it discloses in its half-yearly and annual report in compliance with the Rules (see Appendix I, Rule 8A.32).

156. The Exchange also proposed to mandate certain provisions of the CG Code regarding the role of an INED, the establishment of a nomination committee comprised of a majority of INEDs and chaired by an INED and the retirement of INEDs by rotation at least once every three years. The nomination committee would be solely responsible for making recommendations to the board of directors regarding the nomination of INEDs (see Appendix I, Rules 8A.26 to 8A.29).
157. The Exchange proposed to require that an issuer with a WVR structure engage a compliance adviser on a permanent basis and consult with this adviser on any matters related to its WVR structure, transactions in which the beneficiaries of WVRs in the issuer have an interest and where there is a potential conflict of interest between Non-WVR Shareholders and beneficiaries of WVRs in the issuer (see Appendix I, Rules 8A.33 and 8A.34).
158. The Exchange proposed that directors and senior management of an issuer with a WVR structure also be required by the Rules to undergo appropriate training on WVR and its associated risks (Appendix I, Rule 8A.36).

## **Enforcement**

### *Enforcement by the Exchange*

159. The Exchange built the WVR safeguards into the draft Rules using compulsive language to facilitate enforcement actions.
160. The Exchange proposed that a breach of the Rules by a company listed on the Exchange with a WVR structure would be enforced in the same way as a breach of Rules by any other company listed on the Exchange.
161. In the event of a possible breach of the relevant WVR safeguards or the triggering of a circumstance in which WVR may be lost, the Exchange proposed that its proceedings comply with the same due process requirements as those applicable to a proceeding for a possible breach by any other listed company, with the delivery of show cause letters requiring rectification of the breach within a specific period failing which, for example, suspension may be directed as a protective measure. Ultimately a hearing before the Listing Committee as decision maker would normally be required for which the relevant established procedures would be followed.
162. The Exchange proposed measures to supplement its powers to impose or issue a sanction under Rule 2A.09 against the parties set out in Rule 2A.10. This would be for the purpose of enforcement in circumstances where a WVR beneficiary acted in a manner contrary to the Rules. Depending on the circumstances, the Listing Committee would be asked to make appropriate directions for remedial action or a direction for a WVR beneficiary to give up the WVRs carried by his or her shares, to be carried out within a specific timeframe. The Exchange may constrain access to the market by the company or an individual director through an order denying the facilities

of the market<sup>13</sup>; suspend or ultimately cancel the relevant company's listing unless the direction is complied with.

163. Further, if the Listing Committee decided that a WVR issuer or a WVR beneficiary had breached any Rule set out in Chapter 8A, the Exchange proposed that it may direct a trading halt or suspend dealings of the WVR issuer's shares; impose disciplinary sanctions, or withhold its listing approval (in the case of an issuance of listed securities) or its clearance for the issuance of a shareholders' circular (in the case of a material transaction requiring a circular) (see Appendix I, Rule 8A.03).
164. The Exchange also specified in the draft Rules that where prescribed majorities are set for shareholders' resolutions (e.g. special or ordinary thresholds), in the event that a WVR beneficiary casts his/her votes whilst in contravention of the Rules, such resolutions would not, for the purposes of the Rules and in calculating the requisite majorities, be counted (see Appendix I, Rule 8A.25). It would remain the issuer's obligation to ensure that only persons vote in the manner in which they are entitled to vote.

#### *Constitutional Backing and Legal Remedies*

165. The Exchange proposed to require the safeguards described in the Rule Chapters Consultation Paper for WVR structures to be incorporated in the issuer's constitutional documents (see Appendix I, Rule 8A.44), with the intention of allowing a shareholder to take civil actions to enforce provisions in the constitutional documents (including WVR safeguards) against the issuer.
166. The Exchange also proposed to require WVR beneficiaries to provide, in addition, an undertaking to the issuer that they will comply with the relevant WVR safeguards. The undertaking would expressly confer benefit on the issuer and all existing and future shareholders of the company with the intention that such third parties have a legal basis on which to seek to enforce the terms of the undertaking against the WVR beneficiary (see Appendix I, Rule 8A.43).
167. The above proposed requirements would be in addition to existing legal remedies available to shareholders. The Rule Chapters Consultation Papers stated that any circumvention of or non-compliance with a requirement under Chapter 8A may also amount to a contravention of the SMLR and/or the SFO and, in these circumstances, the SFC may exercise its powers under the SMLR and/or the SFO in relation to the listing applicant or listed issuer (as the case may be).

#### **Grandfathering**

168. The Exchange proposed that an existing Hong Kong listed issuer, such as Swire Pacific Limited, with a WVR structure as at the date of the publication of the Rule Chapters Consultation Paper would not be required to meet the Rules proposed by this Rule Chapters Conclusions Paper and their WVR structures will be accordingly grandfathered (see Appendix I, Rule 8.11(2)).

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<sup>13</sup> Rule 2A.09(9).

## Feedback

### General Feedback

169. The overwhelming majority of respondents supported the Exchange's proposals regarding the introduction of Chapter 8A for issuers with WVR structures. Respondents made the following substantive comments.

### Subjectivity

170. Some respondents commented that the proposed Rules rely substantially on the subjective judgment of the Exchange and the Listing Committee particularly in relation to the suitability of an applicant to list with a WVR structure. These respondents commented that such an approach lacks regulatory clarity and may impact on governance-related issues.

#### *The Exchange's response and conclusion*

171. The Exchange acknowledges that some of the proposed Rules, including the determination of an applicant's suitability to list with a WVR structure, will necessarily involve a degree of subjective judgment on the part of the Exchange and the Listing Committee.
172. The proposals are driven by a policy objective to enhance Hong Kong's competitiveness and attract more innovative companies to list in Hong Kong. As explained in the New Board Concept Paper Conclusions, it is difficult to define companies from emerging and innovative sectors, since they are not necessarily restricted to specific sectors, and the definition is likely to evolve over time. Accordingly the Exchange has chosen to publish a guidance letter setting out the characteristics of an innovative company in order to provide more clarity to the market (see Appendix II, Part II). In developing its proposals, the Exchange has worked closely with the SFC to develop the detailed list of factors/characteristics. The Exchange intends to provide further guidance and clarity to the market as it gains more experience on the listing of companies from emerging and innovative sectors.

### Meaning of "Sophisticated Investor" and "Meaningful Investment"

173. The Exchange stated that an applicant for listing with a WVR structure must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor.
174. Some respondents asked us to provide more guidance on the meaning of "Sophisticated Investor" and "meaningful investment" in these circumstances.

#### *The Exchange's response and conclusion*

175. Please see paragraphs 82 to 84 and 87 to 89 of the Exchange's response and conclusion in respect of this suggestion. For the avoidance of doubt the guidance suggested in paragraph 85 is relevant only to Biotech Companies seeking a listing under Chapter 18A and is not applicable for the WVR chapter.

### Possible Use of Mandatory "One-Share, One-Vote" Provisions to Remove or Modify WVR Structures

176. The Exchange received feedback questioning whether its proposed WVR safeguards

would enable Non-WVR Shareholders to requisition a general meeting of shareholders to remove or modify a WVR structure to the detriment of the WVR beneficiaries.

177. The Exchange had proposed that:
- (a) shareholders holding 10% or more of the voting rights in an issuer's share capital must be able to requisition a general meeting (see paragraph 146 and Appendix I, Rule 8A.23); and
  - (b) a change to an issuer's constitutional documents must be decided on a one-share one-vote basis and WVR beneficiaries must not be able to exercise WVRs on this matter (see paragraph 147 and Appendix I, Rule 8A.24).
178. Consequently, respondents asked whether Non-WVR Shareholders could use a combination of the above rights to requisition a general meeting for the purpose of voting (on a one-share, one-vote basis) on changing the issuer's constitutional documents to remove (or weaken) its WVR structure.
179. Two respondents suggested that to prevent the possibility of Non-WVR Shareholders removing or modifying the WVR structure, the Exchange should not require an amendment to the constitutional documents to be a one-share one-vote matter. Instead the Exchange could protect the Non-WVR Shareholders by requiring any amendment to the constitutional documents which adversely affect the Non-WVR Shareholders to be subject to the consent of a majority of the Non-WVR Shareholders.

*The Exchange's response and conclusion*

180. The intention of the Exchange's proposed WVR safeguards is to protect Non-WVR Shareholders from resolutions that amend the constitutional documents of the company being passed by WVR beneficiaries on the basis of their WVRs. It is not the Exchange's intention to enable Non-WVR Shareholders to remove or modify an issuer's WVR structure through a change to its constitutional documents.
181. A proposal to amend an issuer's constitutional documents to alter or remove the WVRs attached to a particular class of its shares would require the approval of the relevant majority<sup>14</sup> of holders of that particular class of shares (as a matter of Hong Kong law and the laws of certain common law countries, including Bermuda and the Cayman Islands). If the issuer is not subject to such requirements as a matter of law, we would require the issuer to provide this protection for WVR holders in its constitutional documents (see paragraph 2(1) of Appendices 13a and 13b of the Rules for companies incorporated in Bermuda and the Cayman Islands, and paragraph 31(a) of section 1 of the 2013 Joint Policy Statement).
182. We have added a note to Rule 8A.24 clarifying the intention of the Rule and of the rights of shareholders.
183. In addition, we consider that an issuer would be able to include provisions in its constitutional documents, prior to listing, to prevent their amendment without the

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<sup>14</sup> Under the Listing Rules, the constitutional documents of issuers incorporated in either the Cayman Islands or Bermuda that have, or are seeking, a primary listing must state that a three-fourths majority is required to approve a change to class rights (see paragraph 2(1) of Appendix 13a and 13b to the Rules).

consent of the WVR beneficiaries to provide additional protection.

184. A significant number of respondents thought that the requirement for an amendment to the constitutional documents to be a one-share one-vote matter to be a necessary shareholder protection given the potential risks relating to WVR structures. For the reasons above, the Exchange considers that there are sufficient safeguards to prevent Non-WVR Shareholders removing or modifying the issuer's WVR structure through an amendment to the constitutional documents, or otherwise amending the constitutional documents to frustrate the operation of the WVR structure, and accordingly has not adopted the proposal to remove an amendment to the constitutional documents from the list of one-share one-vote matters. Nor does it consider it appropriate or necessary to amend the position to "material" changes to the constitutional documents as this will require issuers and the Exchange to consider what would constitute a "material" change.

#### **Restriction on Maximum Shareholding at Listing**

185. A number of respondents expressed concern at the Exchange's proposal that an individual would not be entitled to benefit from WVRs if they held 50% or more of the underlying economic interest in the listing applicant's total issued share capital at the time of its initial listing. These respondents stated that many prospective listing applicants wished to grant their Controlling Shareholders WVRs even though they held more than majority stake in the applicant and who would otherwise meet the other eligibility criteria for a WVR beneficiary. These respondents commented that issuers in the emerging and innovative sectors tend to have significant funding needs post-listing and may also have share incentive schemes which require potential issue of a significant number of shares to incentivise key personnel. Accordingly, a Controlling Shareholder with more than 50% of the underlying economic interest in the listing applicant at listing may have legitimate reasons to be concerned about losing control in the absence of WVR given the dilutive effect of the expected fundraising and/or share incentivisation measures.
186. These respondents were of the view that restricting the maximum shareholding to 50% at listing will be highly unattractive and will adversely impact Hong Kong's competitiveness as a listing venue.

#### *Exchange's response and conclusion*

187. The Exchange proposed the restriction on maximum shareholding at listing to restrict the use of WVRs to individuals that would otherwise not be able to exercise control over the listing applicant after listing. However the Exchange acknowledges that, in the event that an issuer anticipates that it will have significant post-listing funding needs and/or the need to set aside a significant proportion of shares for employee incentivisation, there may be legitimate commercial reasons for allowing a company to list with a WVR beneficiary whose shareholdings, or a number of WVR beneficiaries whose holdings in aggregate, exceed 50% of the underlying economic interest in the issuer at listing so as to enable the WVR beneficiary to retain control of the issuer post-listing. The Exchange is persuaded that restricting the maximum underlying economic interest at listing to 50%, in the presence of such legitimate commercial reasons, would affect the competitiveness of the proposed listing regime.



188. Irrespective of the level of shareholding of WVR beneficiaries, the Exchange will implement its proposed requirement that an issuer ensure that at least 10% of votes are available to Non-WVR Shareholders at general meetings (Rule 8A.09). Accordingly, an issuer would need to set the voting power of its WVR shares below the maximum 10 votes per share cap (Rule 8A.10) if it wished to list with a WVR beneficiary whose holdings, or a number of WVR beneficiaries whose holdings in aggregate, exceed 50% of the underlying economic interest in the issuer at listing. The issuer would not be able to increase the number of votes per share carried by its WVR shares after listing (Rule 8A.16). For this reason, the Exchange believes that not limiting the maximum underlying economic interest at listing to 50% will not compromise the level of protection available to Non-WVR Shareholders.
189. The Exchange has decided to adopt the suggested amendment and has removed the maximum shareholding restriction at listing from the Rules (see Rule 8A.12).

#### **Holding WVRs through Limited Partnerships, Trusts, Private Companies and Other Vehicles**

190. Respondents asked the Exchange to provide more clarity on the type of vehicles that were acceptable to the Exchange to hold WVRs.
191. A number of respondents have also suggested that the Exchange should allow the transfer of shares to affiliates of a WVR beneficiary in line with the practice in the US.

#### *Exchange's response and conclusion*

192. The Exchange proposed that the WVRs attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of, or economic interest in, those shares or the control over the voting rights attached to them (Rule 8A.18). The Exchange also proposed that WVRs could be held by a limited partnership, trust, private company or other vehicle provided that this arrangement did not result in a circumvention of this transfer restriction.
193. Clarifications were requested by a number of respondents in relation to these possible arrangements. By way of such clarification, the Exchange believes that the following arrangements are acceptable and will not result in the WVRs attached to the beneficiary's shares to lapse:
- (a) in the case of holding WVR shares through a partnership, the terms of the partnership must expressly specify that the voting rights attached to such shares are solely dictated by the WVR beneficiary;
  - (b) in the case of holding WVR shares through a trust, (i) the WVR beneficiary must in substance retain an element of control of the trust and any immediate holding companies or, if not permitted in the relevant tax jurisdiction, retain a beneficial interest in the WVR shares; and (ii) the purpose of the trust must be for estate planning and/or tax planning purposes; and
  - (c) in the case of holding WVR shares through a private company or other vehicle, the WVR beneficiary (or a trust referred to in paragraph (b) above) must wholly own and control that vehicle at all relevant times.

194. The above measures ensure that only persons that have ongoing responsibility for the

issuer's performance after listing are able to control the voting under WVR. Requiring WVR beneficiaries to remain as directors also means that WVR beneficiaries will be required to meet the competence and character requirements of the Rules and have fiduciary duties to the issuer under the Rules and common law. This should provide comfort to the issuer's shareholders that the issuer will be managed for the benefit of the company and its shareholders as a whole.

195. To simplify the Rules and clarify the interaction between restrictions on transferring WVR shares and the vehicles permitted to hold those shares, the Exchange has combined the Rules on these two requirements into one Rule (see 8A.18, previously Rules 8A.12 and 8A.20) and deleted redundant Rule notes.
196. The Exchange believes that the above arrangements already provide WVR beneficiaries with a degree of flexibility on their shareholding arrangements to facilitate their tax and/or estate planning. The Exchange is concerned that allowing transfer to corporate affiliates which are not wholly-owned would make it more difficult to safeguard against circumvention of the restriction of WVR to eligible WVR beneficiaries only, and have accordingly not adopted the suggested amendment.

#### **Ownership Continuity and Control**

197. The Exchange has been asked how a new applicant can comply with the ownership continuity and control requirements of the Rules<sup>15</sup> if it lists with a WVR structure.
198. The Rules require that a new applicant demonstrate ownership continuity and control for at least their most recent audited financial year. Prior to listing, the persons to whom a new applicant wishes to grant WVRs may not meet the definition of Controlling Shareholder due to their low shareholding. However, they may meet this definition following the increase in voting power conferred to them by the WVR structure. The Exchange has been asked whether it would view this as a break in continuity of ownership and control for the purpose of compliance with the Rules.

#### *The Exchange's response and conclusion*

199. The Exchange has published guidance<sup>16</sup> on the Exchange's interpretation of the purpose of ownership continuity and control requirement. This states that the ownership continuity and control requirement is intended to ensure that the listing applicant's financial performance resulted from the actual dynamics between the Controlling Shareholder(s) and the management for at least the last financial year of the track record. The listing applicant must have been operated as an integrated unit under the same shareholder(s) who was able to exert substantial influence on management.
200. A new applicant should be able to rebut a presumption that there has been a change in ownership continuity and control by demonstrating that there was no material change in influence on management despite the technical change in Controlling Shareholder(s) arising from the increase in voting power conferred by the WVR structure. This guidance will continue to apply after the implementation of the Rules appended to this

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<sup>15</sup> Rule 8.05(1)(c); 8.05(2)(c) or 8.05(3)(c), as applicable.

<sup>16</sup> HKEX-GL89-16 (November 2016) (Updated in October 2017 and February 2018)

Rule Chapters Conclusions Paper.

201. For the reason stated above we have not adopted the suggested amendments to our proposals or the draft Rules.

#### **Increasing the Number of INEDs on the Board of an Issuer with a WVR Structure**

202. Some respondents proposed, as an additional corporate governance measure, that the Exchange should require issuers with WVR structures to increase the number of INEDs on their boards, for example, by requiring at least half of the board to be composed of INEDs.

##### *The Exchange's response and conclusion*

203. For issuers with a WVR structure, the Exchange's proposed Rules strengthened the role of INEDs and made it mandatory for them to perform particular duties. We proposed that INEDs be elected on a one-share, one-vote basis and dominate board committees, including the newly mandated Corporate Governance Committee (see paragraphs 154 to 156). In addition, we have decided to require the Corporate Governance Committee to be comprised entirely of INEDs (see paragraphs 229 to 232).
204. We believe these measures are sufficient and for this reason do not believe it is necessary to adopt the suggested amendment to our proposals or the draft Rules.

#### **WVR Safeguards Committee**

205. Some respondents suggested that the Exchange should not require a mandatory Corporate Governance Committee and should instead require the formation of a WVR safeguards committee solely for the purpose of monitoring compliance with the WVR safeguards. The respondents suggested that the formation of a Corporate Governance Committee generally should be left as an option to the issuer.

##### *The Exchange's response and conclusion*

206. The Exchange does not consider it appropriate to seek to assess compliance with WVR safeguards in isolation from corporate governance issues generally. Accordingly, the Exchange has not adopted the suggested amendment.

#### **Time-Defined "Sunset" Clause**

207. A number of respondents largely made up of corporate governance associations and large institutional fund managers (many of which put forward the same view in response to the consultation on the New Board Concept Paper) advocated a time-defined sunset clause under which a WVR structure would cease at a particular date after listing or would be subject to renewal by shareholders on that date.

##### *The Exchange's response and conclusion*

208. The Exchange has previously explained why it has decided not to require a time-defined sunset clause. A time-defined sunset clause may trigger a change in control at a listed issuer that would occur at an arbitrary date in the future when the change may not be in the best interests of the company or its shareholders. Requiring a WVR structure to be subject to renewal after a certain date (on a rolling basis) would, in the Exchange's opinion, create excessive uncertainty for shareholders and

prospective investors as that date approached.

209. The Exchange is also mindful that a time-defined sunset clause is likely to make the Hong Kong regime uncompetitive versus overseas markets (particularly the US and the UK) where no requirement for a sunset clause exists.
210. The Exchange notes that a number of respondents advocating for a time-defined sunset clause also put forward the same view in response to the consultation of the New Board Concept Paper, which was taken into consideration in the New Board Concept Paper Conclusions. The Exchange also notes that a majority of the investor respondents did not propose a time-defined sunset.
211. It should be noted that the Exchange has already included an “event-based sunset” since WVRs are restricted to those WVR beneficiaries who were materially responsible for the growth of the issuer and who remain as directors. The effect of the Exchange’s proposed requirements is that WVRs will not exist indefinitely.
212. For these reasons the Exchange remains of the same view in relation to time-defined sunset and accordingly we have not adopted the suggested amendment to our proposals or the draft Rules.
213. It should be noted that the proposed regulatory requirements and safeguards represent the minimum governance standards that a company with a WVR structure must meet in order to list. Whilst the proposed regime contains numerous safeguards to protect the interests of investors in WVR companies (including the “natural sunset”, the minimum votes that must be held by Non-WVR Shareholders and the 10:1 ratio cap), it should not be taken to serve as a substitute for investors’ own judgment and assessment regarding the governance of a company. In the US, for example, safeguards are often negotiated between the company and its investors in the absence of regulatory requirements. If a company decides to adopt one or more “additional protections”, it has the discretion to do so under the proposed regime.

#### **Disclosure of the Circumstances when WVRs will Cease**

214. Some respondents asked that the Exchange amend its Rules to require an issuer with a WVR structure to disclose at its initial listing and thereafter the circumstances under which WVRs would cease.

#### *The Exchange’s response and conclusion*

215. The Exchange agrees that an issuer with a WVR structure should inform investors of the circumstances under which the WVRs would cease. We have added Rule 8A.41 to state that an issuer with a WVR structure must disclose in its Listing Documents and in its annual and interim reports all the circumstances in which the WVRs attached to its shares will cease.

#### **Disclosure of WVR Structure, Rationale and Associated risks**

216. One respondent commented that the requirement to include in the front page of all corporate documents disclosures that would describe the WVR structure, the issuer’s rationale for having it and the associated risks for shareholders would necessitate lengthy substantive disclosure far beyond the space available.

*The Exchange's response and conclusion*

217. The Exchange agrees that it is not practicable to require such extensive disclosure on the front page of all corporate documents. We have amended Rule 8A.37 to require a warning language to be included on the front page of all corporate documents and for the description of the WVR structure, the issuer's rationale for having and the associated risks for shareholders to be disclosed prominently in the issuer's Listing Documents and periodic financial reports only.

**Top-up Placings**

218. Two respondents suggested that the Exchange should allow WVR beneficiaries to participate in top-up placings. The respondents commented that top-up placings is a common feature of the Hong Kong market and the Listing Rules already includes top-up placings through a number of exemptions (e.g. connected transaction requirements). The respondents suggested that similar exemption should be incorporated into Chapter 8A to allow an issuer to issue further WVR shares to a WVR beneficiary pursuant to a top-up placing.

*The Exchange's response and conclusion*

219. Top-up placings are used by issuers in fundraisings to provide quicker settlement to investors. Since WVR shares represent a separate class of unlisted shares which must be converted into ordinary shares and deposited into the Central Clearing and Settlement System before they can be traded on the Exchange, the Exchange believes that there is little practical benefit from using WVR shares in top-up placings. Accordingly the Exchange has not adopted the suggested amendment. In exceptional circumstances where an issuer can justify the need to conduct a top-up placing using WVR shares, the Exchange may consider granting a waiver to the issuer based on the facts and circumstances of the case.

**Share Repurchases**

220. One respondent suggested that the requirement in Rule 8A.15, which requires WVR beneficiaries to reduce their WVRs proportionately following a share repurchase if the repurchase would otherwise result in an increase in the proportion of shares carrying WVRs, to be an unfair restriction on an issuer's ability to repurchase shares and suggested for the requirement to be removed. The respondent suggested that Non-WVR Shareholders are already protected by the requirement that at least 10% of the voting power must be held by Non-WVR Shareholders.

*The Exchange's response and conclusion*

221. Rule 8A.17 is designed to prevent WVR beneficiaries from increasing the proportion of WVR shares in issue through a share repurchase. WVR beneficiaries will still be able to exercise the same proportion of voting power through their WVR shares in general meetings after any such reduction. Accordingly the Exchange has not adopted the suggested amendment.

**Stock-Borrowing**

222. Two respondents suggested that the Exchange should allow stock borrowing arrangements for the purpose of facilitating over-allocations in the IPO process. Stock

borrowing/lending involves a transfer of title in the shares, which will result in the WVRs attached to the WVR shares to fall away. The respondents pointed to the fact that exemptions exist in the current Hong Kong regulatory regime to facilitate stock borrowing, and suggested that the Exchange should provide an exemption under Chapter 8A to allow stock borrowing to take place without causing the WVR beneficiaries to lose the WVR attached to the relevant shares.

*The Exchange's response and conclusion*

223. WVR shares held by the WVR beneficiaries represent a separate class of unlisted shares. This is similar to the situation of many PRC incorporated issuers listed on the Exchange whose Controlling Shareholders hold a separate class of domestic shares and were able to complete the IPO without stock borrowing arrangements with the Controlling Shareholder involving domestic shares (for example through deferred settlement with specific investors).
224. The Exchange is concerned that allowing stock borrowing of WVR shares would cause significant uncertainties for the issuer and investors (since stock borrowing could potentially result in a change of control in the issuer at the time the WVR shares were lent out and when they are returned). Accordingly the Exchange has not adopted the suggested amendment. In exceptional circumstances where an issuer can justify the need for stock-borrowing using WVR shares, the Exchange may consider granting a waiver to the issuer based on the facts and circumstances of the case.

**Disclosure of Pro Forma Voting at General Meetings on a One-share, One-vote Basis / Potential Additional Matters to be Subject to One-share, One-vote**

225. Some respondents suggested that, for shareholders' information, the Exchange should require issuers to disclose voting results at general meetings on a pro forma one-share, one-vote basis in respect of resolutions that the Exchange does not require to be decided on a one-share one-vote basis.
226. Some respondents also suggested a number of additional matters be decided on a one-share one-vote basis, including connected/related party transactions; the issuance of shares/share buy-backs; reverse takeovers; takeover-related matters and the appointment and removal of compliance advisers.

*The Exchange's response and conclusion*

227. The Exchange's previous analysis on related matters indicated that voting disclosure of the nature sought by some respondents was unlikely to be able to show a balanced picture of shareholders' views, as voting may be dominated by those shareholders who are against the resolution, while those in support will generally not vote in the expectation that the resolution would pass due to the superior voting power of the Controlling Shareholder. Accordingly the Exchange has not adopted the suggestion to require such disclosure.
228. The Exchange has also not adopted the suggestions for other matters to be decided on a one-share one-vote basis. The purpose of the proposed Rules is to allow eligible beneficiaries to control and manage the issuer with WVRs, and to allow investors to invest in the issuer on this basis. Accordingly the Exchange does not consider it appropriate to require matters to be decided on a one-share one-vote basis that would

render WVRs ineffective in a number of important areas. It should be noted that, in relation to connected transactions, a WVR beneficiary with a material interest in the transaction is required under the existing Rules to abstain from voting on the resolution. On this basis, the Exchange does not consider it necessary to require connected transactions to be decided on a one-share one-vote basis.

229. The Exchange proposed to require an issuer with a WVR structure to establish a Corporate Governance Committee comprised of a majority of INEDs and chaired by an INED to ensure that the issuer is operated and managed for the benefit of all shareholders and to help ensure the issuer's compliance with the Rules. To address the concern from respondents that the proposed corporate governance safeguards applicable to companies with a WVR structure should be strengthened, we will require the Corporate Governance Committees of such companies to be composed entirely of INEDs (see Appendix I, Rule 8A.31). A Corporate Governance Committee would be free to invite members of the issuer's management to attend meetings of the committee, as the committee required.
230. The Exchange proposed that the Corporate Governance Committee review and monitor the management of conflicts and interests at an issuer with a WVR structure. To strengthen the role of this committee we will also require it to make a recommendation to the board of the issuer on any matter where there is a potential conflict of interests between the issuer, a subsidiary of the issuer and/or shareholders of the issuer (considered as a group) on one hand and any beneficiary of WVRs on the other.
231. We proposed that the Corporate Governance Committee review and monitor all risks related to the issuer's WVR structure, including the issuer's compliance with requirements on connected transactions. We will require the committee to also make a recommendation to the board of the issuer on any transaction between the issuer and/or a subsidiary of the issuer on one hand and any beneficiary of WVRs on the other. In addition, we will require the committee to make a recommendation to the board of the issuer as to the appointment or removal of a compliance adviser (see Appendix I, Rule 8A.30).
232. To improve transparency, the Exchange will require the Corporate Governance Committee, on a comply or explain basis, to disclose its recommendations to the board of the issuer in relation to the matters set out in paragraphs 230 and 231 above in the report on the work of the Corporate Governance Committee published on a semi-annual basis (see Appendix I, Rule 8A.30).

#### **Transferability of Shares (rights) not taken up in a Pro Rata Offering**

233. The Exchange has reviewed the Rules further and believes that in principle there is no regulatory concern with allowing beneficiaries of WVR to transfer any shares (rights) not taken up in a pro rata offering provided that the transferee does not receive the benefit of WVR. We have amended Rule 8A.14 such that where a beneficiary of WVR does not take up shares (rights) in a pro rata issue, such shares (rights) not taken up could be transferred to another person provided that such transferred rights will only entitle the transferee to an equivalent number of ordinary shares.

## Clarification Amendments

### Interaction between WVR Structures and PRC Restrictions on Foreign Ownership

234. Under existing PRC laws, certain industry sectors are subject to foreign investment restrictions. A “foreign investor” is defined according to the form of the investment made i.e. whether investments are made by way of wholly-foreign-owned entities, foreign-invested equity joint ventures or contractual joint ventures.
235. In January 2015, MOFCOM published a consultation draft of a Foreign Investment Law intended to replace existing PRC laws on foreign investment restrictions. The draft law looks through the form of the investment and instead defines a “foreign investor” according to several factors including the citizenship of the person in control, or de facto control, of the investor company. Under the draft Foreign Investment Law companies in the control, or de facto control, of a Chinese citizen would not be subject to foreign investment restrictions.
236. If the draft Foreign Investment Law were to come into effect, a Chinese citizen could potentially use WVRs to demonstrate to MOFCOM that they had de facto control of an issuer that is in an industry subject to foreign ownership restrictions. If that person then lost their ability to exercise WVRs (e.g. due to a breach of a WVR safeguard imposed by the Exchange) they may also lose their ability to demonstrate de facto control for this purpose.

#### *The Exchange’s clarification*

237. The Exchange’s current approach in relation to issuers operating in restricted industries is set out in guidance published on the Exchange’s website<sup>17</sup>. Since the PRC Foreign Investment Law is still in draft form with no proposed date for implementation, the Exchange will continue to examine each case on its individual merits to determine whether the arrangements an issuer proposes will provide appropriate investor protection. Under this approach, an issuer may be required, on a case by case basis, to demonstrate that it is able to comply with the requirements of the draft PRC Foreign Investment Law in the event that the legislation is promulgated. The Exchange has in the past accepted disclosure of the relevant risks without requiring the issuer to specify how compliance with the draft PRC Foreign Investment Law will be achieved if it is promulgated and will continue this approach. In light of the ongoing uncertainty regarding the promulgation of the PRC Foreign Investment Law, the Exchange is in discussions with the SFC to formalise this approach in the published guidance and modify it accordingly.
238. The Exchange believes that WVRs and foreign ownership restrictions are separate issues. Since the publication of the draft PRC Foreign Investment Law, a number of issuers have listed on the Exchange with a range of mechanisms to comply with foreign ownership restrictions that do not involve WVRs.
239. In the event that an applicant seeks to demonstrate compliance with the draft PRC

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<sup>17</sup> Listing Decision HKEX-LD43-3



Foreign Investment Law through WVRs, given that WVRs could not exist indefinitely as a result of the requirement that they fall away in certain circumstances, including the death or incapacity of the WVR beneficiary, the issuer must clearly disclose the risk that its WVRs may fall away and that, as a result, it may not be able to comply with the PRC Foreign Investment Law.

#### **Number of Share Classes Permitted to Carry WVR**

240. The Exchange proposed to require a WVR structure to be attached to a specific class of shares. We would like to clarify that the Exchange normally expects that only one class of shares will carry WVR, and will consider applications by issuers of more than one class of WVR shares on a case by case basis if the issuer provides sufficient justification based on its circumstances for having more than one class of WVR shares and its WVR structure is not an extreme case of non-conformance with governance norms.

#### **Training**

241. One respondent suggested that the requirement in Rule 8A.37 for training to be undertaken on the Listing Rules relating to WVRs and the risks associated with WVR structures should not be applied to advisers of the applicant.

*The Exchange's clarification*

242. The Exchange agrees with the comment and has clarified this in the Rules (see Rule 8A.36).

#### **WVR beneficiaries as Controlling Shareholders**

243. Some respondents commented whether the definition of Controlling Shareholders in Rule 1.01 will need to be revised in light of WVR structures. One respondent asked whether each WVR beneficiary would be considered a Controlling Shareholder for the purpose of the Listing Rules and whether WVR beneficiaries could be deemed as a group of Controlling Shareholders. The respondent suggested that, if the Exchange would consider WVR beneficiaries as a group of Controlling Shareholders, then transfer of WVR shares between WVR beneficiaries should be permitted.

*The Exchange's clarification*

244. The definition of Controlling Shareholder under the Listing Rules is based on voting rights rather than economic value (see "Definitions" section of this Rule Chapters Conclusions Paper). The Exchange considers that the definition remains relevant to WVR beneficiaries. The Exchange does not propose to deem a WVR beneficiary as a Controlling Shareholder or deem WVR beneficiaries as a group to be Controlling Shareholders, which will remain a question of fact. For the avoidance of doubt, the Exchange does not consider it appropriate to allow transfer of WVR shares between WVR beneficiaries even if they are in fact a group of Controlling Shareholders.

#### **Executive Role for WVR Beneficiaries**

245. Some respondents suggested that a WVR beneficiary should be required to have an ongoing executive role in the issuer in order to remain eligible for WVRs.

*The Exchange's clarification*

246. The Exchange has chosen to tie the eligibility for WVRs to directorship because it is an objective criteria which facilitates monitoring and enforcement, while the question of whether a person continues to have an executive role is much more subjective and difficult to determine. Requiring WVR beneficiaries to be directors also means that WVR beneficiaries will have fiduciary duties to the issuer under the Rules and common law as a director. The Exchange expects WVR beneficiaries to continue to contribute to the strategic direction of the issuer in their capacity as directors.

**Disclosure of dilution impact**

247. Some respondents suggested that the requirement to disclose any dilution impact of a potential conversion of WVR shares into ordinary shares is unnecessary, since WVR shares convert on a one to one ratio to ordinary shares and therefore there should be no dilution.

*The Exchange's clarification*

248. The Exchange has amended the Rule to require disclosure of the impact, generally, on the issuer's share capital of a potential conversion of WVR shares into ordinary shares (see Appendix I, Rule 8A.40).

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## CHAPTER 5: SECONDARY LISTINGS OF QUALIFYING ISSUERS

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### Proposals

#### Structure of Proposals

249. The Exchange proposed to add a new Chapter 19C of the Rules and make consequential changes to the 2013 JPS to create a new concessionary route to secondary listing for companies from emerging and innovative sectors that are primary listed on a Qualifying Exchange, referred to as “Qualifying Issuers”, whilst preserving the most important protections for Hong Kong investors.
250. The new chapter would apply to both Overseas Issuers and Hong Kong incorporated issuers primary listed on a Qualifying Exchange.
251. Consequential updates will be made to the 2013 JPS to reflect the creation of the new concessionary secondary listing route under Chapter 19C.

#### Qualifications for Listing

252. The Exchange proposed that a Qualifying Issuer seeking a secondary listing under the new concessionary route must demonstrate to the Exchange that it is both eligible and suitable for listing (see Appendix I, Rule 19C.02). The Exchange would normally consider a Qualifying Issuer to be suitable for secondary listing under this route if it is an innovative company by reference to the characteristics set out in paragraph 106(a) of the Rule Chapters Consultation Paper.
253. The Exchange proposed to retain the discretion to find a Qualifying Issuer not suitable for listing under the new concessionary route even if it satisfied these characteristics. In particular, the Exchange will exercise its discretion to find an applicant suitable to list under the concessionary route only in appropriate cases where the applicant fits the targeted profile of companies which the Exchange is seeking to attract with these proposals. The issuer must, in any case, satisfy the general suitability requirement of the Rules.<sup>18</sup>
254. The Exchange proposed that a Qualifying Issuer must also:
- (a) have a good record of compliance for at least two full financial years on a Qualifying Exchange (NYSE, NASDAQ or the “premium listing” segment of the LSE’s Main Market) (see Appendix I, Rule 19C.04); and
  - (b) have an expected market capitalisation at the time of secondary listing in Hong Kong of at least HK\$10 billion.

A secondary listing applicant (i) with a WVR structure; and/or (ii) which is a Greater China Issuer would also be required to have at least HK\$1 billion of revenue in its most recent audited financial year if it has an expected market

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<sup>18</sup> Rule 8.04.

capitalisation at the time of secondary listing in Hong Kong of less than HK\$40 billion (see Appendix I, Rule 19C.05).

### **Centre of Gravity**

255. The Exchange proposed that Greater China Issuers with the characteristics listed in paragraph 252 above would not be subject to the “centre of gravity” restriction and would be allowed to seek a secondary listing in Hong Kong.

### **Automatic Waivers**

256. The Exchange proposed to codify the waivers in the Rules that are currently automatically granted to eligible companies (for example, requirements regarding connected transactions, notifiable transactions and the Corporate Governance Code<sup>19</sup>) with, or seeking, a secondary listing under the 2013 JPS (see Appendix I, Rule 19C.11)<sup>20</sup>. Qualifying Issuers seeking a secondary listing under the new concessionary route would have the benefit of these codified waivers.

### **Equivalence Requirement**

257. The Exchange proposed that Non-Greater China Issuers and Grandfathered Greater China Issuers would be subject to the requirement currently set out in section 1 of the 2013 JPS codified in the Rules. Accordingly, a Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange’s satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the Key Shareholder Protection Standards. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them. An issuer can refer to the methods used to provide these standards specified in the Country Guides published on the Exchange’s website (see Appendix I, Rules 19C.06 to 19C.08).
258. The Exchange proposed that a Qualifying Issuer must also prominently disclose in its Listing Documents any provisions in its constitutional documents concerning the issuer’s governance that are unusual compared with normal practices in Hong Kong and specific to the issuer (rather than a consequence of the laws and regulations to which the issuer subject) and how such provisions affect its members’ rights. Examples of such provisions include, but are not limited to, “poison pill” arrangements and provisions setting restrictions on the quorum for board meetings (see Appendix I, Rule 19C.10).

### **VIE Structures**

259. The Exchange proposed Grandfathered Greater China Issuers be able to secondary list with their existing VIE structures in place.<sup>21</sup> These issuers would be required to

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<sup>19</sup> Appendix 14 – Corporate Governance Code and Corporate Governance Report of the Rules.

<sup>20</sup> Qualifying Issuers should continue to refer to the 2013 JPS for guidance on waivers from the Rules that are commonly but not automatically granted to issuers with, or seeking, a secondary listing and for guidance on modifications to the rules for such issuers.

<sup>21</sup> Non-Greater China Issuers would also be able to secondary list with their existing VIE Structures, if they have them.

provide the Exchange with a PRC legal opinion that their VIE structure complies with PRC laws, rules and regulations. These issuers will also be required to meet VIE Guidance disclosure requirements.

### **Foreign Private Issuers**

260. The Exchange proposed that an applicant applying to list under the new secondary listing route that is classified in the US as a Foreign Private Issuer must clearly disclose in the Listing Document that it produces for the purpose of its secondary listing in Hong Kong the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer (see Appendix I, Rule 19C.14).

### **WVR Companies**

261. The Exchange proposed that Qualifying Issuers seeking a secondary listing under the new concessionary route with a WVR structure must be an innovative company in accordance with the characteristics set out in paragraph 106(a) of the Rule Chapters Consultation Paper and the market capitalisation requirement set out in paragraph 135 above (see Appendix I, Chapter 19C.05). As discussed elsewhere, the Exchange would exercise its discretion to find a Qualifying Issuer suitable to list with a WVR structure only in appropriate cases where the applicant fits the targeted profile (see paragraph 133).
262. The Exchange reserves the right to reject an applicant for secondary listing on suitability grounds if its WVR structure is an extreme case of non-conformance with governance norms (for example, if the ordinary shares carry no voting rights at all).
263. The Exchange proposed that Non-Greater China Issuers and Grandfathered Greater China Issuers would be eligible to secondary list with their existing WVR structures and would not have to comply with the proposed ongoing WVR safeguards except for those that are disclosure requirements (see Appendix I, Rule 19C.12). This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 137; nor will they be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis (see paragraph 147).

### **Non-Grandfathered Greater China Issuers**

264. The Exchange proposed that Greater China Issuers that are primary listed on a Qualifying Exchange after 15 December 2017 (the date of the New Board Concept Paper Conclusions) would not be granted the concessions set out in paragraphs 257, 259 and 263 above with regards to the equivalence requirement, VIE structures and WVR structures.
265. At the point of secondary listing, Non-Grandfathered Greater China Issuers must vary their constitutional documents in accordance with the requirements set out in the

existing Rules<sup>22</sup> (see Appendix I, Rule 19C.06) and their WVR structure and VIE structures, if they have them, must conform to all primary listing requirements, including all ongoing WVR safeguards and the Exchange's VIE Guidance.

### **Migration of the Bulk of Trading to Hong Kong**

#### *Automatic Waivers*

266. Where the bulk of trading in the shares of an issuer migrates to Hong Kong on a permanent basis<sup>23</sup>, the Exchange proposed that the codified waivers granted to Greater China Issuers (both Grandfathered Greater China Issuers and Non-Grandfathered Greater China Issuers) under the new concessionary route (see paragraph 256) would no longer apply. These companies would be treated as having a dual-primary listing in Hong Kong and would, on a case by case basis, be granted only waivers that are commonly granted to dual-primary listed issuers (see Appendix I, Rule 19C.13). These common waivers include waivers from aspects of requirements relating to reporting accountants' independence / qualifications and company secretary qualifications / experience.<sup>24</sup>
267. The main Rule requirements that these companies would need to comply with after a migration of the bulk of trading to Hong Kong are those relating to (a) Model Code for Securities Transactions by Directors of Listed Issuer (Appendix 10 of the Rules); (b) full corporate governance requirements including in relation to audit committees and remuneration committees; (c) ongoing minimum public float; (d) restriction on purchase of own shares; (e) notifiable transactions; and (f) connected transactions.
268. Greater China Issuers may have continuing transactions in place with third parties that they entered into as a secondary listed issuer on the basis that the Exchange's Rules on notifiable and/or connected transactions did not apply. To prevent undue disruption to the ongoing business activities of such companies, the Exchange proposed that any such existing transactions carried on by the Greater China Issuer, at the time the automatic waivers fall away, be exempted from having to comply with Rules for a period of three years from the date on which the issuer is treated as having a dual-primary listing and therefore subject to the Rules (see Appendix I, Note 3 to Rule 19C.13). However if such transaction is subsequently amended or renewed before the expiry of the three year period, the Greater China Issuer must comply with the relevant requirements under the Rules at such time.
269. In the event that the bulk of trading in their shares moved permanently to Hong Kong the Exchange proposed that Non-Greater China Issuers would be able to continue to enjoy automatic waivers granted under the new concessionary secondary listing route. This is consistent with the Exchange's existing practice for Non-Greater China Issuers.

#### *WVR Safeguards*

270. Following a migration of the bulk of trading to Hong Kong, the Exchange proposed that

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<sup>22</sup> For companies incorporated in the PRC, the Cayman Islands and Bermuda, the requirements set out in Appendices 3 and 13 of the Rules will apply.

<sup>23</sup> If 55% or more of the total trading volume of those shares over the issuer's most recent fiscal year takes place on the Exchange's markets (see Appendix I, Note 1 to Rule 19C.13).

<sup>24</sup> The common waivers granted to dual-primary listed companies are set out in the Appendix to the 2013 JPS.

a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure would not need to comply with the Hong Kong WVR safeguards applicable to primary listings other than WVR safeguards that are disclosure requirements. This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 137; nor will they be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis (see paragraph 147).

#### *VIE Structures*

271. The Exchange proposed that Grandfathered Greater China Issuers would not be required to amend their VIE structures if the bulk of trading in their securities moved to the Exchange.<sup>25</sup>

#### *Grace Period for Compliance*

272. The Exchange proposed that all issuers affected by a permanent migration of the bulk of trading in their securities would be given a 12 month grace period to comply with the applicable requirements (see Appendix I, Note 2 to Rule 19C.13). The Exchange may apply all disciplinary measures at its disposal, including a de-listing of the issuer's listed shares, if a Greater China Issuer fails to comply with the requirements within the grace period allowed (see Appendix I, Note 3 to Rule 19C.13).

#### **Takeovers Code**

273. The SFC proposed that the Takeovers Code would not apply to secondary listings of Grandfathered Greater China Issuers within the proposed Chapter 19C of the Rules in so far as they might be regarded as “public companies in Hong Kong” for the purposes of the Takeovers Code; but that if the bulk of trading moves to Hong Kong and therefore a company is treated as having a dual-primary listing in Hong Kong, the Takeovers Code would apply at that point.

## **Feedback**

### **General Feedback**

274. The overwhelming majority of respondents supported the Exchange's proposals regarding the introduction of Chapter 19C for Qualifying Issuers seeking a secondary listing. Respondents made the following substantive comments.

### **Confidential Filing**

275. The Rules require new applicants to submit their Application Proof to the Exchange for publication on the Exchange's website.<sup>26</sup> For a Qualifying Issuer seeking a secondary listing on the Exchange, doing so is likely to trigger a disclosure requirement in the

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<sup>25</sup> This exemption would also apply to Non-Greater China Issuers if they have VIE Structures.

<sup>26</sup> Practice Note 22 of the Rules.

jurisdiction of the issuer's primary listing. For example, the issuer would not be able to enjoy a "safe harbour" from disclosure that may be provided by the laws and regulations of its jurisdiction of primary listing for matters, such as application for listing on the Exchange, that require regulatory approval and can be kept confidential until regulatory approval is granted.

276. The Exchange has been asked whether it would include a specific exception for Qualifying Issuers to submit applications for secondary listing on the Exchange on a confidential basis.

*The Exchange's response and conclusion*

277. A listing applicant can currently make a listing application on a confidential basis, without the publication of an Application Proof, on the condition that, at the time of filing their listing application, the applicant has already been listed on a recognized overseas exchange for not less than five years and have a market capitalisation of not less than US\$400,000,000 (HK\$3 billion) or such higher value the Exchange as may determine from time to time.<sup>27</sup> Qualifying Exchanges would be considered recognized overseas exchanges for this purpose.
278. The eligibility requirements for listing via Chapter 19C (see Appendix I, Rules 19C.04 and 19C.05) should mean that Qualifying Issuers applying to list under this chapter would be able to make listing applications on a confidential basis without publishing an Application Proof.
279. In the case of a spin-off from an overseas listed parent, the Exchange or the SFC (as the case may be) will consider a waiver from the publication requirements on a case by case basis taking into account whether an applicant can generally satisfy (a), (b) or (c) below:
- (a)(i) the applicant's application for listing in Hong Kong is price sensitive to its overseas listed parent under the applicable rules of its primary listing venue;
  - (ii) the overseas listed parent is not required under the applicable rules of its primary listing venue to disclose the applicant's listing in Hong Kong (e.g. a safe harbour provisions are available under the rules of its primary listing venue); and
  - (iii) the overseas listed parent keeps and undertakes to keep the applicant's application for listing in Hong Kong confidential before the issue of the PHIP; or
- (b)(i) the Application Proof contains price-sensitive information to the overseas listed parent under the applicable rules of its primary listing venue;
  - (ii) the overseas listed parent is entitled to keep the price-sensitive information confidential under the applicable rules of its primary listing venue by redacting such information in the Application Proof; and
  - (iii) the extent of the proposed redactions will make the content of the Application Proof and its publication meaningless; or

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<sup>27</sup> Paragraph 18 of Practice Note 22 to the Main Board Rules and paragraph 17 of Practice Note 5 to GEM Rules



- (c) the overseas listed parent's jurisdiction or the relevant exchange it is listed on has requirements or regulations that prevent the overseas listed parent or the applicant from publishing a draft Listing Document relating to the spin-off.<sup>28</sup>
280. To facilitate the secondary listing of issuers from emerging and innovative sectors and in line with the approach taken in respect of automatic waivers, the Exchange will also modify Paragraph 18 of Practice Note 22 to the Main Board Rules so that a new applicant applying for a secondary listing under Chapter 19C would be entitled to make a confidential filing of its Application Proof in accordance with that Practice Note. We believe the amendment to Practice Note 22 will address the respondents' concerns.

### **Grandfathering**

281. Respondents suggested that the concessionary measures under Chapter 19C should not be limited to Grandfathered Greater China Issuers. They suggested that the same concessions should be granted to Greater China Issuers that had listed on Qualifying Exchanges after the 15 December 2017 cut-off date that the Exchange had proposed.
282. A respondent suggested that Grandfathered Greater China Issuers should also include those companies which have submitted a listing application to list on a Qualifying Exchange before 15 December 2017.
283. Other respondents opposed the proposed grandfathering arrangement and expressed concerns that the arrangement weakened corporate governance standards in Hong Kong.

### *The Exchange's response and conclusion*

284. All applicants seeking a secondary listing under Chapter 19C will need to meet the requisite eligibility requirements (including the requirement to have a good record of compliance for at least two financial years on a Qualified Exchange). This means that investors will have a period of reference regarding the management and corporate governance of these secondary listing applicants in order to form their own views as to whether to invest in these companies. All secondary listing applicants under Chapter 19C will also be required to meet the Key Shareholder Protection Standards (being the most important shareholder protection standards under the Hong Kong Companies Ordinance (Cap. 622 of the laws of Hong Kong)). The grandfathering proposal is also structured to mitigate the risk of regulatory arbitrage (as explained below). Accordingly, the Exchange believes that there are appropriate safeguards around the grandfathering proposals to protect the interest of investors.
285. The Exchange proposed to only grant concessions to Greater China Issuers that listed on a Qualifying Exchange before the date of the publication of the New Board Concept Paper Conclusions (15 December 2017). This is intended to deter Greater China Issuers from listing on a Qualifying Exchange and then seeking a secondary listing in Hong Kong to avoid Hong Kong's primary listing requirements.
286. The Exchange continues to believe it is necessary to maintain this restriction to deter

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<sup>28</sup> Guidance Letter HKEX-GL57-13 (July 2013) (Updated in February, March, June and September 2014, November 2016 and February 2018), paragraph A.12.

such regulatory arbitrage attempts and so have not adopted the suggested amendments to our proposals and the draft Rules.

287. As a company who has made an application for listing could still make substantial amendments and modifications to its structure, the Exchange does not consider it appropriate to include companies which have submitted a listing application to list on a Qualifying Exchange but were had not successfully listed before 15 December 2017 in its definition of Grandfathered Greater China Issuers.

## **Clarification Amendments**

### **Migration of Bulk of Trading to Hong Kong**

288. Based on feedback from stakeholders during the consultation period, we have decided to clarify how the Exchange will calculate the denominator figure when determining whether 55% of the trading volume in a Greater China Issuer's listed shares has moved to the Exchange's markets on a permanent basis (see paragraph 266).
289. The Exchange will regard the majority of trading in a Greater China Issuer's listed shares to have moved to the Exchange's markets on a permanent basis if 55% or more of the total worldwide trading volume (by dollar value) of those shares (including the trading volume in depositary receipts issued on those shares) over the issuer's most recent financial year, takes place on the Exchange's markets. We have amended Note 1 to Rule 19C.13 to make this clear.

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## **CHAPTER 6: OTHER MATTERS**

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### **Proposals Relating to Existing Rules for Applicants from Emerging and Innovative Sectors**

290. Certain respondents to the New Board Concept Paper urged the Exchange to make the Rules more appropriate to the characteristics of companies in the emerging and innovative sectors. The Exchange is conducting a review of the existing Rules and guidance and is in discussion with the SFC in relation to this matter and intends to publish further guidance in due course.
291. Some respondents have asked the Exchange to clarify how the revenue and profit ratios for the size tests under Chapters 14 and 14A will be applied to Biotech Companies listed under Chapter 18A since the issuers are pre-revenue (and pre-profit). The Exchange agrees that the application of the revenue ratio and the profit ratio to any proposed transaction that these issuers propose to undertake may not be appropriate in some cases given the nature of these Biotech Companies, and is prepared to exercise its discretion under Rule 14.20 to disregard the revenue ratio and profit ratio for Biotech Companies listed under Chapter 18A and consider alternative tests suggested by the issuer on a case by case basis. We have reflected this in the guidance letter for the Biotech chapter (see Appendix II, Part I).

### **Takeovers Code related matters**

292. A number of respondents asked for clarification as to whether an obligation to make a mandatory general offer under the Takeovers Code would arise if a shareholder's voting rights in an issuer (a) increases above 30%; or (b) increases by more than 2% in the case of a shareholder holding 30% or more but less than 50% of the voting rights, in each case solely due to the WVRs attached to WVR shares falling away (for example as a result of the death of a WVR beneficiary).
293. The Exchange has discussed this issue with the SFC and clarified that consistent with the approach taken under Note 2 to Rule 32.1 of the Takeovers Code, a mandatory general offer would not normally be required if the relevant person is independent of the event which has led to the WVRs falling away. In all relevant cases, the Executive (as defined in the Takeovers Code) should be consulted.

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# APPENDIX I: AMENDMENTS TO THE RULES

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Rules that have been added or amended compared to those included in the Rule Chapters Consultation Paper are highlighted in yellow.

## Chapter 2

### GENERAL

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2.08 The Exchange Listing Rules fall into four main parts: Chapters 1 – 6 set out matters of general application; Chapters 7 – 49A19C set out the requirements applicable to the issue of equity securities; Chapters 20 and 21 set out the requirements applicable to unit trusts, mutual funds and other investment companies; and Chapters 22 – 37 set out the requirements applicable to the issue of debt securities.

## Chapter 8

### EQUITY SECURITIES

...

8.01

...

Further conditions which have to be met by infrastructure companies, mineral companies, overseas issuers, PRC issuers and depositary receipt issuers are set out in rule 8.05B(2) and Chapters 8A, 18, 18A, 19, 19A and 19B and 19C for issuers seeking a listing of equity securities under those chapters.

...

8.11 The share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid ("B Shares") and the Exchange will not be prepared to list any new B Shares issued by a listed issuer nor to allow any new B Shares to be issued by a listed issuer (whether or not listing for such shares is to be sought on the Exchange or any other stock exchange) except:—

- (1) in exceptional circumstances agreed with the Exchange; or
- (2) in the case of those listed companies which already have B Shares in issue, in respect of further issues of B Shares identical in all respects with those B Shares by way of scrip dividend or capitalisation issue, provided that the total number of B Shares in issue remains substantially in the same proportion to the total number of other voting shares in issue as before such further issue; or
- (3) as permitted by Chapter 8A or Chapter 19C of these rules.

...

8.21A (1) A new applicant must include a working capital statement in the listing document. In making this statement the new applicant must be satisfied after due and careful enquiry that it and its subsidiary undertakings, if any, have available sufficient working capital for the group's present requirements, that is for at least the next 12 months from the date of publication of the listing document. The sponsor to the new applicant must also confirm to the Exchange in writing that:

- (a) it has obtained written confirmation from the new applicant that the working capital available to the group is sufficient for its present requirements, that is for at least the next 12 months from the date of publication of the listing document; and
- (b) it is satisfied that this confirmation has been given after due and careful enquiry by the new applicant and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.

*Note 1: This rule is modified for a new applicant Mineral Company which must comply with*

the requirements of ~~Listing Rules~~ rules 18.03(4) and 18.03(5).

Note 2: This rule is modified for a new applicant under Chapter 18A which must comply with the requirements of rule 18A.03(4).

# Chapter 11

## EQUITY SECURITIES

### LISTING DOCUMENTS

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#### Contents

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11.08 Special requirements for listing documents issued by mineral companies, overseas issuers, PRC issuers and investment companies are set out in Chapters 8A, 18, 18A, 19, 19A, 19C and 21 for issuers with, or seeking, a listing of equity securities under those chapters.

## **Chapter 8A**

### **EQUITY SECURITIES**

#### **WEIGHTED VOTING RIGHTS**

##### **INTRODUCTION**

The concept of proportionality between the voting power and equity interest of shareholders, commonly known as the “one-share, one-vote” principle, is an important aspect of investor protection as it helps align controlling shareholders’ interests with those of other shareholders and makes it possible for incumbent management to be removed, if they underperform, by those with the greatest equity interest in an issuer.

Although the Exchange believes that the “one-share, one vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company, the Exchange will consider listing applications of companies seeking to deviate from this principle, under the conditions and safeguards set out in this Chapter. Applicants are expected to demonstrate the necessary characteristics of innovation and growth and demonstrate the contribution of their proposed beneficiaries of weighted voting rights to be eligible and suitable for listing with a WVR structure as set out in guidance published on the Exchange website and amended from time-to-time.

##### **Scope**

The Exchange Listing Rules (including Chapter 8) apply as much to issuers with or seeking a listing with a WVR structure, as other issuers of equity securities. This Chapter sets out rules and modifications to existing rules applicable to issuers with, or seeking, a listing with a WVR structure. For Qualifying Issuers with, or seeking, a secondary listing, the rules in this Chapter are subject to modification by rule 19C.12.

Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

##### **General Principles**

8A.01 The general principle of rule 2.03(4) for issuers with, or seeking, a listing with a WVR structure under this Chapter is modified as follows:

The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:-

...

(4) all holders of listed securities are treated fairly and all holders of listed securities of the same class are treated equally; ...



## DEFINITIONS

8A.02 In this Chapter, the following definitions apply:

- “non-WVR shareholder” a shareholder of a class of listed shares of an issuer with a WVR structure who is not also a beneficiary of weighted voting rights;
- “weighted voting right” the voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share, or other governance right or arrangement disproportionate to the beneficiary’s economic interest in the equity securities of the issuer; and
- “WVR structure” a structure of an issuer that results in weighted voting rights

## GENERAL

8A.03 In the event of any failure to adhere to the requirements of this Chapter as determined by the Exchange, the Exchange may, as it considers necessary for the protection of the investors or the maintenance of an orderly market and in addition to any other action that the Exchange considers appropriate under the rules, exercise absolute discretion to:

- (1) direct a trading halt or suspend dealings of any securities of the issuer or cancel the listing of any securities of the issuer as set out in rule 6.01;
- (2) impose the disciplinary sanctions set out in rule 2A.09 against the parties set out in rule 2A.10;
- (3) withhold:
  - (a) approval for an application for the listing of securities; and/or
  - (b) clearance for the issuance of a circular to the issuer’s shareholders  
unless and until all necessary steps have been taken to address the non-compliance as directed by the Exchange to its satisfaction.

## QUALIFICATIONS FOR LISTING

### Basic Conditions

8A.04 A new applicant seeking a listing with a WVR structure must demonstrate to the Exchange that it is both eligible and suitable for listing with a WVR structure.

8A.05 The Exchange will consider applications for listing with a WVR structure from new applicants only.

Note: The Exchange retains the discretion to reject an application for listing if it believes an issuer has acted intentionally to avoid rule 8A.05 or in a manner which has the effect of avoiding rule 8A.05.

### **Qualifications for Listing with a WVR Structure**

8A.06 A new applicant seeking a listing with a WVR structure must satisfy one of the following:

- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing;  
or
- (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

### **PERMISSIBLE WVR STRUCTURES**

#### **Restriction to share class based WVR structures**

8A.07 Subject to the requirement of rule 8A.24, a WVR structure must attach weighted voting rights only to a class of an issuer's equity securities and confer on a beneficiary enhanced voting power on resolutions tabled at the issuer's general meetings only. In all other respects, the rights attached to a class of equity securities conferring weighted voting rights must otherwise be the same as the rights attached to the issuer's listed ordinary shares.

#### **A class of shares with weighted voting rights is ineligible for listing**

8A.08 An issuer must not seek a listing of a class of shares carrying weighted voting rights.

#### **Voting power of non-WVR shareholders**

8A.09 Non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings.

*Note 1: Compliance with this rule means, for example, that an issuer cannot list with a WVR structure that attaches 100% of the right to vote at general meetings to the beneficiaries of weighted voting rights.*

*Note 2: A beneficiary of weighted voting rights must not take any action that would result in a non-compliance with this rule.*

#### **Restriction on voting power**

8A.10 A class of shares conferring weighted voting rights in a listed issuer must not entitle the beneficiary to more than ten times the voting power of ordinary shares, on any resolution tabled at the issuer's general meetings.

#### **Beneficiaries of Weighted Voting Rights**

8A.11 At listing, any beneficiaries of weighted voting rights must be members of the applicant's board of directors.

### **Minimum Economic Interest at Listing**

8A.12 The beneficiaries of weighted voting rights must beneficially own collectively at least 10% of the underlying economic interest in the applicant's total issued share capital at the time of its initial listing.

Note: The Exchange may be prepared to accept a lower minimum shareholding percentage, on a case by case basis, if the lower underlying economic interest still represents a very large amount in absolute dollar terms (for example if the applicant has an expected market capitalisation of over HK\$80 billion at the time of its initial listing) taking into account such other factors about the applicant as the Exchange may in its discretion, consider appropriate.

### **RESTRICTIONS ON PURCHASE AND SUBSCRIPTION**

#### **Issues of Shares Carrying Weighted Voting Rights**

8A.13 A listed issuer must not increase the proportion of shares that carry weighted voting rights above the proportion in issue at the time of listing.

Note: If the proportion of shares carrying weighted voting rights is reduced below the proportion in issue at the time of listing, this rule 8A.13 shall apply to the reduced proportion of shares carrying weighted voting rights.

8A.14 A listed issuer with a WVR structure may only allot, issue or grant shares carrying weighted voting rights with the prior approval of the Exchange and pursuant to (1) an offer made to all the issuer's shareholders pro rata (apart from fractional entitlements) to their existing holdings; (2) a pro rata issue of securities to all the issuer's shareholders by way of scrip dividends; or (3) pursuant to a stock split or other capital reorganisation provided that the Exchange is satisfied that the proposed allotment or issuance will not result in an increase in the proportion of shares carrying weighted voting rights.

Note 1: If, under a pro rata offer, beneficiaries of weighted voting rights do not take up any part of the shares carrying weighted voting rights (or rights to those shares) offered to them, those shares (or rights) not taken up could only be transferred to another person on the basis that such transferred rights will only entitle the transferee to an equivalent number of ordinary shares.

Note 2: To the extent that rights in a listed issuer's shares not carrying weighted voting rights in a pro rata offer are not taken up in their entirety (e.g. in the case where the pro rata offering is not fully underwritten), the number of the listed issuer's shares carrying weighted voting rights that can be allotted, issued or granted must be reduced proportionately.

Note 3: Where necessary, beneficiaries of weighted voting rights must use their best endeavours to enable the issuer to comply with this rule.

## **Purchases of Own Shares**

- 8A.15 If a listed issuer with a WVR structure reduces the number of its shares in issue (e.g. through a purchase of its own shares) the beneficiaries of weighted voting rights must reduce their weighted voting rights in the issuer proportionately (for example through conversion of a proportion of their shareholding with those rights into shares without those rights), if the reduction in the number of shares in issue would otherwise result in an increase in the proportion of the listed issuer's shares that carry weighted voting rights.

## **Prohibition on Changing Terms of Shares Carrying Weighted Voting Rights**

- 8A.16 After listing, a listed issuer with a WVR structure must not change the terms of a class of its shares carrying weighted voting rights to increase the weighted voting rights attached to that class.

*Note:* If a listed issuer wishes to change the terms of a class of its shares carrying weighted voting rights to reduce those rights it may do so but must, in addition to complying with any requirements under law, first obtain the prior approval of the Exchange and, if approval is granted, must announce the change.

## **CONTINUING OBLIGATIONS**

### **Ongoing Requirements for Beneficiaries of Weighted Voting Rights**

- 8A.17 The beneficiary's weighted voting rights in a listed issuer must cease if, at any time after listing, the beneficiary is:

- (1) deceased;
- (2) no longer a member of the issuer's board of directors;
- (3) deemed by the Exchange to be incapacitated for the purpose of performing his or her duties as a director; or
- (4) deemed by the Exchange to no longer meet the requirements of a director set out in these rules.

*Note 1:* The Exchange would deem a beneficiary of weighted voting rights to no longer meet the requirements of a director if, for the following reasons, the Exchange believed the person no longer has the character and integrity commensurate with the position:

- (a) the beneficiary is or has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly;
- (b) a disqualification order is made by a court or tribunal of competent jurisdiction against the beneficiary; or
- (c) the beneficiary is found by the Exchange to have failed to comply with the requirement of rules 8A.15, 8A.18 or 8A.24.

*Note 2:* The dealing restrictions of rule 10.06(2), the issue restrictions of rule 10.06(3) and the director dealing restrictions under Appendix 10 do not

apply where the dealing or issue is solely to facilitate the conversion of shares carrying weighted voting rights into ordinary shares to comply with rule 8A.17.

### **Restriction on Transfer of Shares with Weighted Voting Rights**

8A.18 (1) The weighted voting rights attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of, or economic interest in, those shares or the control over the voting rights attached to them (through voting proxies or otherwise).

(2) A limited partnership, trust, private company or other vehicle may hold shares carrying weighted voting rights on behalf of a beneficiary of weighted voting rights provided that such an arrangement does not result in a circumvention of rule 8A.18(1).

*Note 1: The Exchange would not consider a lien, pledge, charge or other encumbrance on shares carrying weighted voting rights to be a transfer for the purpose of rule 8A.18 on condition that this does not result in the transfer of legal title to or beneficial ownership of those shares or the voting rights attached to them (through voting proxies or otherwise).*

*Note 2: The Exchange would consider a transfer to have occurred under rule 8A.18 if a beneficiary of weighted voting rights and a non-WVR shareholder(s) enter into any arrangement or understanding to the extent that this resulted in a transfer of weighted voting rights from the beneficiary of those weighted voting rights to the non-WVR shareholder.*

8A.19 If a vehicle holding shares carrying weighted voting rights in a listed issuer on behalf of a beneficiary no longer complies with rule 8A.18(2), the beneficiary's weighted voting rights in the listed issuer must cease. The issuer and beneficiary must notify the Exchange as soon as practicable with details of the non-compliance.

### **Definition of a Connected Person and Core Connected Person**

8A.20 A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights (who does not otherwise meet the rule 14A.07 definition of a "connected person") is a person deemed to be connected to the listed issuer by the Exchange under rule 14A.07(6). A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights (who does not otherwise meet the rule 1.01 definition of a "core connected person") is deemed to be a core connected person of the listed issuer by the Exchange.

### **Conditions for Conversion of Shares Carrying Weighted Voting Rights**

8A.21 Any conversion of shares with weighted voting rights into ordinary shares must occur on a one to one ratio.

Note: An issuer with a WVR structure **must** seek the Exchange's prior approval of the listing of any shares that are issuable upon conversion of its shares carrying weighted voting rights.

### **Conditions for End of WVR Structure**

8A.22 A listed issuer's WVR structure must cease when none of the beneficiaries of **the weighted voting rights** at the time of the issuer's initial listing have beneficial ownership of shares carrying weighted voting rights.

## **CORPORATE GOVERNANCE**

### **Right of Non-WVR Shareholders to Convene an Extraordinary General Meeting**

8A.23 Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights on a **one vote per share** basis in the share capital of the listed issuer.

### **Resolutions Requiring Voting on a **One Vote per Share** Basis**

8A.24 Any weighted voting rights **attached to** any class of shares in a listed issuer must be disregarded and must not entitle the beneficiary to more than one vote per share on any resolution to approve the following matters:

- (1) changes to the listed issuer's constitutional documents, however framed;
- (2) variation of rights attached to any class of shares;
- (3) the appointment or removal of an independent non-executive director;
- (4) the appointment or removal of auditors; and
- (5) the voluntary winding-up of the listed issuer.

Note: The purpose of rule 8A.24 is to protect non-WVR shareholders from resolutions being passed by WVR beneficiaries without their consent and not to enable non-WVR shareholders to remove or further constrain weighted voting rights. The weighted voting rights attached to a class of issued shares may be varied only with the consent of the holders of that class of shares as stipulated by the regulations and/or laws to which the issuer is subject. Where the regulations and/or laws do not require such approval, the Exchange will require such approval to be included in its constitutional documents to the extent it is not prohibited under the laws of its incorporation (for issuers incorporated in Bermuda or the Cayman Islands see Appendix 13a, paragraph 2(1) and Appendix 13b, paragraph 2(1)).

8A.25 Without limiting the issuer's obligation to comply with rule 8A.24, where a beneficiary of weighted voting rights casts their votes in a manner contradictory to the requirements of rule 8A.24, the Exchange will not accept that such resolutions have been passed in accordance with the requirements of these rules nor for determining the requisite majority of votes required for matters specified in these rules.

Note: This action by the Exchange is without prejudice to other actions that the Exchange may take in these circumstances.

### **Independent Non-Executive Directors**

#### **Role of an independent non-executive director**

8A.26 The role of an independent non-executive director of a listed issuer with a WVR structure must include but is not limited to the functions described in Code Provisions A.6.2, A.6.7 and A.6.8 of Appendix 14 to these rules.

#### **Nomination committee**

8A.27 Issuers with a WVR structure must establish a nomination committee that complies with Section A5 of Appendix 14 of these rules.

Note: The appointment or re-appointment of directors, including independent non-executive directors must be subject to the recommendation of the nomination committee, in accordance with A.5.2(b) and (d) of Appendix 14 of these rules.

8A.28 The nomination committee established under rule 8A.27 must be chaired by an independent non-executive director.

#### **Retirement by rotation**

8A.29 The independent non-executive directors of an issuer with a WVR structure must be subject to retirement by rotation at least once every three years. Independent non-executive directors are eligible for re-appointment at the end of the three year term.

### **Corporate Governance Committee**

#### **Terms of reference**

8A.30 An issuer with a WVR structure must establish a Corporate Governance Committee with at least the terms of reference set out in Code Provision D.3.1 of Appendix 14 to these rules, and the following additional terms:

- (1) to review and monitor whether the listed issuer is operated and managed for the benefit of all its shareholders;
- (2) to confirm, on an annual basis, that the beneficiaries of weighted voting rights have been members of the listed issuer's board of directors throughout the year and that no matters under rule 8A.17 have occurred during the relevant financial year;
- (3) to confirm, on an annual basis, whether or not the beneficiaries of weighted voting rights have complied with rules 8A.14, 8A.15, 8A.18 and 8A.24 throughout the year;
- (4) to review and monitor the management of conflicts of interests and make a recommendation to the board on any matter where there is a potential conflict of interest between the issuer, a subsidiary of the issuer and/or

shareholders of the issuer (considered as a group) on one hand and any beneficiary of weighted voting rights on the other;

- (5) to review and monitor all risks related to the issuer's WVR structure, including connected transactions between the issuer and/or a subsidiary of the issuer on one hand and any beneficiary of weighted voting rights on the other and make a recommendation to the board on any such transaction;
- (6) to make a recommendation to the board as to the appointment or removal of the Compliance Adviser;
- (7) to seek to ensure effective and on-going communication between the issuer and its shareholders, particularly with regards to the requirements of rule 8A.35;
- (8) to report on the work of the Corporate Governance Committee on at least a half-yearly and annual basis covering all areas of its terms of reference; and
- (9) to disclose, on a comply or explain basis, its recommendations to the board in respect of the matters in sub-paragraphs (4) to (6) above in the report referred to in sub-paragraph (8) above.

#### **Composition**

8A.31 The Corporate Governance Committee must be comprised entirely of independent non-executive directors, one of whom must act as the chairman.

#### **Reporting requirements**

8A.32 The Corporate Governance Report produced by a listed issuer with a WVR structure to comply with Appendix 14 of these rules must include a summary of the work of the Corporate Governance Committee, with regards to its terms of reference, for the accounting period covered by both the half-yearly and annual report and disclose any significant subsequent events for the period up to the date of publication of the half-yearly and annual report, to the extent possible.

#### **Compliance Adviser**

8A.33 Rule 3A.19 is modified to require an issuer with a WVR structure to appoint a Compliance Adviser on a permanent basis commencing on the date of the issuer's initial listing.

8A.34 An issuer must consult with and, if necessary, seek advice from its Compliance Adviser, on a timely and ongoing basis in the circumstances set out in rule 3A.23 and also on any matters related to:

- (1) the WVR structure;
- (2) transactions in which any beneficiary of weighted voting rights in the issuer has an interest; and
- (3) where there is a potential conflict of interest between the issuer, a subsidiary of the issuer and/or shareholders of the issuer (considered as a group) on one hand and any beneficiary of weighted voting rights in the issuer on the other.



## **Communication with Shareholders**

8A.35 An issuer with a WVR structure must comply with Section E “Communication with Shareholders” of Appendix 14 these rules.

### **Training**

8A.36 A new applicant and its directors must confirm to the Exchange, as part of its listing application, that its directors (including those that are beneficiaries of weighted voting rights and independent non-executive directors), senior management and company secretary have undertaken training on these rules and the risks associated with a WVR structure.

## **DISCLOSURE**

### **Warnings**

8A.37 An issuer with a WVR structure must include the warning “A company controlled through weighted voting rights” on the front page of all listing documents, periodic financial reports, circulars, notifications and announcements required by these rules and describe the WVR structure, the issuer’s rationale for having it and the associated risks for shareholders prominently in its listing documents and periodic financial reports. This warning statement must inform prospective investors of the potential risks of investing in an issuer with a WVR structure and that they should make the decision to invest only after due and careful consideration.

8A.38 The documents of or evidencing title for the listed equity securities of an issuer with a WVR structure must prominently include the warning “A company controlled through weighted voting rights”.

### **Disclosure in Listing Documents, Interim and Annual Reports**

8A.39 An issuer with a WVR structure must identify the beneficiaries of weighted voting rights in its listing documents and in its interim and annual reports.

8A.40 An issuer with a WVR structure must disclose the impact of a potential conversion of WVR shares into ordinary shares on its share capital in its listing documents and in its interim and annual reports.

8A.41 An issuer with a WVR structure must disclose in its listing documents and in its interim and annual reports all circumstances in which the weighted voting rights attached to its shares will cease.

### **Stock Marker**

8A.42 The listed equity securities of an issuer with a WVR structure must have a stock name that ends with the marker “W”.

## **UNDERTAKING**

8A.43 At listing, a beneficiary of weighted voting rights must give the issuer an undertaking in a form acceptable to the Exchange that they will comply with rules 8A.09, 8A.14, 8A.15, 8A.17, 8A.18 and 8A.24.

## CONSTITUTIONAL DOCUMENTS

8A.44 Issuers with WVR structures must give force to the requirements of rules 8A.07, 8A.09, 8A.10, 8A.13, 8A.14, 8A.15, 8A.16, 8A.17, 8A.18, 8A.19, 8A.21, 8A.22, 8A.23, 8A.24, 8A.26, 8A.27, 8A.28, 8A.29, 8A.30, 8A.31, 8A.32, 8A.33, 8A.34, 8A.35, 8A.37, 8A.38, 8A.39, 8A.40 and 8A.41 by incorporating them into their articles of association or equivalent document.

# Chapter 18A

## EQUITY SECURITIES

### BIOTECH COMPANIES

#### Scope

This Chapter sets out additional listing conditions, disclosure requirements and continuing obligations for Biotech Companies that seek to list on the basis that they are unable to satisfy either the profit test in rule 8.05(1), the market capitalisation/revenue/cash flow test in rule 8.05(2), or the market capitalization/revenue test in rules 8.05(3).

Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

#### DEFINITIONS AND INTERPRETATION

18A.01 For the purposes of this Chapter unless otherwise stated or the context otherwise requires the following terms have the meanings set out below:—

<u>“Approved Product”</u>	<u>a Biotech Product which has been approved for commercialisation by a Competent Authority.</u>
<u>“Biotech”</u>	<u>the application of science and technology to produce commercial products with a medical or other biological application.</u>
<u>“Biotech Company”</u>	<u>A company primarily engaged in the research and development, application and commercialisation of Biotech Products.</u>
<u>“Biotech Product”</u>	<u>Biotech products, processes or technologies</u>
<u>“Competent Authority”</u>	<u>the US Food and Drug Administration, the China Food and Drug Administration, the European Medicines Agency.</u> <u>The Exchange may, at its discretion, recognise another national or supranational authority as a Competent Authority for the purposes of this Chapter in individual cases (depending on the nature of the Biotech Product).</u>
<u>“Core Product”</u>	<u>A Regulated Product that (alone or together with other Regulated Products) forms the basis of a Biotech Company’s listing application under this chapter.</u>
<u>“Cornerstone Investor”</u>	<u>An investor in the initial public offering of a new applicant’s shares to whom offer shares are preferentially placed with a guaranteed allocation</u>

irrespective of the final offer price, usually for the purpose of signifying that the investor has confidence in the financial condition and future prospects of the new applicant.

**“Regulated Product”** A Biotech Product that is required by applicable laws, rules or regulations to be evaluated and approved by a Competent Authority based on data derived from clinical trials (i.e. on human subjects) before it could be marketed and sold in the market regulated by that Competent Authority.

### **CONDITIONS FOR LISTING OF BIOTECH COMPANIES**

18A.02 An applicant that has applied for listing under this Chapter must, in addition to satisfying the requirements of this Chapter, also satisfy the requirements of Chapter 8 (other than **rules 8.05, 8.05A, 8.05B and 8.05C**).

18A.03 An applicant that has applied for listing under this Chapter must:—

- (1) demonstrate to the Exchange’s satisfaction that it is both eligible and suitable for listing as a Biotech Company;
- (2) have an initial market capitalisation at the time of listing of at least HK\$1,500,000,000;
- (3) have been in operation in its current line of business for at least two financial years prior to listing under substantially the same management; and
- (4) ensure that it has available sufficient working capital to cover at least 125% of the group’s costs for at least 12 months from the date of publication of its listing document (after taking into account the proceeds of the new applicant’s initial listing). These costs must substantially consist of the following:—
  - (a) general, administrative and operating costs (including any production costs); and
  - (b) research and development costs.

Note 1: The Exchange would expect that the issuer would use a substantive portion of the proceeds from its initial listing to cover these costs.

Note 2: Capital expenditures do not need to be included in the calculation of working capital requirements for the purpose of this rule. However, where capital expenditures are financed out of borrowings, relevant interest and loan repayments must be included in the calculation. For the avoidance of doubt, Biotech Companies must include research and development costs, irrespective of whether they are capitalised, in the calculation of working capital requirements for the purpose of this rule.

## CONTENTS OF LISTING DOCUMENTS FOR BIOTECH COMPANIES

18A.04 In addition to the information set out in Appendix 1A, a Biotech Company must disclose in its listing document:—

- (1) its strategic objectives;
- (2) the details of each Core Product, including:
  - (a) a description of the Core Product;
  - (b) details of any relevant regulatory approval required and/or obtained for each Core Product;
  - (c) summary of material communications with the relevant Competent Authority in relation to the its Core Product(s) (unless such disclosure is not permitted under applicable laws or regulations, or the directions of the Competent Authority);
  - (d) the stage of research and development for each Core Product;
  - (e) development details by key stages and its requirements for each Core Product to reach commercialisation, and a general indication of the likely timeframe, if the development is successful, for the product to reach commercialisation;
  - (f) all material safety data relating to its Core Product(s), including any serious adverse events;
  - (g) a description of the immediate market opportunity of each Core Product if it proceeds to commercialisation and any potential increased market opportunity in the future (including a general description of the competition in the potential market);
  - (h) details of any patent(s) granted and applied for in relation to the Core Product(s) (unless the applicant is able to demonstrate to the satisfaction of the Exchange that such disclosure would require the applicant to disclose highly sensitive commercial information), or an appropriate negative statement;
  - (i) in the case of a Core Product which is biologics, disclosure of planned capacity and production related technology details; and
  - (j) to the extent that any Core Product is in-licensed, a clear statement of the issuer's material rights and obligations under the applicable licensing agreement;
- (3) a statement that no material unexpected or adverse changes have occurred since the date of issue of the relevant regulatory approval for a Core Product (if any). Where there are material changes, these must be prominently disclosed;
- (4) a description of Approved Products (if any) owned by the applicant and the length of unexpired patent protection period and details of current and expected market competitors;

- (5) details of the Biotech Company's research and development experience, including:
- (a) details of its operations in laboratory research and development;
  - (b) the collective expertise and experience of key management and technical staff; and
  - (c) its collaborative development and research agreements;
- (6) details of the relevant experience of the Biotech Company's directors and senior management in the research and development, manufacturing and commercialisation of Biotech Products;
- (7) the salient terms of any service agreements between the applicant and its key management and technical staff;
- (8) measures (if any) that the applicant has in place to retain key management or technical staff (for example incentivisation arrangements and/or non-compete clauses), and the safeguards and arrangements that the applicant has in place, in the event of the departure of any of its key management or technical staff;
- (9) a statement of any legal claims or proceedings that may have an influence on its research and development for any Core Product;
- (10) disclosure of specific risks, general risks and dependencies, including:
- (a) potential risks in clinical trials;
  - (b) risks associated with the approval process for its Core Product(s); and
  - (c) the extent to which its business is dependent on key individuals and the impact of the departure of key management or technical staff on the applicant's business and operations;
- (11) if relevant and material to the Biotech Company's business operations, information on the following:—
- (a) project risks arising from environmental, social, and health and safety issues;
  - (b) compliance with host country laws, regulations and permits, and payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis;
  - (c) its historical experience of dealing with host country laws and practices, including management of differences between national and local practice; and
  - (d) its historical experience of dealing with the concerns of local governments and communities on the sites of its research and trials, and relevant management arrangements;
- (12) an estimate of cash operating costs, including costs relating to research and development and clinical trials incurred in the development of the Core Product and costs associated with:—

- (a) workforce employment;
- (b) direct production costs, including materials (if it has commenced production);
- (c) research and development;
- (d) product marketing (if any);
- (e) non-income taxes, royalties and other governmental charges (if any);
- (f) contingency allowances; and
- (g) any other significant costs; and

Note: A Biotech Company must:

- set out the components of cash operating costs separately by category;
- explain the reason for any departure from the list of items to be included under cash operating costs; and
- discuss any material cost items that should be highlighted to investors.

(13) if the applicant has obtained an expert technical assessment and where relevant and appropriate, include such assessment in its listing document.

18A.05 A Biotech Company must, in respect of each Core Product, prominently disclose to investors a warning that the relevant Core Product may not ultimately be successfully developed and marketed.

18A.06 A Biotech Company must comply with rule 4.04 modified so that references to “three financial years” or “three years” in that rule shall instead reference to “two financial years” or “two years”, as the case may be.

### **CORNERSTONE INVESTORS**

18A.07 A Biotech Company seeking an initial listing under this chapter must, in addition to meeting the requirements of Rule 8.08(1), ensure that a portion of the total number of its issued shares with a market capitalisation of at least HK\$375 million are held by the public at the time of its initial listing. Any shares allocated to a Cornerstone Investor and any shares subscribed by existing shareholders of the Biotech Company at the time of listing shall not be considered as held by the public for the purpose of this rule 18A.07.

### **CONTINUING OBLIGATIONS**

#### **Disclosure in Reports**

18A.08 A Biotech Company must include in its interim (half-yearly) and annual reports details of its research and development activities during the period under review, including:

- (1) details of the key stages for each of its Core Products under development to reach commercialisation, and a general indication of the likely timeframe, if the development is successful, for the Core Product to reach commercialisation;
- (2) a summary of expenditure incurred on its research and development activities; and
- (3) a prominently disclosed warning that a Core Product may not ultimately be successfully developed and marketed.

Note: Details to be disclosed should be in line with those disclosed in the listing document of the Biotech Company under rules 18A.04 and 18A.05.

#### **Sufficient Operations**

- 18A.09 Where the Exchange considers that a Biotech Company listed under this chapter fails to comply with rule 13.24, the Exchange may suspend dealings or cancel the listing of its securities under rule 6.01. The Exchange may also under rule 6.10 give the relevant issuer a period of not more than 12 months to re-comply with rule 13.24. If the relevant issuer fails to re-comply with rule 13.24 within such period, the Exchange will cancel the listing.

#### **Material Changes**

- 18A.10 Without the prior consent of the Exchange, a Biotech Company listed under this chapter **must** not effect any acquisition, disposal or other transaction or arrangement or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the relevant issuer as described in the listing document issued at the time of its application for listing.

#### **Stock Marker**

- 18A.11 The listed equity securities of a Biotech Company listed under this chapter must have a stock name that ends with the marker “B”.

#### **Dis-application of rules 18A.09 to 18A.11**

- 18A.12 Upon application by the listed Biotech Company and demonstration to the Exchange’s satisfaction that it is able to meet the requirements of rule 8.05, rules **18A.09** to 18A.11 do not apply to a Biotech Company listed under this chapter.



# Chapter 19C

## EQUITY SECURITIES

### SECONDARY LISTINGS OF QUALIFYING ISSUERS

#### Scope

This Chapter sets out the additional requirements, modifications or exceptions to the Exchange Listing Rules for Qualifying Issuers that have, or are seeking, a secondary listing on the Exchange.

Qualifying Issuers that are overseas issuers must also comply with Chapter 19, subject to the additional requirements, modifications and exceptions set out in this Chapter.

Qualifying Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the applicable requirements.

#### Definitions

19C.01 In this Chapter, the following definitions apply:

**“Foreign Private Issuer”** as defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time-to-time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time-to-time

**“Grandfathered Greater China Issuer”** a Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017

**“Greater China Issuer”** a Qualifying Issuer with its centre of gravity in Greater China

*Note: The following are some of the factors that the Exchange will consider in determining whether a Qualifying Issuer has its centre of gravity in Greater China:*

- (a) whether the issuer has a listing in Greater China;
- (b) where the issuer is incorporated;
- (c) the issuer’s history;
- (d) where the issuer is headquartered;

- (e) the issuer's place of central management and control;
- (f) the location of the issuer's main business operations and assets;
- (g) the location of the issuer's corporate and tax registration; and
- (h) the nationality or country of residence of the issuer's management and controlling shareholder.

These factors are not exhaustive. The Exchange may take other factors into consideration in determining whether a Qualifying Issuer has its centre of gravity in Greater China.

**“Non-Grandfathered Greater China Issuer”**

a Greater China Issuer that was primary listed on a Qualifying Exchange after 15 December 2017

**“Non-Greater China Issuer”**

a Qualifying Issuer that is not a Greater China Issuer

**“place of central management and control”**

the Exchange will consider the following factors to determine a Qualifying Issuer's place of central management and control:

- (a) the location from where the issuer's senior management direct, control, and coordinate the issuer's activities;
- (b) the location of the issuer's principal books and records; and
- (c) the location of the issuer's business operations or assets

**“Qualifying Exchange”**

The New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority's “Premium Listing” segment)

**“Qualifying Issuer”**

an issuer primary listed on a Qualifying Exchange

**“WVR structure”**

has the meaning given to it in rule 8A.02

### **Basic Conditions**

- 19C.02 A Qualifying Issuer seeking a secondary listing under this chapter must demonstrate to the Exchange that it is both eligible and suitable for listing.
- 19C.03 Rules 8A.04 to 8A.06 do not apply to a Qualifying Issuer seeking a secondary listing under this chapter.

### **Qualifications for Listing**

- 19C.04 A Qualifying Issuer must have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.
- 19C.05 A Non-Greater China Issuer without a WVR structure must have an expected market capitalisation at the time of its secondary listing of at least HK\$10,000,000,000. All other Qualifying Issuers must satisfy one of the following:
- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
  - (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

### **Equivalent Standards of Shareholder Protection**

- 19C.06 Appendix 3 and Appendix 13 of these rules do not apply to an overseas issuer that is a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking to secondary list under this Chapter.

*Note 1: A Non-Grandfathered Greater China Issuer seeking a secondary listing under this Chapter must comply with Appendix 3 of these rules and must also comply with Appendix 13 if it is incorporated in a jurisdiction to which Appendix 13 applies.*

*Note 2: If an overseas issuer that is a Non-Grandfathered Greater China Issuer seeks a secondary listing under this Chapter and is not incorporated in a jurisdiction covered by Appendix 13 of these rules, the Exchange will require that these companies must vary their constitutional documents to meet the standards set out in rule 19C.07 (unless these standards are already provided for in their constitutional documents and/or the laws to which they are subject).*

- 19C.07 The Exchange will consider that a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking a secondary listing has met the requirements of rule 19.30(1)(b) if it has met the following shareholder protection standards:
- (1) a super-majority vote of the Qualifying Issuer's members in general meeting is required to approve:
    - (a) changes to the rights attached to any class of shares of the Qualifying Issuer;

*Note: A super-majority vote of the Qualifying Issuer's members of the*

class to which the rights are attached is required to approve a change to those rights.

- (b) changes to the Qualifying Issuer's constitutional documents, however framed; and
- (c) a voluntary winding-up of the Qualifying Issuer;

Note: For the purpose of rule 19C.07(1), a "super-majority vote" means at least a two-thirds majority of the members present and voting where the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer have a low quorum requirement (e.g. two members). If the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer requires only the approval of simple majority only (50% plus one vote) for deciding the matters set out in 19C.07(1) these matters must be decided by a significantly higher quorum.

- (2) any alteration to the Qualifying Issuer's constitutional document to increase an existing member's liability to the company must be agreed by such a member in writing;
- (3) the appointment, removal and remuneration of auditors must be approved by a majority of the Qualifying Issuer's members or other body that is independent of the issuer's board of directors;

Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.

- (4) the Qualifying Issuer must hold a general meeting each year as its annual general meeting;

Note: Generally not more than 15 months should elapse between the date of one annual general meeting of the Qualifying Issuer and the next.

- (5) the Qualifying Issuer must give its members reasonable written notice of its general meetings;
- (6) members must have the right to (1) speak at a general meeting; and (2) vote at a general meeting except where a member is required, by these rules, to abstain from voting to approve the matter under consideration;

Note 1: An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.

Note 2: If a Qualifying Issuer is subject to a foreign law or regulation that

prevents the restriction of a members' right to speak and vote at general meetings, the company can enter into an undertaking with the Exchange to put in place measures that achieve the same outcome as the rule 19C.07(6) restriction (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction must not be counted towards the resolution).

- (7) members holding a minority stake in the Qualifying Issuer's total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the of the Qualifying Issuer; and
- (8) HKSCC must be entitled to appoint proxies or corporate representatives to attend the Qualifying Issuer's general meetings and creditors meetings and those proxies/corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote.

Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/corporate representatives enjoying the rights described by rule 19C.07(8), the Qualifying Issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.

19C.08 A Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange's satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in rule 19C.07. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them.

Note: An issuer that is subject to rule 19C.08 can refer to the methods used to show equivalent shareholder protection standards specified in jurisdictional guidance published on the Exchange's website and amended from time-to-time.

19C.09 A Non-Greater China Issuer or a Grandfathered Greater China Issuer must comply with the requirements set out in rule 19C.07 as an ongoing condition of their listing.

19C.10 A Qualifying Issuer must prominently disclose in its listing documents any provisions in its constitutional documents concerning the issuer's governance that are unusual compared with normal practices in Hong Kong and are specific to the issuer rather than a consequence of the laws and regulations to which the issuer is subject. A Qualifying Issuer must also prominently disclose in its listing documents how such provisions affect its members' rights.

Note: Examples of such provisions include, but are not limited to, "poison pill" arrangements and provisions setting restrictions on the quorum for board meetings.

## **Exceptions to the Rules for All Qualifying Issuers**

- 19C.11 The following rules do not apply to a Qualifying Issuer that has, or is seeking, a secondary listing on the Exchange: 3.17; 3.21 to 3.23; 3.25 to 3.27; 3.28; 3.29; 4.06; 4.07; Chapter 7; 8.09(4) (exception limited to issues outside the Exchange's markets); 8.18 (exception limited to issues outside the Exchange's markets); 9.11(10)(b); 10.05; 10.06(2)(a) to (c); 10.06(2)(e); 10.06(4); 10.06(5); 10.07(1); 10.07(2) to (4); 10.08; 13.11 to 13.22; 13.23(1); 13.23(2); 13.25A; 13.27; 13.28; 13.29; 13.31(1); 13.37; 13.38; 13.39(1) to (5); 13.39(6) to (7) (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.40 to 13.42; 13.44 to 13.45; 13.47; 13.48(2); 13.49; 13.51(1); 13.51(2) (each new director or member of the Qualifying Issuer's governing body must sign and lodge with the Exchange, as soon as practicable, a declaration and undertaking in the form set out in Form B of Appendix 5); 13.51B; 13.51C; 13.52(1)(b) to (d); 13.52(1)(e)(i) to (ii); 13.52(1)(e)(iv) (exception limited to issues outside the Exchange's markets); 13.52(2); 13.67; 13.68; 13.74; 13.80 to 13.87 (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.88; 13.89; 13.91; Chapter 14; Chapter 14A; Chapter 15 (exception limited to issues outside the Exchange's markets); Chapter 16 (exception limited to issues outside the Exchange's markets); Chapter 17; 19.57; Practice Note 4 (exception limited to issues outside the Exchange's markets); Practice Note 15 paragraphs 1 to 3(b) and 3(d) to 5 (exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Exchange's markets and the approval of shareholders of the parent is not required); Appendix 3 paragraphs 1, 2(1), 3, 4(1), 4(2), 4(4), 4(5), 5, 6, 7(1), 7(3), 8, 9, 10, 11, 13(1); Appendix 10; Appendix 14; Appendix 15; Appendix 16; Appendix 21 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent); Appendix 22 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent) and Appendix 27.

## **Additional Exceptions to the Rules for Certain Qualifying Issuers with a WVR structure**

- 19C.12 Rules 8A.07 to 8A.36, 8A.43 and 8A.44 do not apply to a Non-Greater China Issuer or a Grandfathered Greater China Issuer that has, or is seeking, a secondary listing on the Exchange.

### **Migration of the Bulk of Trading to the Exchange's Markets**

- 19C.13 If the majority of trading in a Greater China Issuer's listed shares migrates to the Exchange's markets on a permanent basis, the Exchange will regard the issuer as having a dual-primary listing and consequently the exceptions set out in rules 19C.11 will no longer apply to the issuer.

*Note 1: The Exchange will regard the majority of trading in a Greater China Issuer's listed shares to have moved to the Exchange's markets on a permanent basis if 55% or more of the **total worldwide trading volume, by dollar value, of those shares (including the volume of trading in***

depository receipts issued on those shares) over the issuer's most recent financial year, takes place on the Exchange's markets.

Note 2: A Greater China Issuer to which rule 19C.13 applies will have a grace period of 12 months within which to comply with the applicable Exchange Listing Rules. This grace period will end at midnight on the anniversary of the date of the Exchange's written notice of its decision that the majority of trading in listed shares has migrated permanently to the Exchange's markets.

Note 3: Any continuing transaction of a Greater China Issuer in place as at the date of the Exchange notice referred to in Note 2 will continue to be exempted from the applicable rules set out in 19C.11 for a period of three years from the date of the Exchange notice referred to in Note 2. However if such transaction is subsequently amended or renewed before the expiry of the three year period, the Greater China Issuer must comply with the relevant requirements under the rules at such time.

Note 4: The Exchange may apply all disciplinary measures at its disposal, including a de-listing of the issuer's listed shares, if a Greater China Issuer fails to comply with the requirements of rule 19C.13 within the grace period allowed.

### **Foreign Private Issuers**

19C.14 A Qualifying Issuer that is a Foreign Private Issuer must prominently disclose in its listing documents the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer.

## PRACTICE NOTE 22

### PUBLICATION OF APPLICATION PROOFS AND POST HEARING INFORMATION PACKS (PHIPs)

18. A new applicant which has been listed on a recognised overseas exchange for not less than 5 years and has a significantly large market capitalisation (as determined by the Exchange from time to time) or a new applicant applying for secondary listing under Chapter 19C at the time of filing its listing application is entitled to make a confidential filing of its Application Proof. The new applicant is not subject to the publication requirements for its Application Proof unless requested to comply with them by the Exchange or the Commission (as the case may be). All other requirements under the Exchange Listing Rules apply unless a waiver is granted.



## Appendix 1

### Contents of Listing Documents

#### Part A

#### Equity Securities

36. A statement by the directors that in their opinion the working capital available to the group is sufficient for the group's requirements for at least 12 months from the date of publication of the listing document or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary. (Note 3)

*Note 1: In the case of a Mineral Company, a statement by the directors that in their opinion the issuer has available sufficient working capital for 125% of the group's present requirements.*

*Note 2: In the case of a new applicant for listing under Chapter 18A, a statement by the directors that in their opinion the issuer has available sufficient working capital for at least 125% of the group's costs for at least 12 months from the date of publication of its listing document, taking into account the factors in rule 18A.03(4).*

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# APPENDIX II: GUIDANCE LETTERS

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## Part I

### HKEX GUIDANCE LETTER

HKEX-GL[ ]-[ ] ([date])

<b>Subject</b>	<b>Suitability for Listing of Biotech Companies</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Listing Rules 14.20 and 18A.03(1)</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter. Unless otherwise specified, defined terms in the Listing Rules shall have the same meanings in this letter.*

### 1. Purpose

1.1 This letter provides guidance on the factors that the Exchange will take into account when considering whether an applicant is suitable for listing under Chapter 18A of the Main Board Listing Rules and, after its listing, the application of certain rules on notifiable transactions and connected transactions to such issuers listed under Chapter 18A of the Main Board Listing Rules.

### 2. Relevant Listing Rules

2.1 Main Board Listing Rule 14.20 states that the Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

2.2 Main Board Listing Rule 18A.03(1) states that an applicant that has applied for listing under Chapter 18A of the Main Board Listing Rules must demonstrate to the Exchange's satisfaction that it is both eligible and suitable for listing as a Biotech Company.

### 3. Suitability Criteria

3.1 An applicant applying for listing under Chapter 18A must meet the definition of a Biotech Company as defined in that chapter.

3.2 A Biotech Company that does not meet either the profit test in Main Board Listing Rule 8.05(1), the market capitalisation/revenue/cash flow test in Main Board Listing Rule 8.05(2) or the market capitalisation/revenue test in Main Board Listing Rule 8.05(3) (together, the “**Financial Eligibility Tests**”) for listing on The Stock Exchange of Hong Kong Limited could be permitted to list under Chapter 18A if it can demonstrate the following features:

- (a) the Biotech Company must have developed at least one Core Product beyond the concept stage. The Exchange would consider a Core Product to have been developed beyond the concept stage if it has met the developmental milestones specified for the relevant type of product (see paragraph 3.3 below);
- (b) it must have been primarily engaged in research and development (“**R&D**”) for the purposes of developing its Core Product(s);
- (c) it must have been engaged with the R&D of its Core Product(s) for a minimum of 12 months prior to listing (and, in the case of a Core Product which is in-licensed or acquired from third parties, the applicant must be able to demonstrate R&D progress since the in-licensing/acquisition);
- (d) it must have as its primary reason for listing the raising of finance for R&D to bring its Core Product(s) to commercialisation;
- (e) it must have registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s);
- (f) if the applicant is engaged in the R&D of pharmaceutical (small molecule drugs) products or biologic products, it must demonstrate that it has a pipeline of those potential products; and
- (g) it must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor at least six months before the date of the proposed listing (which must remain at IPO). This factor is intended to demonstrate that a reasonable degree of market acceptance exists for the applicant’s R&D and Biotech Product. Where the applicant is a spin-off from a parent company, the Exchange may not require compliance with this factor if the applicant is able to otherwise demonstrate to the Exchange’s satisfaction that a reasonable degree of market acceptance exists for its R&D and Biotech Product (for example, in the form of collaboration with other established R&D companies).
  - (i) The Exchange will assess whether an investor is a “Sophisticated Investor” for the purpose of applications for listing under Chapter 18A on a case by case basis by reference to factors such as net assets or assets under management, relevant investment experience, and the investor’s knowledge and expertise in the relevant field.

For this purpose, the Exchange would generally consider the following as examples, for illustrative purposes only, of types of Sophisticated Investor:

- (1) a dedicated healthcare or Biotech fund or an established fund with a division/department that specialises or focuses on investments in the biopharmaceutical sector;
  - (2) a major pharmaceutical/healthcare company;
  - (3) a venture capital fund of a major pharmaceutical/healthcare company; and
  - (4) an investor, investment fund or financial institution with minimum assets under management of HK\$1 billion.
- (ii) The Exchange will assess whether a third party investment is a meaningful investment in the circumstances on a case by case basis by reference to the nature of the investment, the amount invested, the size of the stake taken up and the timing of the investment. As an indicative benchmark the following investment amount will generally be considered as a “meaningful investment”:
- (1) for an applicant with a market capitalisation between HK\$1.5 billion to HK\$3 billion, an investment of not less than 5% of the issued share capital of the applicant at the time of listing;
  - (2) for an applicant with a market capitalisation between HK\$3 billion to HK\$8 billion, an investment of not less than 3% of the issued share capital of the applicant at the time of listing; and
  - (3) for an applicant with a market capitalisation of more than HK\$8 billion, an investment of not less than 1% of the issued share capital of the applicant at the time of listing.

3.3 For the purpose of paragraph 3.2(a) above, the Exchange would consider the following to demonstrate that a Regulated Product has developed beyond the concept stage.

(a) Pharmaceutical (small molecule drugs)

- (i) In the case of a Core Product that is a new pharmaceutical (small molecule drug) product, the applicant must demonstrate that it has completed Phase I<sup>29</sup> clinical trials and that the relevant Competent Authority has no objection for it to commence Phase II<sup>30</sup> (or later) clinical trials.
- (ii) In the case of a Core Product that is a pharmaceutical (small molecule drug) product which is based on previously approved products (for example, the 505(b)(2) application process of the US Food and Drug Administration

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<sup>29</sup> Clinical trials on human subjects categorised as Phase I clinical trials by the FDA (or an equivalent process regulated by another Competent Authority). Where the applicant is conducting a combined clinical trial (for example a combined Phase I/Phase II clinical trial) the applicant will need to demonstrate to the Exchange's satisfaction that the safety profile of the combined clinical trial is at least equivalent to the completion of Phase I clinical trials.

<sup>30</sup> Clinical trials on human subjects categorised as Phase II clinical trials by the FDA (or an equivalent process regulated by another Competent Authority)

("FDA" in the US), the applicant must demonstrate that it has successfully completed at least one clinical trial conducted on human subjects, and the relevant Competent Authority has no objection for it to commence Phase II (or later) clinical trials.

(b) Biologics

- (i) In the case of a Core Product that is a new biologic product, the applicant must demonstrate that it has completed Phase I clinical trials and the relevant Competent Authority has no objection for it to commence Phase II (or later) clinical trials.
- (ii) In the case of a Core Product that is a biosimilar, the applicant must demonstrate that it has completed at least one clinical trial conducted on human subjects, and the relevant Competent Authority has no objection for it to commence Phase II (or later) clinical trials to demonstrate bio-equivalency.

(c) Medical devices (including diagnostics)

In the case of a Core Product that is a medical device (which includes diagnostic devices), the applicant must demonstrate that:

- (i) the product is categorised as Class II medical device (under the classification criteria of the relevant Competent Authority) or above;
- (ii) it has completed at least one clinical trial on human subjects (which will form a key part of the application required by the Competent Authority or the Authorised Institution<sup>31</sup>); and
- (iii) either the Competent Authority or the Authorised Institution has endorsed or not expressed objection for the applicant to proceed to further clinical trials; or the Competent Authority (or, in the case of member(s) of the European Commission, an Authorised Institution) has no objection for the applicant to commence sales of the device.

### 3.4 Other Biotech Products

The Exchange will consider Biotech Products which do not fall into the categories set out in paragraph 3.3 on a case by case basis to determine if an applicant has demonstrated that the relevant Biotech Product has been developed beyond the concept stage by reference to, amongst other things, the factors described above in paragraph 3.3, and

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<sup>31</sup> An institution, body or committee duly authorised or recognised by, or registered with, a Competent Authority or the European Commission for conducting, assessing and supervising clinical trials in the relevant clinical fields. The Exchange may, at its discretion, recognise another institution, body or committee as an Authorised Institution on a case by case basis.

whether there is an appropriate framework or objective indicators for investors to make an informed investment decision regarding the listing applicant. A determination to accept such a listing application would be a modification that may only be made with the consent of the Securities and Futures Commission under Main Board Listing Rule 2.04. If the applicant is determined to be eligible for listing under Chapter 18A, references in this guidance letter and in Chapter 18A to “Core Products” shall be taken as referring to the Biotech Product of the applicant in question.

- 3.5 Applicants should note that that the factors set out in this section 3 are neither exhaustive nor **binding** and the Exchange will take into account all relevant circumstances in its assessment of the suitability of the applicant for listing.

#### **4. Ownership continuity of a new applicant that is a Biotech Company**

- 4.1 The Exchange will review any change in ownership of the applicant in the 12 months prior to the date of the listing application in assessing the suitability of the applicant for listing.

#### **5. Subscription of shares by existing shareholders**

- 5.1 Biotech Companies listed under Chapter 18A are expected to have significant ongoing funding needs in order to develop their Core Product to commercialisation. Existing investors in a Biotech Company are likely to have subscribed for shares in the company on the basis of their confidence in the company’s prospects, and may wish to be able to continue to participate in the company’s fundraisings to prevent a dilution to their shareholding. Historically, in the US, a significant majority of existing shareholders at IPO will continue to participate in the issuer’s fundraisings post-IPO
- 5.2 Given the likely significant funding needs of Biotech Companies and the importance of existing shareholders in meeting the funding needs of these companies, the Exchange permits existing shareholders to participate in the IPO of a Biotech Company provided that the issuer complies with Main Board Listing Rules 8.08(1) and 18A.07 in relation to shares held by the public.

#### **6. Calculation of percentage ratios**

- 6.1 Since Biotech Companies listed under Chapter 18A are not required to meet any of the Financial Eligibility Tests at the time of listing, the application of the revenue ratio and the profit ratio to any proposed transaction that these issuers propose to undertake may not be appropriate in some cases.
- 6.2 The Exchange may exercise its discretion under Rule 14.20 to disregard the revenue ratio and profit ratio for Biotech Companies listed under Chapter 18A and consider other relevant indicators of size, including industry specific tests suggested by the issuer, on a case by case basis. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

#### **7. Accountants’ report**

Biotech Companies applying for a listing under Chapter 18A with an accountants’ report

covering two financial years are reminded that they must apply for a certificate of exemption from the relevant disclosure requirements under the Third Schedule of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong).

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## Part II

### HKEX GUIDANCE LETTER

HKEX-GL[ ]-[ ] ([date])

<b>Subject</b>	<b>Suitability for Listing with a WVR Structure</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Listing Rules 8.04, 8A.04</b> <b>HKEX-LD43-3</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter. Unless otherwise specified, defined terms in the Listing Rules shall have the same meanings in this letter.*

#### 1. Purpose

- 1.1 This letter provides guidance to on the factors that the Exchange will take into account when considering whether an applicant is suitable for listing with a weighted voting rights (“WVR”) structure under Main Board Listing Rule 8A.04.
- 1.2 This letter also sets out the Exchange’s approach in relation to an issuer relying on its WVR structure to demonstrate compliance with the draft PRC Foreign Investment Law.

#### 2. Application of this Guidance Letter

- 2.1 The concept of proportionality between the voting power and equity interest of shareholders, commonly known as the “one-share, one-vote” principle, is an important aspect of investor protection as it helps align controlling shareholders’ interests with those of other shareholders and makes it possible for incumbent management to be removed, if they underperform, by those with the greatest equity interest in an issuer.
- 2.2 The Exchange believes that the “one-share, one vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company. Consequently, the Exchange will exercise its discretion to find an applicant suitable to list with a WVR structure sparingly. Demonstration of the characteristics in this guidance letter may not of itself satisfy the Exchange of an applicant’s suitability to list with a WVR structure. The Exchange retains discretion to reject an application for listing with a WVR structure even if the applicant meets the requirements in this guidance letter.



### **3. Relevant Listing Rules**

- 3.1 Main Board Listing Rule 8A.04 states that a new applicant seeking a listing with a WVR structure must demonstrate that it is both eligible and suitable for listing with a WVR structure.
- 3.2 Main Board Listing Rule 8.04 provides that in the opinion of the Exchange both the issuer and its business must be suitable for listing.

### **4. Guidance**

#### **Suitability to list with a WVR structure**

- 4.1 An applicant must demonstrate that, in addition to the other requirements for listing as set out in the Main Board Listing Rules, it has met the following characteristics for the purpose of demonstrating to the Exchange that it is suitable for listing in Hong Kong with a WVR structure.

#### 4.2 Innovative company

The applicant must be an innovative company. The Exchange considers an innovative company for the purpose of the Main Board Listing Rules would normally be expected to possess more than one of the following characteristics:

- (a) its success is demonstrated to be attributable to the application, to the company's core business, of (1) new technologies; (2) innovations; and/or (3) a new business model, which also serves to differentiate the company from existing players;
- (b) research and development is a significant contributor of its expected value and constitutes a major activity and expense;
- (c) its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- (d) it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

The Exchange recognises that what is considered "innovative" depends on the state of the industry(ies) and market(s) in which an applicant operates, and will change over time as technology, markets and industries develop and change. For example, a new and "innovative" business model may cease to be so if it is adopted by numerous industry players over time. Conversely, a company may develop an "innovative" way of deploying existing technologies that qualifies it for listing with a WVR structure. Accordingly, the fact that a particular company has qualified for listing with a WVR structure does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing with a WVR structure.

The Exchange will review the facts and circumstances of each case to determine if an applicant has demonstrated that it is an innovative company for the purpose of this paragraph. The superficial application of new technology to an otherwise conventional

business will not be sufficient to demonstrate the characteristics set out in this paragraph. So, for example, the Exchange may consider that an applicant that operates a retail business with an online sales platform may not be suitable to list with a WVR structure if it does not exhibit other distinctive features or characteristics.

#### 4.3 Success of the company

The applicant must demonstrate a track record of high business growth, as can be objectively measured by operational metrics such as business operations, users, customers, unit sales, revenue, profits and/or market value (as appropriate) and its high growth trajectory is expected to continue.

#### 4.4 Contribution of WVR holders

Each WVR beneficiary must have been materially responsible for the growth of the business, by way of his skills, knowledge and/or strategic direction in circumstances where the value of the company is largely attributable or attached to intangible human capital.

#### 4.5 Role of WVR holders

- (a) Each WVR beneficiary must be an individual who has an active executive role within the business, and has contributed to a material extent to the ongoing growth of the business; and
- (b) each WVR beneficiary must be a director of the issuer at the time of listing.

#### 4.6 External validation

The applicant must have previously received meaningful third party investment (being more than just a token investment) from at least one sophisticated investor<sup>32</sup> (which must remain at IPO). Such investors will be required to retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO (subject to exceptions for de minimis investments by specific investors provided that the main investors are in compliance). The Exchange would not normally require an applicant to demonstrate that it has received meaningful third party investment if the applicant is a spin-off from a parent company<sup>33</sup>.

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<sup>32</sup> An investor that the Exchange considers to be sophisticated by reference to factors such as net assets or assets under management, relevant investment experience, and the investor's knowledge and expertise in the relevant field.

<sup>33</sup> For the purpose of assessing the eligibility and suitability of an applicant to list with a WVR structure, a spin-off applicant will be assessed on a stand-alone basis separate from the characteristics and track record of the parent (irrespective of whether the parent is listed on the Exchange or overseas).

- 4.7 The Exchange reserves the right to reject an applicant on suitability grounds if its WVR structure is an extreme case of non-conformance with governance norms (for example if the ordinary shares would carry no voting rights at all).
- 4.8 Applicants should note that the factors set out in this section 4 are neither exhaustive nor binding and the Exchange will take into account all relevant circumstances in its assessment of the applicant.

## **5. PRC Foreign Investment Law**

- 5.1 Under existing PRC laws, certain industry sectors are subject to foreign investment restrictions. A “foreign investor” is defined according to the form of the investment made i.e. whether investments are made by way of wholly-foreign-owned entities, foreign-invested equity joint ventures or contractual joint ventures.
- 5.2 In January 2015, MOFCOM published a consultation draft of a Foreign Investment Law intended to replace existing PRC laws on foreign investment restrictions. The draft law looks through the form of the investment and instead defines a “foreign investor” according to several factors including the citizenship of the person in control, or de facto control, of the investor company. Under the draft Foreign Investment Law, companies in control, or de facto control, of a Chinese citizen would not be subject to foreign investment restrictions.
- 5.3 The Exchange’s current approach in relation to issuers operating in restricted industries is set out in HKEX-LD43-3. Since the PRC Foreign Investment Law is still in draft form with no proposed date for implementation, the Exchange will continue to examine each case on its individual merits to determine whether the arrangements an issuer proposes will provide appropriate investor protection. Under this approach, an issuer may be required, on a case by case basis, to demonstrate that it is able to comply with the requirements of the draft PRC Foreign Investment Law in the event that the legislation is promulgated. The Exchange has in the past accepted disclosure of the relevant risks without requiring the issuer to specify how compliance with the draft PRC Foreign Investment Law will be achieved if it is promulgated and will continue this approach.
- 5.4 If the draft Foreign Investment Law were to come into effect, an issuer with a WVR structure could potentially use weighted voting rights to demonstrate compliance with the draft PRC Foreign Investment Law in that they had de facto control of an issuer that is in an industry subject to foreign ownership restrictions, if the WVR holders are PRC citizens. In this connection the Exchange believes that WVRs and foreign ownership restrictions are separate issues. Since the publication of the draft PRC Foreign Investment Law, a number of issuers have listed on the Exchange with a range of mechanisms to comply with foreign ownership restrictions that do not involve WVRs.
- 5.5 In the event that an applicant seeks to demonstrate compliance with the draft PRC Foreign Investment Law through WVRs, given that WVRs could not exist indefinitely as a result of the required safeguards in Chapter 8A, the applicant must clearly disclose the risk that its WVRs may fall away and it may not be able to comply with the PRC Foreign Investment Law as a result.

## Part III

### HKEX GUIDANCE LETTER

HKEX-GL[ ]-[ ] ([date])

<b>Subject</b>	<b>Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Listing Rules 8.04, 19C.02 HKEX-LD43-3</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter. Unless otherwise specified, defined terms in the Listing Rules shall have the same meanings in this letter.*

#### 1. Purpose

- 1.1 This letter provides guidance to applicants applying for a secondary listing under Chapter 19C on the factors that the Exchange will take into account when considering whether an applicant is suitable for listing under Main Board Listing Rule 19C.02.
- 1.2 This letter also provides guidance to applicants applying for a secondary listing under Chapter 19C on the use of contract-based arrangements or structures (“**Contractual Arrangements**”) to indirectly own and control the parts of their business.

#### 2. Relevant Listing Rules

- 2.1 Main Board Listing Rule 8.04 provides that in the opinion of the Exchange both the issuer and its business must be suitable for listing.
- 2.2 Main Board Listing Rule 19C.02 states that a Qualifying Issuer seeking a secondary listing under Chapter 19C must demonstrate to the Exchange that it is both eligible and suitable for listing.

#### 3. Guidance

##### **Suitability**

- 3.1 The Exchange would normally consider a Qualifying Issuer to be suitable for secondary listing under Chapter 19C if it is an innovative company by reference to the characteristics set out in paragraph 3.2 below.

3.2 The Exchange considers an innovative company for the purpose of the Listing Rules would normally be expected to possess more than one of the following characteristics:

- (a) its success is demonstrated to be attributable to the application, to the company's core business, of (1) new technologies; (2) innovations; and/or (3) a new business model, which also serves to differentiate the company from existing players;
- (b) research and development is a significant contributor of its expected value and constitutes a major activity and expense;
- (c) its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- (d) it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

The Exchange recognises that what is considered “innovative” depends on the state of the industry(ies) and market(s) in which an applicant operates, and will change over time as technology, markets and industries develop and change. For example, a new and “innovative” business model may cease to be so if it is adopted by numerous industry players over time. Conversely, a company may develop an “innovative” way of deploying existing technologies that qualifies it for listing under Chapter 19C. Accordingly, the fact that a particular company has qualified for listing under Chapter 19C does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing under Chapter 19C.

The Exchange will review the facts and circumstances of each case to determine if an applicant has demonstrated that it is an innovative company for the purpose of this paragraph. The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out in this paragraph. So, for example, the Exchange may consider that an applicant that operates a retail business with an online sales platform may not be suitable to list under Chapter 19C if it does not exhibit other distinctive features or characteristics.

3.3 Applicants should note that the factors set out in this section 3 are neither exhaustive nor binding and the Exchange will take into account all relevant circumstances in its assessment of the applicant.

3.4 The Exchange retains the discretion to find a Qualifying Issuer not suitable for listing under the new concessionary route even if it satisfies the features set out in paragraph 3.2 and the applicant must, in any case, satisfy the general suitability requirement in Main Board Listing Rule 8.04.

#### **4. Contractual arrangements**

4.1 Companies operating in an industry sector that is subject to foreign ownership restrictions often use Contractual Arrangements to indirectly own and control the parts of their business which are subject to foreign ownership restrictions.

- 4.2 The Exchange's current approach in relation to Contractual Arrangements is set out in Listing Decision HKEX-LD43-3. Among other things, Contractual Arrangements are required to be narrowly tailored to achieve the applicant's business purpose and minimise the potential for conflict with relevant PRC laws and regulations, and issuers may be required, on a case by case basis, to demonstrate that it is able to comply with the requirements under the draft PRC Foreign Investment Law in the event that the legislation is promulgated.
- 4.3 The Exchange notes that the requirements of Qualifying Exchanges regarding Contractual Arrangement are not as extensive as the Exchange's requirements. This means that many of the Mainland companies listed on Qualifying Exchanges have done so with Contractual Arrangements that do not meet our existing guidance in all respects. These companies may find it undesirable or impractical to vary their corporate structures to incorporate all aspects of the Exchange's requirements for Contractual Arrangements for the sake of a secondary listing.
- 4.4 Consistent with the purpose of Chapter 19C to facilitate the secondary listing of innovative companies, Grandfathered Greater China Issuers, being those Greater China Issuers which have been listed on a Qualifying Exchange before the Exchange published its proposals (and therefore did not list overseas for the purpose of regulatory arbitrage), will be able to secondary list with their existing Contractual Arrangements in place and will not be required to demonstrate that it is able to comply with the draft PRC Foreign Investment Law provided that they comply with the following requirements:<sup>34</sup>
- (a) The applicant is required to provide the Exchange with a PRC legal opinion that their Contractual Arrangements complies with PRC laws, rules and regulations; and
  - (b) The applicant must comply with the disclosure requirements set out in Listing Decision HKEX-LD43-3.
- 4.5 Non-Grandfathered Greater China Issuers applying for a secondary listing under Chapter 19C must ensure that it complies with the Exchange's requirements set out in Listing Decision HKEX-LD43-3. They may also be required, on a case by case basis, to demonstrate that it is able to comply with the requirements under the draft PRC Foreign Investment Law in the event that the legislation is promulgated.
- 4.6 In the event that an applicant applying for a secondary listing under Chapter 19C uses weighted voting rights to demonstrate its ability to comply with the draft PRC Foreign Investment Law, and the weighted voting rights in question do not exist indefinitely (for example, they are personal to the holder and incapable of being transferred, or are subject to sunset), the applicant must clearly disclose the risk that its weighted voting rights may fall away and it may not be able to comply with the PRC Foreign Investment Law as a result.

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<sup>34</sup> Non-Greater China Issuers would also be able to secondary list with their existing Contractual Arrangements, if they have them.

## APPENDIX III: LIST OF RESPONDENTS

### Named Respondents

NAME	CATEGORY	REPRESENTATION
<b>INSTITUTIONS</b>		
ACCA Hong Kong <sup>35</sup>	Professional Body / Industry Association	24,000 members and 71,000 students
ACEA	Other	Not applicable
AIMA Life-Tech (Shanghai) Ltd.	Other	Not applicable
AJ International Holdings Limited	Corporate Finance Firm / Bank	Not applicable
Allianz Global Investors Asia Pacific Limited	Investment Manager	Not applicable
Ally Bridge LB Healthcare Fund	Other	Not applicable
Alternative Investment Management Association	Investment Manager	Over 1,800 corporate members (its fund manager members collectively manage US\$1.8 trillion AUM)
Aptorum Group Limited	Other	Not applicable
Asian Corporate Governance Association	Professional Body / Industry Association	Over 100 corporate members, two thirds of which are institutional investors with ~US\$26 trillion AUM
Asia Securities Industry & Financial Markets Association - Asset Management Group	Professional Body / Industry Association	Over 80 member firms <sup>36</sup>

<sup>35</sup> Association of Chartered Certified Accountants.

<sup>36</sup> Comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers.

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Asia Securities Industry & Financial Markets Association - Equity Capital Markets Committee	Professional Body / Industry Association	Over 80 member firms
Aucta Pharmaceuticals	Other	Not applicable
Australian Council of Superannuation Investors	Professional Body / Industry Association	38 Australian and international asset owners and institutional investors. Has over \$2.2 trillion in assets and owns on average 10% of every ASX200 company.
B Action Company Limited	Other	Not applicable
Beijing DHH Law Firm	Law Firm	Not applicable
BFC Group	Other	Not applicable
BOCI Asia Limited	Corporate Finance Firm / Bank	Not applicable
BioLingus GmbH	Other	Not applicable
BlackRock	Investment Manager	Not applicable
BMO Global Asset Management	Investment Manager	Not applicable
The British Chamber of Commerce in Hong Kong	Professional Body / Industry Association	Over 1,000 members <sup>37</sup>
British Columbia Investment Management Corporation	Investment Manager	Not applicable
Bull Capital Partners (Hong Kong) Limited	Investment Manager	Not applicable
Capital International, Inc.	Investment Manager	Not applicable

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<sup>37</sup> Comprising major multinational companies, as well as substantial number of small-to-medium sized entities, and represents a broad spectrum of British, Hong Kong, international and Chinese companies.



<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Cathay Pacific Airways Limited	Listed Company	Not applicable
Chamber of Hong Kong Listed Companies	Professional Body / Industry Association	20 listed companies
Chartwell Capital Limited	Corporate Finance Firm / Bank	Not applicable
China Asset Management (HK) Ltd.	Investment Manager	Not applicable
China Insights Consultancy	Other	Not applicable
China International Capital Corporation Hong Kong Securities Limited (CICC)	Corporate Finance Firm / Bank	Not applicable
China Merchants Bank International	Corporate Finance Firm / Bank	Not applicable
China Renaissance Securities (HK) Limited	Corporate Finance Firm / Bank	Not applicable
China Resources Pharmaceutical Group Limited	Other	Not applicable
China Securities International	Corporate Finance Firm / Bank	Not applicable
CITIC Securities	Corporate Finance Firm / Bank	Not applicable
Civic Party	Other	Not applicable
CNCB (Hong Kong) Capital Ltd.	Corporate Finance Firm / Bank	Not applicable
Council of Institutional Investors	Professional Body / Industry Association	Not applicable
CSOP Asset Management Limited	Investment Manager	Not applicable
Dinova Capital	Corporate Finance Firm / Bank	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
dMed Biopharmaceutical Co., Ltd.	Other	Not applicable
Ernst & Young	Accountancy Firm	Not applicable
The European Chamber of Commerce in Hong Kong	Other	15 European Chambers based in Hong Kong and 1 in Macau
Eversheds Sutherland	Law Firm	Not applicable
Fidelity International	Investment Manager	Not applicable
Financial Services Development Council	Other	23 council members
Florida State Board of Administration	Other	Not applicable
GenoSaber Biotech	Other	Not applicable
GES International AB	Corporate Finance Firm / Bank	Not applicable
Global Legal Entity Identifier Foundation (GLEIF)	Other	Not applicable
Gortune Limited	Other	Not applicable
Great Eagle Holdings Limited	Listed Company	Not applicable
Hermed Equity Investment Management (Shanghai) Co., Ltd.	Investment Manager	Not applicable
Hermes Investment Management	Investment Manager	Not applicable
HeungKong Capital Limited	Corporate Finance Firm / Bank	Not applicable
Hogan Lovells	Law Firm	Not applicable
Hong Kong Aircraft Engineering Company	Listed Company	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Hong Kong Baptist University - Department of Accountancy & Law	Other	Not applicable
Hong Kong General Chamber of Commerce	Professional Body / Industry Association	23 industry and functional committees as well as special interest groups
Hong Kong Institute of Chartered Secretaries	Professional Body / Industry Association	Over 5,800 members and 3,200 students
Hong Kong Institute of Directors	Professional Body / Industry Association	Over 2,400 directors <sup>38</sup>
Hong Kong Investment Funds Association (HKIFA)	Professional Body / Industry Association	Over 67 fund management companies managing about 1,350 SFC-authorized funds with about US\$1.1 trillion AUM. Also has 58 affiliate and associate members
Hong Kong Professionals and Senior Executives Association	Professional Body / Industry Association	Over 700 members
Hong Kong Securities Association Limited	Professional Body / Industry Association	Over 1,100 members from some 350 brokerage firms in Hong Kong
Hong Kong Securities Professionals Association	Professional Body / Industry Association	Not applicable
Hong Kong Society of Financial Analysts	Professional Body / Industry Association	Over 6,700 members
Hong Kong Venture Capital and Private Equity Association	Professional Body / Industry Association	With members from over 350 firms
Hua Medicine	Other	Not applicable
Huatai Financial Holdings (Hong Kong) Limited	Corporate Finance Firm / Bank	Not applicable

<sup>38</sup> Who promote corporate governance and director professionalism.

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Huineng Asset Management Limited	Investment Manager	Not applicable
ICBC Credit Suisse Asset Management (International) Company Limited	Corporate Finance Firm / Bank	Not applicable
ICBC International Holdings Limited	Corporate Finance Firm / Bank	Not applicable
Instinet	Corporate Finance Firm / Bank	Not applicable
The Institute of Financial Planners of Hong Kong	Professional Body / Industry Association	Not applicable
Institute of Financial Technologists of Asia (IFTA)	Corporate Finance Firm / Bank	Not applicable
International Corporate Governance Network	Professional Body / Industry Association	638 Members from over 45 markets and include investors responsible for assets under management in excess of US\$26 trillion.
Investor Education Centre	Other	Not applicable
Jeffrey Mak Law Firm	Law Firm	Not applicable
Jones Day	Law Firm	Not applicable
JW Therapeutics (Shanghai) Co., LTD.	Investment Manager	Not applicable
Kingston Financial	Corporate Finance Firm / Bank	Not applicable
KPMG	Accountancy Firm	Not applicable
Latham & Watkins	Law Firm	Not applicable
Law Society of Hong Kong	Professional Body / Industry Association	Over 10,000 members
Legal & General Investment Management	Investment Manager	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Leucadia Investment Management	Investment Manager	Not applicable
Locke Lord	Law Firm	Not applicable
Mayer Brown JSM	Law Firm	Not applicable
Miao & Co. (joint submission by Han Kun Law Offices and Miao & Co.)	Law Firm	Not applicable
Micurx Pharmaceuticals	Other	Not applicable
Nan Fung Group (Nan Fung Life Sciences)	Other	Not applicable
Norges Bank Investment Management	Investment Manager	Not applicable
Norton Rose Fulbright	Law Firm	Not applicable
Office of the Hon. Charles Mok, Legislative Councillor (IT)	Other	Not applicable
Office of the Hon. CHEUNG Wah-fung, Legislative Councillor (Financial Services)	Other	Not applicable
Office of the Hon. Kenneth Leung, Legislative Councillor (Accountancy)	Other	Not applicable
Our Hong Kong Foundation	Other	Not applicable
PGGM Investments	Investment Manager	Not applicable
PlantaRx Limited	Other	Not applicable
PricewaterhouseCoopers	Accountancy Firm	Not applicable
Sanwa Biotech Ltd.	Other	Not applicable
Shearman & Sterling	Law Firm	Not applicable
Sidley Austin LLP	Law Firm	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Sinochem Hong Kong (Group) Co. Ltd.	Listed Company	Not applicable
Skadden, Arps, Slate, Meagher & Flom	Law Firm	Not applicable
Slaughter and May	Law Firm	Not applicable
SQ Capital Group Limited	Corporate Finance Firm / Bank	Not applicable
Sullivan & Cromwell (Hong Kong) LLP	Law Firm	Not applicable
Swire Pacific Limited	Listed Company	Not applicable
Swire Properties Limited	Listed Company	Not applicable
Time Medical Corp	Other	Not applicable
Time Medical Limited	Other	Not applicable
Tung Tai Group Limited	Corporate Finance Firm / Bank	Not applicable
TUS Corporate Finance Limited	Corporate Finance Firm / Bank	Not applicable
United First Partners	Corporate Finance Firm / Bank	Not applicable
Vanguard Investments Hong Kong Limited	Corporate Finance Firm / Bank	Not applicable
Viva Biotech Ltd.	Other	Not applicable
Vivo Capital	Corporate Finance Firm / Bank	Not applicable
Y. Elites Association	Professional Body/ Industry Association	Over 900 members
Yu Ming Investment Management Limited	Investment Manager	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
3H Health Investment Management (HK) Ltd.	Investment Manager	Not applicable
上海帕尼生物科技有限公司	Other	Not applicable
上海張江浩成創業投資有限公司 (Shanghai Zhangjiang Haocheng Venture Capital Co., Ltd)	Investment Manager	Not applicable
上海海抗中醫藥科技發展有限公司 (Shanghai Haikang Pharmaceutical Co., Ltd)	Other	Not applicable
東曜藥業有限公司 (Tot Biopharm Company Limited)	Other	Not applicable
中投證券國際融資有限公司 (China Investment Securities International Capital Limited)	Corporate Finance Firm / Bank	Not applicable
優客工場（北京）創業投資有限公司 (UR Work (Beijing) Venture Capital Investment Co., Ltd.)	Investment Manager	Not applicable
興業證券股份有限公司 (Industrial Securities Co., Ltd)	Corporate Finance Firm / Bank	Not applicable
北京中十盈信息諮詢有限公司 (Beijing Jas Technical Service Co.Ltd)	Other	Not applicable
北京寬厚醫藥科技有限公司 (Beijing Funhau Medicine Technology Co., Ltd)	Other	Not applicable
北京智充科技有限公司 (Beijing Zhichong Technology Co., Ltd)	Other	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
北京首鋼朗澤新能源科技有限公司	Other	Not applicable
安信國際金融控股有限公司	Corporate Finance Firm / Bank	Not applicable
固高科技集團 (Googol Technology Limited)	Other	Not applicable
國元證券股份有限公司投資銀行總部 (Investment Banking Division of Guoyuan Securities Co., Ltd.)	Corporate Finance Firm / Bank	Not applicable
天士力醫藥集團股份有限公司 (Tasly Pharmaceutical Group Co., Ltd.)	Other	Not applicable
尊嘉証券(香港)有限公司 (JuniorChina Securities (Hong Kong) Limited)	Corporate Finance Firm / Bank	Not applicable
常州睿泰投資管理有限公司	Investment Manager	Not applicable
廣州市奇源庫投資管理有限公司	Investment Manager	Not applicable
時富財富管理有限公司 (CASH Wealth Management Limited)	Investment Manager	Not applicable
樸素資本管理有限公司 (Shenzhen Pusu Capital Management Co., Ltd)	Investment Manager	Not applicable
東建國際	Other	Not applicable
漢坤律師事務所 - 深圳 (Han Kun Law Offices – Shenzhen)	Law Firm	Not applicable
江蘇凌雲國際 (Jiangsu Lingyun International)	Other	Not applicable



NAME	CATEGORY	REPRESENTATION
深圳市中農網有限公司 (Shenzhen Agricultural Product E-commerce Joint Stock Company)	Other	Not applicable
深圳市小橙堡文化傳播有限公司	Other	Not applicable
深圳市前海梧桐併購投資基金管理有限公司	Investment Manager	Not applicable
煙臺創新創業投資有限公司 (Yantai Innovation Venture Investment Co., Ltd)	Investment Manager	Not applicable
珠海梧桐領航投資管理有限公司	Investment Manager	Not applicable
碧沃豐生物科技股份有限公司 (Bio-Form Technology Co., Ltd.)	Other	Not applicable
聊城市東昌府區天元小額貸款股份有限公司	Corporate Finance Firm / Bank	Not applicable
興證國際 (Industrial Securities International)	Corporate Finance Firm / Bank	Not applicable
藍濤亞洲 (FCC Partners)	Other	Not applicable
蘇港青年交流促進會 (Jiangsu HK Young Leaders Exchange Association)	Other	Not applicable
通商律師事務所 (Commerce & Finance Law Offices)	Law Firm	Not applicable
陝西佰美基因股份有限公司 (Shaanxi Lifegen Co. Ltd)	Other	Not applicable

NAME	CATEGORY	REPRESENTATION
香港中國企業協會上市公司 委員會 (The Listed Companies Council of the Hong Kong Chinese Enterprises Assoc)	Professional Body / Industry Association	Over 1000 members
香港發現者機器人有限公司 (Hong Kong Discoverer Robot Co., Limited)	Other	Not applicable
高銀國際（香港）金融集團 有限公司 (Goldin International (Hong Kong) Financial Group Limited)	Corporate Finance Firm / Bank	Not applicable
<b>INDIVIDUALS</b>		
Basil Hwang	Other	Not applicable
Cassie Chen	Other	Not applicable
Charles Hsu	Other	Not applicable
Chris Song	Other	Not applicable
CY Wong	Other	Not applicable
CY Zhao	Other	Not applicable
Danyi Wen	Other	Not applicable
Doris Jiang	Other	Not applicable
Eric Wu	Other	Not applicable
Jimmy Mak	Other	Not applicable
Jimmy Zhang	Other	Not applicable
Jin Rui Oh	Institutional Investor Staff	Not applicable
Judy Tsui	Other	Not applicable
Judy Zhu	Other	Not applicable
Jun Bao	Other	Not applicable

<b>NAME</b>	<b>CATEGORY</b>	<b>REPRESENTATION</b>
Kaipeng Xia	Other	Not applicable
Karen Liu	Other	Not applicable
Lance Wong	Other	Not applicable
Leven Li	Other	Not applicable
Liang LIN (Stephen)	Other	Not applicable
Ling Hu Ming	Other	Not applicable
Matthew Harrison	Other	Not applicable
Nan Li	Other	Not applicable
Nick Tse	Other	Not applicable
Nova Liu	Other	Not applicable
Patrick Sik Ming Yuen	Other	Not applicable
Robin Fox	Other	Not applicable
Sherry He	Other	Not applicable
Silong Zhou	Other	Not applicable
Stella SHI	Other	Not applicable
Steve Chen	Other	Not applicable
Su Linlin	Other	Not applicable
Way Lau	Other	Not applicable
William Cao	Other	Not applicable
Yali Zhu	Other	Not applicable
劉建華	Other	Not applicable
傅曷	Other	Not applicable
徐斌	Other	Not applicable
潘君宇	Other	Not applicable

NAME	CATEGORY	REPRESENTATION
秦波	Institutional Investor Staff	Not applicable
謝佩靜	Other	Not applicable
陳治中	Other	Not applicable
陳秋亦	Other	Not applicable
齊念民	Other	Not applicable

## Anonymous Respondents

<b>CATEGORY</b>	<b>NUMBER</b>
Corporate Finance Firm / Bank	12
Individual Investors	1
Investment Manager	5
Law Firms	6
Listed Companies	1
Others	52
<b>TOTAL</b>	<b>77</b>

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## APPENDIX IV: QUANTITATIVE ANALYSIS OF RESPONSES

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The Rule Chapters Consultation Paper invited public comments on (a) the substance of the proposals set out in the consultation paper, and (b) the draft Rule changes that would give effect to those proposals (assuming that the proposals were implemented as proposed in the consultation paper).

For the purpose of its quantitative analysis and given that a number of respondents restricted their response to a particular chapter and not to the proposals as a whole, the Exchange has analysed the responses to each of the proposed new chapters separately. In respect of each chapter, the Exchange placed each response into one of the following four categories based on the content of the response:

- (a) support for the adoption of the proposals and draft Rules without amendment;
- (b) support for the adoption of the proposals and draft Rules with suggested amendments;
- (c) opposition to the adoption of the proposals as a whole; or
- (d) view unknown<sup>39</sup>.

The totals in each of the following tables add up to more than the total number of responses received (283) because many respondents commented on more than one of the three topics covered by the Rule Chapters Consultation Paper.

The percentages in the tables below may not total 100% due to rounding.

### BIOTECH CHAPTER

CATEGORY OF RESPONSE	NUMBER	PERCENTAGE
Support for the adoption of the proposals and the draft Rules <u>without</u> any amendment	78	36%
Support for the adoption of the proposals and draft Rules <u>with</u> suggested amendments	128	60%
Opposition to the adoption of the proposals as a whole	1	0.5%
View unknown	7	3%
<b>TOTAL</b>	<b>214</b>	<b>100%</b>

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<sup>39</sup> "Unknown" responses are those that indicated in the heading or body of their response that they are responding to the Rule Chapters Consultation Paper but their view cannot be discerned from their response. For example a response containing the words "thank you" without additional text.

**WVR CHAPTER**

<b>CATEGORY OF RESPONSE</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
Support for the adoption of the proposals and the draft Rules <u>without</u> any amendment	73	42%
Support for the adoption of the proposals and draft Rules <u>with</u> suggested amendments	73	42%
Opposition to the adoption of the proposals as a whole	22	13%
View unknown	6	3%
<b>TOTAL</b>	<b>174</b>	<b>100%</b>

**CONCESSIONARY SECONDARY LISTINGS CHAPTER**

<b>CATEGORY OF RESPONSE</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
Support for the adoption of the proposals and the draft Rules <u>without</u> any amendment	75	69%
Support for the adoption of the proposals and draft Rules <u>with</u> suggested amendments	29	27%
Opposition to the adoption of the proposals as a whole	2	2%
View unknown	2	2%
<b>TOTAL</b>	<b>108</b>	<b>100%</b>

## Summary of Suggested Amendment Topics

The following table lists the topics on which respondents made substantive suggestions for amending the proposals and/or Rules and the paragraphs of this Rule Chapters Conclusions Paper where we have stated our response and conclusions on the suggested amendment.

TOPIC OF SUGGESTED AMENDMENT	PARAGRAPHS ADDRESSING SUGGESTIONS
<b>BIOTECH COMPANIES</b>	
Reconsider Restriction to Biotech Companies	60 to 64
Listing Eligibility Requirements	65 to 73
Clinical Trials	74 to 76
Meaning of “Sophisticated Investor” and “Meaningful Investment”	77 to 89
Recognition of Other Authorities as a Competent Authority	90 to 92
Eligibility for Listing of Other Biotech Companies	93 to 97
Excluding Cornerstone Investors from the Public Float	98 to 106
Connected Persons’ Post-Listing Anti-Dilution Rights	107 to 110
Patents	111 to 114
Ongoing Disclosure Requirements	115 to 117
Shell Manufacturing	118 to 119
Notified Bodies	120 to 121
Accountants’ Reports	122 to 124
Profit Forecast Memorandum	125 to 126
Working Capital Statement	127 to 128
Ownership Continuity of the Applicant	130



TOPIC OF SUGGESTED AMENDMENT	PARAGRAPHS ADDRESSING SUGGESTIONS
<b>ISSUERS WITH WVR STRUCTURES</b>	
Subjectivity	170 to 172
Meaning of “Sophisticated Investor” and “Meaningful Investment”	173 to 175
Possible Use of Mandatory “One-Share, One-Vote” Provisions to Remove WVR Structures	176 to 184
Restriction on Maximum Shareholding at Listing	185 to 189
Holding Weighted Voting Rights through Limited Partnerships, Trusts, Private Companies and Other Vehicles	190 to 196
Ownership Continuity and Control	197 to 201
Increasing the Number of INEDs on the Board of an Issuer with a WVR Structure	202 to 204
WVR Safeguards Committee	205 to 206
Time-Defined “Sunset” Clause	207 to 213
Disclosure of the Circumstances when WVRs will Cease	214 to 215
Disclosure of WVR structure, Rationale and Associated Risks	216 to 217
Top-up Placing	218 to 219
Share Repurchases	220 to 221
Stock Borrowing	222 to 224
Disclosure of Pro Forma Voting on A One-Share One-Vote Basis / Other Matters to be Decided on a One-Share, One-Vote Basis	225 to 232
Interaction between WVR Structures and PRC Restrictions on Foreign Ownership	234 to 239

TOPIC OF SUGGESTED AMENDMENT	PARAGRAPHS ADDRESSING SUGGESTIONS
Number of Share Classes Permitted to Carry WVR	240
Training	241 to 242
WVR beneficiaries as Controlling Shareholders	243 to 244
Executive Role for WVR Beneficiaries	245 to 246
Disclosure of Dilution Impact	247 to 248
<b>SECONDARY LISTINGS OF QUALIFYING ISSUERS</b>	
Confidential Filing	275 to 280
Grandfathering	281 to 287
Migration of Bulk of Trading to Hong Kong	288 to 289

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