

**CONSULTATION CONCLUSIONS
ON PROPOSED CHANGES TO
REQUIREMENTS FOR CIRCULARS AND
LISTING DOCUMENTS OF LISTED ISSUERS**

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Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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EXECUTIVE SUMMARY

This paper presents the results of the public consultation on our proposals to revise requirements regarding notifiable and/or connected transaction circulars, and listing documents.

An overwhelming majority of the respondents supported our proposals. Taking into account the respondents' views, we will implement the proposals subject to amendments identified in Chapter 2.

We also sought market views on whether the requirement for disclosing an indebtedness statement in a notifiable transaction circular should be retained. The responses were diverse. While there was no clear consensus on this issue, a substantial number of respondents expressed views that the information is useful to shareholders. On balance, we consider it appropriate to retain the current requirement.

We have finalised the Rule amendments to implement the proposals. They have been made by the Board of The Stock Exchange of Hong Kong Limited and approved by the Securities and Futures Commission, and will become effective on 3 June 2010.

CHAPTER 1 INTRODUCTION

1. On 18 September 2009, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**), published a Consultation Paper on Proposed Changes to Requirements for Circulars and Listing Documents of Listed Issuers. The proposals were intended to make the contents of these documents relevant for shareholders and to encourage timely despatch of the documents to the market by eliminating unnecessary restrictions or burdens on issuers.
2. The consultation period ended on 18 November 2009. We received a total of 34 submissions from listed issuers, professional and industry associations, market practitioners and individuals. A list of respondents is provided in the **Appendix**.
3. The full text of all submissions is available on the HKEx website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp200909crr.htm>
4. We received general support from the market for the proposals with certain recommended amendments. Chapter 2 summarises the major comments and our responses.
5. The Rule amendments are available on the HKEx website at: http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/mb_ruleupdate.htm and http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/gemrule_update.htm. They have been made by the Board of the Exchange and approved by the Securities and Futures Commission (**SFC**), and will become effective on 3 June 2010.
6. We would like to thank all those who shared their views with us during the consultation process.
7. This paper should be read in conjunction with the consultation paper, which is posted on the HKEx website. The Rule references are to the Main Board Rules. Unless otherwise specified, the discussion applies equally to the GEM Rules.

CHAPTER 2 MARKET FEEDBACK AND CONCLUSIONS

A. Financial information in circular or listing document

(1) Accountants' report on the listed group for very substantial disposals (VSD) (Consultation Questions 1 to 3)

8. Under the current Rules, if a VSD involves a disposal of a company or business, the circular must contain:

(a) an accountants' report on the issuer group with the company or business being disposed of (the **Disposal Target**) shown separately as a discontinuing operation in a note to the financial statements; and

(b) pro forma information on the remaining group.

9. We considered that in a VSD, financial information on the Disposal Target and on the remaining group is relevant for shareholders' consideration of the transaction. It is not necessary to provide financial information on the issuer group.

10. We also considered that it is not necessary or cost-effective for an issuer to prepare an accountants' report as the issuer is already required to publish periodic financial reports (including audited accounts) and the Disposal Target is part of the issuer group. Nevertheless, we considered that there should be some assurance on the financial information provided in a VSD circular. At a minimum, the information should be reviewed by the issuer's auditors or reporting accountants (similar to a review of interim financial information).

11. The proposal requires a VSD circular to contain financial information of either:

(a) the issuer group with the Disposal Target shown separately as a disposal group or discontinuing operation (as in the current Rule) (**option (a)**); or

(b) the Disposal Target (**option (b)**),

for three financial years (or such shorter period as may be acceptable to the Exchange). The latest financial year or the stub period (where applicable) must relate to a financial period ended 6 months or less before the circular is issued.

12. The financial information under option (a) or (b) must be prepared by the issuer's directors using the issuer's accounting policies, and comprise:
- (i) the balance sheet;
 - (ii) an income statement;
 - (iii) a cash flow statement;
 - (iv) a statement of changes in equity; and
 - (v) any notes to accounts that the directors consider necessary for a reasonable appreciation of the results for the relevant financial periods.
13. This financial information is comparable to the current disclosure requirements for results announcements which cover items (i), (ii) and (v). The financial information must be reviewed by the issuer's auditors or reporting accountants.
14. The proposal would be the minimum requirement for financial information contained in a VSD circular. An issuer may voluntarily include an accountants' report on the financial information in its circular. In this case, it must comply with Chapter 4 of the Rules.
15. The following table sets out the major differences between the current Rule and the proposed Rule:

	<i>Current Rule</i>	<i>Proposed Rule</i>	
		<i>Option (a)</i>	<i>Option (b)</i>
Financial information disclosure	Issuer group (with separate disclosure on the Disposal Target in a note)	Issuer group (with separate disclosure on the Disposal Target in a note)	Disposal Target
Reporting/review standards	An accountant report prepared under Auditing Guidelines – Prospectuses and the Reporting Accountants (Statement 3.340) issued by the Hong Kong Institute of Certified Public Accountants (HKICPA). The reporting accountants are to give an opinion as to whether the financial information gives a true and fair view.	A review of the financial information to provide a moderate level of assurance. This review is to be conducted according to the relevant standards published by HKICPA or the International Auditing and Assurance Standards Board of the International Federation of Accountants (IAASB). The auditors or reporting accountants are to give an opinion as to whether the information subject to review is free from material misstatement. This is expressed in the form of negative assurance.	

	<i>Current Rule</i>	<i>Proposed Rule</i>	
		<i>Option (a)</i>	<i>Option (b)</i>
Content requirement	<p>A complete set of the issuer group's financial statements (containing at least information required under Chapter 4 and Appendix 16 of the Rules, and HKAS 1), with separate disclosure on the Disposal Target.</p> <p>There is no specific content requirement in the Rules for the separate disclosure on the Disposal Target.</p> <p>In practice, the issuer group's financial information includes a note on the Disposal Target's information included in the issuer group's</p> <ul style="list-style-type: none"> - balance sheet; - income statement; and - cash flow statement. <p>This financial information is required to prepare pro forma financial information of the remaining group.</p> <p>In some cases, the note also includes:</p> <ul style="list-style-type: none"> - the Disposal Target's statement on changes in equity; and - explanatory notes to the Disposal Target's financial information. 	<p>The issuer group's financial information comprising</p> <ul style="list-style-type: none"> - balance sheet; - income statement; - cash flow statement; - statement on changes in equity; and - any explanatory notes that the directors consider necessary for a reasonable appreciation of the results, with separate disclosure on the Disposal Target. <p>For the separate disclosure on the Disposal Target, we expect that issuers would follow the existing practice to include at least the Disposal Target's information included in the issuer group's</p> <ul style="list-style-type: none"> - balance sheet; - income statement; and - cash flow statement. 	<p>The Disposal Target's financial information comprising</p> <ul style="list-style-type: none"> - balance sheet; - income statement; - cash flow statement; - statement on changes in equity; and - any explanatory notes that the directors consider necessary for a reasonable appreciation of the results. <p>The proposed disclosure on the Disposal Target is in line with the existing practice plus a statement on changes in equity and explanatory notes where necessary.</p>

16. Most respondents agreed with the proposed financial information disclosure requirements. They also agreed with our proposal to relax the review standards for the financial information. Some respondents made specific comments and proposed that the Rule set out the accounting standards for financial reporting and the review of financial information. Some respondents also commented there were too many options, which might be confusing.
17. Following the consultation period, we have conducted soft consultations and sought further views from the respondents on these issues.

(I) – Standards for preparation and review of the financial information

Comments received

18. Some respondents considered that the proposed Rule should have greater clarity on the level of detail required for the financial information. It should set out the minimum content requirement. Allowing directors to decide what explanatory notes should be included would create inconsistency as different issuers would provide different sets of financial information. There should be a framework to facilitate the auditors or reporting accountants to review the financial information and form the basis of their review opinion. They suggested that the proposed Rule make reference to the accounting standard on interim financial reporting issued by HKICPA or the International Accounting Standards Board (**IASB**)¹, or alternatively, the Exchange should specify the content required for the financial information.
19. For the review of financial information, the respondents also suggested adopting the standard published by HKICPA or IAASB on engagement to review financial information.

Our response

20. The minimum content required under HKAS / IAS 34 is similar to our proposal except that the accounting standard specifies the explanatory notes required to be disclosed if they are material. The explanatory notes assist readers to understand the financial statements and form part of a complete set of financial statements. Based on our soft consultation, we understand that these explanatory notes are voluminous.

¹ Currently “Accounting Standard 34 – Interim Financial Reporting” issued by HKICPA or IASB. Under HKAS 34, an interim financial report should include at a minimum the following components:

- (i) a condensed statement of financial position;
- (ii) a condensed statement of comprehensive income ;
- (iii) a condensed statement of changes in equity;
- (iv) a condensed statement of cash flows; and
- (v) selected explanatory notes (as required under paragraph 16 of the standard). They include, for example, a statement that the same accounting policies are followed as compared with the most recent annual financial statements or a description of the nature and effect of the change if those policies have been changed; segment revenue and segment results for business segments or geographical segments, etc.

21. Some respondents questioned the added value of disclosing these explanatory notes in a disposal, given that shareholders would be concerned with the impact of the disposal on the remaining issuer group, which would be served by the pro forma financial information of the remaining group and the key financial statements of the Disposal Target.
22. We agree with these respondents' comments. The proposed Rule should require key financial statements of the Disposal Target which, together with the pro forma financial information of the remaining group, would be sufficient for shareholders to evaluate the financial effect of the disposal on the issuer group. This is in line with the level of financial information disclosure on the Disposal Target required under the current Rules. We also note that under the UK listing rules, a circular for a class 1 disposal² contains the Disposal Target's balance sheet and income statement only and not the explanatory notes.
23. We therefore decided to modify our proposal and set out the minimum financial information disclosure to include the four major statements (i.e. a balance sheet, an income statement, a cash flow statement and a statement on changes in equity). While the revised proposal would not specifically require disclosure of any explanatory notes, issuers would still need to comply with the general disclosure principle under Rule 2.13³.
24. For the review standard, the market generally supported the proposal to require a review of the financial information similar to that for interim results. We have set out in the Rule for VSDs that the review should be conducted according to the relevant standards published by HKICPA or IAASB, and the circular must contain a statement that the financial information has been reviewed by the issuer's auditors or reporting accountants and details of any qualifications or modifications in the review report. Issuers should agree with their auditors or reporting accountants on the scope of the review and provide any records and information requested by them in connection with the review.

² Under the UK listing rules, disposal transactions are classified as a Class 1, Class 2 and Class 3 transaction. A Class 1 transaction refers to a transaction where any percentage ratio is 25% or more and is subject to shareholders' approval. A Class 1 transaction is therefore equivalent to a major transaction, a very substantial acquisition or a very substantial disposal under Chapter 14 of the Rules.

³ Under Rule 2.13, the information contained in an issuer's document must be accurate and complete in all material respects and not be misleading or deceptive. In particular, the issuer must not omit material facts of an unfavourable nature or fail to accord them with appropriate significance.

(II) - Options available

Comments received

25. Some respondents noted that the proposal would effectively result in four options, i.e. financial information of either:

- (a) the issuer group with the Disposal Target shown separately in a note (as in the current Rule); or
- (b) the Disposal Target.

The issuer may either:

- (i) have the financial information reviewed by the auditors or reporting accountants; or
- (ii) provide an accountants' report on the financial information.

26. They commented that the proposed options may create confusion for issuers and readers of the financial information and asked whether some options may be eliminated.

27. Since the 3-year financial information of the issuer group (i.e. option (a)) had been subject to annual audits, one accounting firm questioned the applicability of a review report (i.e. option (i)) on the same set of financial information which provides a lower level of assurance. It also suggested removing option (a) altogether since the relevant financial information in a disposal is the financial information on the Disposal Target and not the issuer group.

28. Another respondent agreed with keeping option (a). An issuer may prefer option (a) when the issuer has not maintained separate books and records for the Disposal Target. For example, where the VSD involves a disposal of part of the issuer's businesses.

Our response

29. We decided to retain option (a) as there may be circumstances where issuers may prefer this option. For example, when the Disposal Target is not a separate legal entity, it may be more practical and cost effective to prepare the issuer group's accounts with a note disclosure on the Disposal Target under option (a). Issues such as cost allocations between the issuer group and the Disposal Target may make it difficult to present a separate set of financial statements of the Disposal Target.

30. We note the respondent's comments on option (a)(i) (i.e. giving a review opinion on the issuer group's financial information). We understand this may be a perception issue as readers may question why a lower level of assurance is given after an opinion with a higher level of assurance had been issued. As this is not a commonly shared concern, we have decided to retain this option. Individual issuers wishing to apply this option may discuss it with their auditors or reporting accountants.

(III) – Alternative disclosure for disposals of associates or investments

31. We note from respondents' comments that where the Disposal Target is an associate or investment of an issuer, there may be circumstances where the issuer would not have access to the books and records of the Disposal Target and cannot prepare the financial statements. Under current Rules an issuer would provide limited information in the explanatory note to its group's financial statements (i.e. line items on the Disposal Target's figures incorporated in the group's balance sheet, income statement and cash flow statement). In these circumstances shareholders normally rely on the pro forma financial information of the remaining issuer group to assess the effect of the disposal.
32. We have modified the Rule for VSDs so that the Exchange may allow an exemption from the financial information disclosure for a Disposal Target that is not consolidated in the issuer's accounts before the disposal. The issuer will still be required to provide the pro forma financial information of its remaining group. This approach is consistent with our current Rules on major acquisitions by issuers of minority interests in companies. In these cases the Exchange may relax the requirement for an accountants' report on the acquisition target. The approach is also consistent with the UK listing rules on class 1 disposals, which do not require financial information of the Disposal Target in similar circumstances.

(IV) Other comments

Comments received

33. Some respondents pointed out that it would be sufficient to reproduce the Disposal Target's audited accounts in the VSD circular if they are available. A respondent also suggested accepting the Disposal Target's accounting policies adopted under its local accounting standards. It considered that in a VSD (as opposed to an acquisition) the Disposal Target's most updated information should suffice and suggested shortening the reporting period, say to 2 years and where applicable a stub period, for the Disposal Target's financial information in a VSD circular.

Our response

34. As the Disposal Target's audited accounts may not be prepared under accounting policies (including accounting standards and disclosures) consistent with the issuer, we believe a general relaxation to allow the reproduction of these audited accounts in a VSD circular is inappropriate. We will consider granting waivers in individual circumstances.
35. The respondents' suggestions to further relax the financial disclosure requirements will be considered in a separate exercise as part of our continuing initiatives to improve the disclosure standards in circulars and listing documents.

(2) Reporting period of accountants' report in major acquisition or very substantial acquisition circular (Consultation Questions 4 to 5)

36. For a very substantial acquisition or a major transaction involving acquisition of a business or company (the **Target**), we proposed to amend the requirement in Rule 4.06 which requires the reporting period to cover the results of each of the three financial years immediately before the circular date. Under the current Rule the latest financial year in the reporting period must be the financial year ended immediately preceding the issue of the circular. It is possible that the accounts for this period are not available, for example, the December 31, 2009 accounts may not be available in March 2010, when the circular is issued. The proposed Rule will remove this requirement for the accounts of the latest financial year (i.e. December 31, 2009), provided that the reporting period must end not more than 6 months before the circular date. In this example, the report period may include the years ended December 31, 2006, 2007 and 2008 plus a stub period ended September 30, 2009.

Comments received

37. An overwhelming majority of the respondents agreed with our proposal.

Our response

38. We will proceed with the proposed amendments.

(3) Indebtedness statement in a notifiable transaction circular (Consultation Question 6)

39. In the consultation paper, we sought market views on whether the requirement for disclosing an indebtedness statement in a notifiable transaction circular should be retained.

Comments received

40. The respondents' views are divided. Of the 32 respondents replying to this consultation, 13 respondents agreed to retain the requirement, 17 supported a removal and 2 were neutral.
41. Some respondents who supported the retention of the requirements commented that an indebtedness statement provides shareholders with up-to-date quantitative information about an issuer group's indebtedness position, liquidity and/or financial resources which are useful for shareholders' assessment of the impact of a proposed transaction. One respondent commented that the preparation of an indebtedness statement is not costly and should not cause delay in the publication of circular.
42. Respondents who supported a removal of the indebtedness statement requirements commented that an indebtedness statement serves little purpose. Some commented that the information in an indebtedness statement has already been reflected in the working capital statement and/or the statement of no material adverse change. If an issuer group's indebtedness is materially different from those in the published financial information, the directors will have to consider making an appropriate qualification to the no material adverse change statement.

Our response

43. As stated in the consultation paper, we do not have a strong view on removing the disclosure requirement for indebtedness statements. Given the divided responses, and the substantial number of respondents who considered the information useful, we consider it appropriate to retain the indebtedness statement.

(4) Working capital statement in a notifiable transaction circular (Consultation Questions 7 to 8)

44. Rule 14.66(10) requires a circular for a major (or above) transaction to contain a working capital statement by the directors referred to in paragraph 30 of Appendix 1B to the Rules. In line with market practice, we proposed to clarify that the working capital statement must take into account the effect of the proposed transaction.

Comments received

45. All respondents supported our proposal.

46. A respondent noted that the proposed clarification has been made to the Rules for major transactions and very substantial acquisitions but not reverse takeovers.
47. Another respondent suggested that in line with common practice and the requirement for IPO listing documents⁴, the Rule should specify that the working capital statement in a notifiable transaction circular covers at least 12 months from the publication date of the circular.

Our response

48. We agreed with the respondents' comments and have revised the Rules accordingly.

(5) Reproducing published financial information in circular or listing document (Consultation Questions 9 to 10)

49. Paragraph 31 of Appendix 1B to the Rules (**Paragraph 31**) refers to disclosure of financial information of the issuer group and/or a company acquired by the issuer contained in documents it published previously. The information must be disclosed in major (or above) acquisition circulars or listing documents (except those relating to capitalisation issue or an exchange or substitution of securities).
50. We proposed to amend the Rules to allow issuers to refer to these published documents in their circulars or listing documents, instead of reproducing the information. These documents must have been published under Rule 2.07C.

Comments received

51. All except one respondent supported the proposal. The opposing respondent commented that the financial information is useful for investors to make decisions and, for convenience sake, should be contained in one document instead of several documents.
52. Of the respondents who supported the proposal, some suggested requiring issuers to specify clearly and prominently in the circulars or listing documents where and how to locate/obtain the published information referred to in Paragraph 31.
53. Another respondent recommended specifying in the Rules the circumstances under which an issuer is not permitted to incorporate by reference. For example, where an issuer wishes to incorporate by reference to published financial information which has been subsequently amended.

⁴ Paragraph 36 of Appendix 1A to the Rules

Our response

54. In response to the comment that all information should be contained in one document, our view is that the information referred to in Paragraph 31 has been published under the Rules and is readily accessible by investors (on both our and the issuer's website). Balancing the costs and benefit of reproducing this information, we will allow issuers to refer in their circulars or listing documents to the published information.
55. The proposed Rule requires information to be incorporated by reference to other documents published under the Rules. Accordingly, we expect the published documents to be clearly identified in the reference. Shareholders and investors can access the information on both our and the issuer's website.
56. The current Rule requires reproduction of published financial information referred to in Paragraph 31. If the published information was subsequently amended, the issuer should also refer to the amended financial information in its circular. If there are exceptional circumstances where incorporation by reference is not permitted, we will deal with these cases individually.

(6) Combined financial information of the enlarged group under paragraph 31(3)(b) of Appendix 1B to the Rules (Consultation Questions 11 to 12)

57. For a major (or very substantial) acquisition circular and a listing document issued by an issuer (except in connection with a capitalisation issue or an exchange or substitution of securities), we proposed to remove the requirement to disclose combined financial information of the enlarged group under paragraph 31(3)(b) of Appendix 1B to the Rules. This requirement conflicts with the disclosure standards for pro forma financial information in issuers' documents under Rule 4.29.

Comments received

58. An overwhelming majority of the respondents supported the proposal.

Our response

59. We will proceed with the proposed amendments.

B. Other disclosure requirements for circular or listing document

(1) Directors' statement on the accuracy and completeness of information in notifiable or connected transaction circular and listing document (Consultation Questions 13 to 14)

60. To align the general disclosure principle under Rule 2.13(2), we proposed to modify the content of the directors' responsibility statement in paragraph 2 of Appendix 1B to the Rules as follows:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.”

Comments received

61. We received support from a large majority of respondents. Of the respondents who opposed, some considered that the proposed additional wording is unnecessary and the existing responsibility statement is already clear and sufficient. One respondent mentioned that directors' liability for making false or misleading statements or misrepresentations has already been dealt with under common law or statutes (e.g. the Securities and Futures Ordinance, the Companies Ordinance, and Misrepresentation Ordinance), and considered that legislation and common law remedies are more appropriate to determine directors' liability.

62. We also received comments on the drafting of the Rule.

- (a) A respondent suggested restricting the directors' responsibility to information relating to the issuer because circulars or listing documents may contain information from public official documents or expert reports which are beyond the directors' knowledge and/or expertise.
- (b) A respondent suggested removing the phrase “or deceptive” from the proposed statement because “deceptive” has a criminal element and whether a piece of information is deceptive should be determined by court.

- (c) Some respondents commented that with the proposed additional confirmation about the accuracy and completeness of information in all material respects, the existing statement that “there are no other facts the omission of which would make any statement misleading” (the **No Omission Statement**) appears unnecessary.
- (d) There are also some other proposed drafting changes to the statement.

Our response

- 63. The purpose of the proposed amendments is to align the directors’ responsibility statement with the disclosure principle under Rule 2.13, i.e. the information in a document issued by an issuer under the Rules must be accurate and complete in all material respects and not misleading or deceptive.
- 64. We disagree with the comment to restrict the directors’ responsibility to information relating to the issuer only. When deciding what information is included and how it is presented in the document, directors must have regard to their responsibility for the accuracy and completeness of the information.
- 65. On the drafting comments, we note a respondent’s comment that the confirmation about the accuracy and completeness of information is, to a certain extent, repetitive of the No Omission Statement. However, we have decided to retain the No Omission Statement as a reminder to directors of their responsibility to ensure that the document has not omitted any matters which would make any part of the document misleading.
- 66. We also consider that directors should take all reasonable steps to ensure the truthfulness of the information. We disagree with the comment to delete the phrase “or deceptive”.
- 67. We have decided to modify the content of the directors’ responsibility statement in the Main Board Rules, and have made drafting amendments in view of the respondents’ comments. The following is the revised statement:

“This document, for which the directors of the issuer collectively and individually accept full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, confirm that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other matters ~~facts~~ the omission of which would make any statement herein or this document misleading.”

68. The general disclosure principle under GEM Rule 17.56 is the same as that in Main Board Rule 2.13. Accordingly, we will align the directors’ responsibility statement in the GEM Rules with the proposed statement in the Main Board Rules.

**(2) Information in board minutes for connected transactions
(Consultation Questions 15 to 16)**

69. Instead of filing to us the board minutes which contains information on whether any directors have a material interest in the transaction and have abstained from voting, we proposed issuers to disclose this information in connected transaction circulars (or if no circular is required under the Rules, announcements).

Comments received

70. All except one respondent supported the proposal. The respondent who opposed commented that the information is the issuer’s internal matter and should not be made public.
71. One respondent suggested extending our proposed amendments to cover the case where the transaction is approved by the directors’ written resolution.

Our response

72. We consider that the information is relevant for shareholders’ consideration and would enhance transparency. In light of market support, we maintain that the proposal is appropriate.
73. We agree that no distinction should be made between the transactions approved at a board meeting or those approved by way of a directors’ written resolution. We have modified the Rule amendment accordingly.

(3) Circular content requirements for a notifiable transaction involving an acquisition and a disposal (Consultation Questions 17 to 18)

74. We proposed to clarify that the circular content requirements for each of the acquisition and the disposal under a transaction should be determined by their respective transaction classification. This addresses market views that the current requirement for both the acquisition and the disposal to comply with the more stringent disclosure requirements by reference to the larger of the acquisition or disposal is unduly burdensome.

Comments received

75. All respondents supported our proposal.

Our response

76. We will proceed with the proposed amendments.

(4) Disclosure in listing documents of listed overseas or PRC issuer regarding provisions in constitutional document and regulatory provisions in the relevant jurisdiction (Consultation Questions 19 to 20)

(5) Additional disclosure requirements for listing documents of PRC issuers (Consultation Questions 21 to 22)

77. In relation to listing documents for subsequent issue of securities by PRC issuers and overseas issuers, we proposed to remove the requirements to:

- (a) disclose provisions in an issuer's constitutional documents and in the relevant statutory/regulatory provisions of its place of incorporation or establishment (Rules 19.10(2) and (3) for overseas issuers and Rules 19A.27(2) and (3) and paragraph 50 of Appendix 1B for PRC issuers); and
- (b) offer inspection of the relevant statutes and regulations (Rule 19.10(6) for overseas issuers and Rule 19A.27(4) for PRC issuers).

78. We also proposed to remove the following disclosure requirements under paragraphs 45, 46, 48 and 49 of Appendix 1B to the Rules for listing documents or subsequent issue of securities by PRC issuers:
- (a) The quorum and voting requirements for shareholders meetings (paragraph 45).
 - (b) A statement of sufficiency of foreign exchange to pay dividend on H shares and to meet foreign exchange liabilities (paragraph 46).
 - (c) Risk factors relating to investments in PRC-incorporated business and the differences in the legal, economic and financial systems between the PRC and Hong Kong and a warning statement thereof (paragraphs 48 and 49).
79. The above proposals do not apply to listing documents issued in connection with an introduction or a deemed new listing.

Comments received

80. All respondents supported the proposal set out in paragraph 77 above.
81. We also received support from an overwhelming majority of respondents on the proposal set out in paragraph 78 above. One respondent who opposed considered it beneficial for shareholders to have updated information on risk factors relating to investment in the PRC and the differences in the legal, economic and financial systems between PRC and Hong Kong which might change from time to time.
82. A respondent to these proposals suggested that issuers should be required to specify clearly and prominently in the relevant listing documents where and how a shareholder/investor can locate this information.

Our response

83. The additional disclosures for PRC issuers were introduced in 1993 and 1994. They aim to highlight differences in circumstances related to PRC issuers. Since these differences are now widely understood, we consider the additional disclosures no longer necessary.
84. The disclosure requirements set out in paragraphs 77 and 78 above are related to general information that is publicly available, is not directly related to the subject matter of the documents and has little relevance to an assessment of the merits of the subject matter. We believe that it is unnecessary to require issuers to specify in the listing documents where and how a shareholder/investor can locate the information.

C. Timing for despatch of circulars

(1) Timing for despatch of notifiable or connected transaction circulars (Consultation Questions 23 to 25)

85. For a notifiable or connected transaction circular (other than information circular), we proposed to:

- (a) remove the requirement to despatch the circular within 21 days after publication of the relevant announcement; and
- (b) require an issuer to:
 - (i) disclose the expected despatch date in the initial announcement of the transaction and if this is more than 15 business days from the initial announcement, the reasons why this is so, and
 - (ii) publish further announcement(s) when there is any delay in despatch with the reasons for the delay.

An issuer is still required under Rules 13.73, 14.41 and 14A.49 to send the circulars when or before it gives notice of the general meeting to approve the transaction.

86. For an information circular, we proposed a housekeeping change to the timing requirement from 21 calendar days to 15 business days after publication of the relevant announcement.

87. The proposals are widely supported by respondents. We set out below the respondents' major comments.

(I) Deadline for despatch of circular

Comments received

88. For notifiable or connected transaction circulars (other than information circulars), there are views that without a deadline for despatch of circular, issuers may be given a free rein to extend the transaction timetable indefinitely. Hence, it was suggested that the deadline be extended (and not removed) to, say 40 business days unless waived by us in specific circumstances.

89. One respondent pointed out that the despatch of an information circular may also be delayed by the requirements to produce financial information and/or expert reports, and suggested removing the 21-day requirement.

Our response

90. We routinely grant waivers to allow an extension of this deadline. In practice, we note that the timing of despatch is governed by the issuer's timetable for seeking shareholder approval to complete the transaction and the availability of the required information.
91. The 21-day requirement is arbitrarily fixed. We believe it is more appropriate for the issuer to consider its circumstances and set a realistic timetable for its proposed despatch date. This will provide shareholders with a more reliable timetable. The issuer will also have to explain the basis for its proposed timetable in the announcement if it is more than 15 business days.
92. We have considered the merits of extending the deadline instead of a disclosure based approach. However, a longer deadline does not address the specific situations of individual issuers. We consider our proposal more appropriate because it enables an issuer to assess its own situation and determine a realistic timetable for the despatch of circulars.
93. We believe a deadline should be retained in the Rules for the despatch of information circulars because without a deadline, issuers may have little incentive to timely despatch the circular. We do not propose to extend the deadline. However, we will continue to grant waivers on a case by case basis.

(II) Business days vs. calendar days

Comments received

94. We received a suggestion that in the interest of issuers listed in both Hong Kong and PRC, "business day" should mean the day on which the Hong Kong and PRC stock exchanges are open for business for a full day. Another respondent commented that as public holidays in the PRC differ from those in Hong Kong, using calendar days is more convenient for PRC issuers.

Our responses

95. “Business day” is defined in the Rules to mean any day on which the Exchange is open for the business of securities dealing. We consider it is appropriate to use business day as it provides a common reference point for all issuers listed on the Exchange.

(III) Other comments

Comments received

96. A respondent raised an issue on the despatch of circulars by PRC issuers. Rules 13.73, 14.41 and 14A.20 require a circular to be despatched when or before the issuer gives notice of general meeting to approve the transaction. A listed PRC issuer is required under the Mandatory Provisions for Companies Listing Overseas (**Mandatory Provisions**) to give not less than 45 days’ notice of any general meeting. This means that a PRC issuer is required to issue its circular about one month earlier than a non-PRC issuer⁵. This longer notice period subjects PRC issuers to unnecessary market risks. Fluid information contained in a circular such as the indebtedness statement could potentially be three months old by the time the shareholders cast a vote on the resolution.
97. The respondent noted that some PRC issuers were granted waivers from the Rules and despatched their circulars after the notice of general meeting had been issued. It suggested that the Exchange give written guidance on the circumstances and criteria for such waivers.

Our response

98. The minimum notice period for calling a general meeting is regulated by provisions in the relevant company law and where applicable, the issuer’s articles of association. The notice period required under the Mandatory Provisions has not been amended since changes were made to the PRC Company Law in January 2006⁶. Because of the long notice period under the Mandatory Provisions, some PRC issuers face practical difficulty in despatching their circulars when or before they issue the notice of general meeting. We have granted individual waivers to some PRC issuers to allow circulars to be despatched after it gave notice of the

⁵ Under the Code on Corporate Governance in the Rules, an issuer is recommended to give not less than 20 clear business days’ notice for annual general meetings and not less than 10 clear business days’ notice for all other general meetings.

⁶ Following the amendments to the PRC Company Law in January 2006, a Mainland incorporated company is required to issue a notice of general meeting 20 days before the meeting or 15 days for a special general meeting.

general meeting. These waivers were granted on the basis that the issuer despatched the circular well in advance of the date of the general meeting.

99. We have decided to codify the waiver practice in new Rules 19A.39A and 19A.39B and require PRC issuers to despatch circulars on or before the deadline for giving notice of general meeting under the PRC Company Law.

(2) Timing for despatch of supplementary circulars (Consultation Questions 26 to 28)

100. We proposed to amend the minimum timing requirement for the despatch of supplementary circular from 14 calendar days to 10 business days before the relevant general meeting.

Comments received

101. We received an overwhelming support on the proposal from the respondents. One respondent commented that the proposed minimum 10 business day requirement is too long. It mentioned that normally shareholders have 14 calendar days to consider the initial circular; they should not need the same length of time to consider a supplementary circular. It pointed out that 10 business days could be longer than 14 calendar days (particularly in case of a long intervening public holiday). The longer the timing requirement, the greater the commercial/market risk to which the issuer will be exposed. The respondent suggests changing the 14 calendar day requirement to 7 business days since 7 clear day notice is usually required for an adjourned meeting.

Our response

102. The purpose of a supplementary circular is to provide shareholders with material information that has come to the directors' attention after the issue of circular. The 14 calendar day (or 10 business day) requirement seeks to ensure that shareholders would have sufficient time to consider the information and make an informed decision. We do not propose to shorten this period.
103. In light of market support and the reason for the proposal, we maintain that the 10 business day requirement is reasonable.

OTHER COMMENTS RECEIVED

104. We invited respondents to give comments on circular and listing document requirements and received valuable comments. Their comments cover financial disclosure requirements for major (or above) acquisitions of revenue generating assets with an identifiable income stream, disclosure requirements for circulars regarding directors' and chief executives' interests in issuers and associated corporations, and the requirements for disclosure on material contracts and document inspection. We will deal with these comments in separate exercises as part of our continuing initiatives to improve the disclosure standards in circulars and listing documents.

CONSULTATION CONCLUSIONS

105. Except for certain changes as discussed above, we have adopted our proposals and the Main Board Rule amendments largely as those proposed in the Consultation Paper.
106. We have also amended the GEM Rules in line with the changes to the Main Board Rules.

- End -

APPENDIX LIST OF RESPONDENTS

Listed issuers

1. Cathay Pacific Airways Limited
2. Cheung Kong (Holdings) Limited
3. Cheung Kong Infrastructure Holdings Limited
4. CK Life Sciences Int'l., (Holdings) Inc.
5. CLP Holdings Limited
6. Hong Kong Aircraft Engineering Company Limited
7. Hutchison Whampoa Limited
8. Swire Pacific Limited
9. to 19. 11 Main Board issuers (*name not disclosed at the respondents' request*)

Professional and industry associations

20. ACCA Hong Kong
21. Hong Kong Institute of Certified Public Accountants
22. The Chamber of Hong Kong Listed Companies
23. The Hong Kong Institute of Chartered Secretaries

Market practitioners

24. SBI E2-Capital (HK) Limited
25. Baker & McKenzie LLP
26. Latham & Watkins
27. Linklaters
28. P. C. Woo & Co.
29. Ernst & Young
30. PricewaterhouseCoopers
31. Accounting Firm (*name not disclosed at the respondents' request*)

Individuals and retail investor representatives

32. Suen Chi Wai
33. and 34. 2 individuals (*name not disclosed at the respondents' request*)(*Note*)

Note:

One individual elected not to have his submission published

