CONSULTATION CONCLUSIONS

ON REVIEW OF THE CORPORATE GOVERNANCE CODE AND ASSOCIATED LISTING RULES

October 2011

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

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CHAPTER 1: INTRODUCTION

1. In December 2010, 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 Review of the Code on Corporate Governance Practices and Associated Listing Rules" (**Consultation Paper**).

2. The Code on Corporate Governance Practices, renamed the Corporate Governance Code (**Code**), forms Appendix 14 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Main Board Rules**) and Appendix 15 of the Rules Governing the Listing of Securities on the Growth Enterprise Market (**GEM Rules**), (together referred to as the **Listing Rules** or **Rules**). The Code sets out (a) principles of good corporate governance; (b) code provisions (**CPs**); and (c) recommended best practices (**RBPs**). Issuers have the flexibility to comply with CPs or, if they do not, explain the reasons for this decision in their Corporate Governance Report. Issuers are encouraged, but not required, to state if they have adopted RBPs.

3. This paper presents the results of the consultation.

4. The consultation period ended on 18 March 2011. The Exchange received a total of 118 submissions from respondents including issuers, market practitioners, professional and industry associations, institutional investors and individuals. Chapter II of this paper includes a breakdown of the categories of respondents and an overview of the responses. All except one of the submissions are available on the HKEx website[1] and a list of respondents forms Appendix I.

5. Given the broad market support, we will adopt most of the proposals outlined in the Consultation Paper, with certain modifications set out in this paper.

6. Chapter III of this paper summarises the key points made by respondents on the proposals and our conclusions. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEx website. We also received valuable comments on the Code and other corporate governance related Rules which were not covered in the consultation. These comments will be considered at future reviews.

7. We have finalised the revised Rules and Code to implement the detailed proposals. These are available on the HKEx website at "Rules & Regulations – Rules and Guidance on Listing Matters – The Rules and Procedures – Rule Updates – Amendments to Main Board Listing Rules" and "Rules & Regulations – Rules and Guidance on Listing Matters – The Rules and Procedures – Rule Updates – Amendments to GEM Listing Rules". The Rules and Code amendments have been approved by the Board of the Exchange and the Securities and Futures Commission (**SFC**).

[1] http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2010124r.htm

8. The Rule and Code amendments referred to in this paper apply to both Main Board Rules and GEM Rules. While the discussion in this paper will focus on Main Board Rules, the discussion applies equally to GEM Rules.

9. We would like to thank all those that responded to this consultation for sharing their views and suggestions with us.

Our approach to corporate governance

10. To provide a sound regulatory framework appropriate for our market and maintain a high standard of corporate governance, our approach is to adopt a combination of Rules, CPs and RBPs. This combination is designed to give flexibility to issuers and to protect investors and the integrity of the market.

Rules - where the required standard of corporate governance is mandatory for all issuers and breaches may lead to sanctions.

CPs - where an issuer is allowed the flexibility to either adopt or if it does not, explain the reasons for its decision in the Corporate Governance Report. This is known as the "comply or explain" principle. If the issuer does not comply with the CP, it is not a breach of the Rules and there is no sanction.

RBPs - where the standard of corporate governance is set by specifying desirable best practices and an issuer is encouraged to comply. If it does not comply, an issuer does not need to explain.

11. Most of our changes are CPs, whilst Rules and RBPs only form a small percentage.

12. The feedback from some respondents indicated that they did not fully appreciate the "comply or explain" principle. Some appeared to think of CPs and/or RBPs as mandatory requirements.

13. We do not expect issuers to treat CPs and RBPs as Rules. The main rationale for adopting CPs and RBPs instead of Rules is that it is not possible to define good corporate governance in all circumstances. The best approach for one issuer may not be suitable for another. We believe every issuer should carefully consider the corporate governance practice that best suits it and explain this choice in its Corporate Governance Report.

What is "comply or explain"?

14. We have therefore included a new section in the Code introduction to clarify the purpose of CPs and RBPs:

*"**What is "comply or explain"?***

The Code sets out a number of "principles" followed by code provisions and recommended best practices. It is important to recognise that the code provisions and recommended best practices are not mandatory rules. The Exchange does not

envisage a "one size fits all" approach. Deviations from code provisions are acceptable if the issuer considers there are more suitable ways for it to comply with the principles.

Therefore the Code permits greater flexibility than the rules, reflecting that it is impractical to define in detail the behaviour necessary from all issuers to achieve good corporate governance. To avoid "box ticking", issuers must consider their own individual circumstances, the size and complexity of their operations and the nature of the risks and challenges they face. Where an issuer considers a more suitable alternative to a code provision exists, it should adopt it and give reasons. However, the issuer must explain to its shareholders why good corporate governance was achieved by means other than strict compliance with the code provision.

Shareholders should not consider departures from code provisions and recommended best practices as breaches. They should carefully consider and evaluate explanations given by issuers in the "comply or explain" process, taking into account the purpose of good corporate governance.

An informed, constructive dialogue between issuers and shareholders is important to improving corporate governance."

Implementation dates

15. The implementation dates are:

- most Rule amendments will be effective on 1 January 2012;
- Code and certain Rules will be effective on 1 April 2012;
- new Rule requiring the issuer to appoint independent non-executive directors (**INEDs**) representing at least one-third of the board must be complied with by 31 December 2012; and
- new Rule requiring company secretary training will be staggered according to the date of appointment of an individual as company secretary of an issuer.

16. In its first interim/half year or annual report covering a period after 1 April 2012, the issuer must state, in that report, whether it has, for that period, complied with the CPs in the revised Code as well as with the former Code. Issuers may adopt the revised Code at an earlier date than 1 April 2012. A summary of the Rules and Code adopted and their implementation dates are set out in paragraph 20.

CHAPTER 2: OVERVIEW OF MARKET RESPONSE

The respondents

17. The 118 respondents can be grouped into broad categories as follows:

Category	No. of respondents
Issuers	67
Market practitioners	14
Individuals	15
Professional and industry associations	8
Institutional investors	3
Others	11
Total	118

18. A list of the respondents forms Appendix I. Except for one respondent who requested the Exchange not to publish its submission, the full text of all the submissions is available on the HKEx website[2].

Overview of the responses

19. A majority of respondents supported most of the proposals. Where appropriate, we amended or decided not to adopt certain proposals to reflect respondents' strong concerns.

20. A summary of the proposals adopted and their implementation dates are set out below. Except for the Rules and Code amendments specified below, all other Rule amendments will be effective on 1 January 2012 and all other Code amendments will be effective on 1 April 2012.

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
1.	Directors' duties **Main Board Rule (MB R) 3.08, GEM Rule (GEM R) 5.01**	Expanded Rule 3.08 to emphasise directors' duties. The Rule now requires directors to take an active interest in the issuer's affairs and obtain a general understanding of its business and follow up anything untoward that comes to their attention. Delegating their functions is permissible but does not absolve them from their responsibilities or from	*1 January 2012*

[2] http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2010124r.htm

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
		applying the required levels of skill, care and diligence. It also cautions that directors failing to discharge their duties and responsibilities may be disciplined by the Exchange and may attract civil and/or criminal liabilities. Introduced a Note to Rule 3.08 providing guidance to directors referencing the Companies Registry's "A Guide on Directors' Duties" and the Hong Kong Institute of Directors' guidelines for directors.	
2.	Directors' time commitments **Code[3]: A.1 Principle, new CP A.6.6**	Introduced a new Principle in the Code that the board should regularly review the contribution by a director to performing his responsibilities to the issuer, and whether he is spending sufficient time performing them. Also amended the Code to include a CP that directors should inform the issuer of any change to their significant commitments in a timely manner.	*1 April 2012*
3.	Directors' training **New CP A.6.5, and new mandatory disclosure requirement under Paragraph I(i) of the Code**	Revised and upgraded an RBP to a CP on directors' training. Also introduced a Note to the CP stating that directors should provide records of training they received to issuers. Introduced a requirement that the issuer must disclose in its Corporate Governance Report how directors complied with the CP on training.	*1 April 2012*
4.	INEDs to form one-third of board **MB Rs 3.10A and 3.11, GEM Rs 5.05A and 5.06**	Introduced a Rule that at least one-third of an issuer's board should be independent non-executive directors (**INEDs**). Issuers must comply with the Rule by 31 December 2012. Also introduced a Rule to allow an issuer a three-month period to appoint a sufficient number of INEDs to comply with the one-third Rule after failing to meet the requirement.	*By 31 December 2012*
5.	An INED who has served nine years **New CP A.4.3**	Upgraded to a CP the RBP recommending shareholders vote on a separate resolution to retain an INED who has served on the board for more than nine years. Also, an issuer should include the reasons why the board considers the INED	*1 April 2012*

[3] Although the wording of the Main Board Code (Appendix 14) and the GEM Code (Appendix 15) are not identical, the paragraph numberings in both Codes are the same.

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
		independent in the circular nominating him for election.	
6.	Board committees		
	A. Remuneration committee **MB Rs 3.25 to 3.27, GEM Rs 5.34 to 5.36, new CPs B.1.1 to B.1.4 and RBPs B.1.6 to B.1.8, new mandatory disclosure requirement under Paragraph L(d)(i) of the Code**	Introduced new Rules, requiring: (i) issuers to establish a remuneration committee with a majority of INED members; (ii) an INED as chairman of remuneration committee; (iii) written terms of reference for the remuneration committee; (iv) an issuer that fails to comply with these Rules to immediately announce its reasons for not doing so and any other relevant details. The issuer will have a three- month period to rectify its non-compliance; and (v) the remuneration committee to disclose in the Corporate Governance Report which of the two models it has adopted. Amended the CPs to: (i) state that professional advice made available to a remuneration committee should be independent; (ii) accommodate a model where the remuneration committee performs an advisory role to the board, with the board retaining the final authority to approve executive directors' and senior management's remuneration; (iii) remove the term "performance-based" from the CP describing executive directors' and senior management's remuneration; and (iv) make the remuneration committee's terms of reference available on both the issuer's and the HKEx websites.	*1 April 2012*
	B. Nomination committee **New CPs A.5.1 to A.5.5, new mandatory disclosure requirement under**	Upgraded RBPs to CPs (with some amendments) to enhance the nomination committee's role. These CPs state that an issuer should: (i) establish a nomination committee with a majority of INEDs, chaired by an INED or the board chairman;	*1 April 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
	Paragraph L(d)(ii) of the Code	(ii) establish a nomination committee with written terms of reference that performs the duties described; (iii) include, as one of the nomination committee's duties, a review of the structure, size and composition of the board at least annually to complement the issuer's corporate strategy; (iv) make the nomination committee's terms of reference available on both the issuer's and the HKEx websites; (v) ensure a nomination committee has sufficient resources; and (vi) enable a nomination committee to seek independent professional advice at the issuer's expense.	
	C. Corporate governance functions **New CPs D.3.1 and D.3.2, new mandatory disclosure requirement under Paragraph L(d)(iii) of the Code**	Introduced a new CP stating that the board should be responsible for corporate governance. Also introduced new CPs stating that an issuer should establish terms of reference on duties that should be performed by the board or committees delegated by the board. Introduced a new Rule requiring issuers to disclose the corporate governance policy and duties performed in the Corporate Governance Report.	*1 April 2012*
	D. Audit committee **New CPs C.3.7 and C.3.3(e)(i), and RBP C.3.8. New mandatory disclosure requirement under Paragraph L(d)(iv) of the Code**	Upgraded to a CP the RBP stating that an audit committee's terms of reference should include arrangements for employees to raise concerns about financial reporting improprieties. Amended the relevant CP to state that an audit committee should meet the external auditor at least twice a year. Introduced a new RBP recommending the audit committee establish a whistleblowing policy and system.	*1 April 2012*
7.	Disclosure of senior management remuneration by band **New CP B.1.5**	Introduced a CP stating that senior management remuneration should be disclosed by band.	*1 April 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
8.	Disclosure of chief executive's remuneration **MB R Paragraph 24.5 of Appendix 16, GEM R Note 6 to 18.28**	Amended the Rules to require issuers to disclose the remuneration of a chief executive who is not a director.	*1 January 2012*
9.	Board evaluation **New RBP B.1.9**	Introduced an RBP recommending the board to conduct a regular evaluation of its performance.	*1 April 2012*
10.	Board meetings		
	A. Directors' attendance at board meetings **New CP A.1.7, new mandatory disclosure requirement under Paragraph I(c) of the Code**	Clarified that, subject to the issuer's constitutional documents and the laws and regulations of its place of incorporation, it may count attendance by electronic means (including telephonic or video-conferencing) as attendance at a physical board meeting.	*1 April 2012*
	B. Removing 5% threshold for voting on a resolution in which a director has an interest **MB R 13.44, GEM R 17.48A**	Amended the Rules to remove the 5% exemption for voting by a director on a board resolution in which he has an interest.	*1 January 2012*
11.	Chairman and chief executive **New CPs A.2.4 to A.2.9**	Upgraded all the RBPs in A.2 of the Code to CPs with minor amendments. The CPs place greater emphasis on the roles and responsibilities of the chairman.	*1 April 2012*
12.	Notifying directorship change and disclosure of directors' information (including the chief executive)	Amended the Rules to require issuers to: (i) disclose information on the retirement or removal of a director or supervisor; (ii) disclose information on the appointment, resignation, re-designation, retirement or removal of a chief executive; (iii) disclose director's information on all civil judgments of fraud, breach of duty, or other	*1 January 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
	MB R 13.51, GEM R 17.50, new CP A.3.2	misconduct involving dishonesty; and (iv) clarify that the sanctions referred to in Rule 13.51B(3)(c) are those made against the issuer.	
		Also upgraded the RBP to a CP stating that a list of directors should be published on the issuer's website and added that it should also be published on the HKEx website.	*1 April 2012*
13.	Providing monthly information to board members to enable them to discharge their duties **New CP C.1.2**	Introduced a CP stating that management should provide monthly updates to board members giving a balanced and understandable assessment of the issuer's performance, position and prospects in sufficient detail to enable them to discharge their duties under Rule 3.08 and Chapter 13. Added a Note stating that the monthly updates may include information such as monthly management accounts and management updates. The Note was moved from CP A.6.2 (re-numbered A.7.2) and revised.	*1 April 2012*
14.	Next day disclosure for a director of the issuer's subsidiaries exercising an option for shares in the issuer **MB R 13.25A, GEM R 17.27A**	Amended the Rules to remove the requirement for issuers to publish a Next Day Disclosure Form following the exercise of an option for shares in the issuer by a director of its subsidiaries. Amended the Rules so that options for shares in the issuer exercised by a director of a subsidiary only triggers an announcement if the change in its share capital, individually or when aggregated with other events, is 5% or more since its last Monthly Return.	*1 January 2012*
15.	Disclosing long term basis on which an issuer generates or preserves business value **New CP C.1.4**	Introduced a CP stating that the annual report should include an explanation of the basis on which the company generates or preserves value over the longer term and the strategy for delivering the objectives of the company.	*1 April 2012*
16.	Directors' insurance **New CP A.1.8**	Upgraded to a CP the RBP stating that an issuer should arrange appropriate insurance cover for directors.	*1 April 2012*
17.	Shareholders' general meetings		

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
	A. Notice of meeting and bundling of resolutions **New CP E.1.1**	Clarified that issuers should avoid "bundling" resolutions and, where they are "bundled", explain the reasons and material implications in the notice of meeting.	*1 April 2012*
	B. Voting by poll **MB R 13.39(4) and (5), GEM R 17.47(4) and (5)**	<u>Exception for procedural and administrative matters</u> Amended the Rules to allow a chairman at a general meeting to exempt certain prescribed procedural and administrative matters from a vote by poll. <u>Clarification of disclosure in poll results</u> Amended the Rules to clarify the disclosure requirements regarding poll results. <u>Timing of explanation of polling procedures</u> Deleted the words "at the commencement of the meeting" from the CP that states when an explanation for the detailed procedures should be given.	*1 January 2012* *(For meetings held on or after 1 January 2012)*
	C. Shareholders' approval to appoint and remove an auditor **MB R 13.88, GEM R 17.100**	Introduced a new Rule to require shareholders' approval at a general meeting of any proposal to appoint or remove an auditor before the term of his office. The Rule requires the issuer to send a circular containing any written representation from the auditor to shareholders and the auditor must be allowed to make a written and/or verbal representation at the general meeting to remove him.	*1 January 2012*
	D. Directors' attendance at meetings **New CPs A.6.7 and A.6.8, new mandatory disclosure requirement under Paragraph (I)(c) of the Code**	Upgraded to a CP the RBP stating that non-executive directors, including INEDs, should attend board, committee and general meetings and contribute to the issuer's strategy and policies. Introduced a requirement that issuers must disclose details of the attendance at general meetings of each director by name in its Corporate Governance Report. Also revised the CP on attendance at the annual	*1 April 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
	New CP E.1.2	general meeting (**AGM**) of the chairman of the board and the chairmen of the audit, remuneration and nomination committees to include chairmen of "any other committees".	
	E. Auditor's attendance at AGMs **New CP E.1.2**	Introduced a CP stating that the issuer's management should ensure the external auditors attend the AGM to answer questions about the conduct of the audit, the preparation and content of the auditors' report, accounting policies and auditor independence.	*1 April 2012*
18.	Shareholders' rights **New mandatory disclosure requirements under Paragraph O of the Code**	An issuer must disclose the following "shareholder rights" information in its Corporate Governance Report that was previously a recommended disclosure: (i) the way in which shareholders can convene an extraordinary general meeting; (ii) the procedures for sending enquiries to the board (with sufficient contact details); and (iii) the procedures for making proposals at shareholders' meetings (with sufficient contact details).	*1 April 2012*
19.	Communication with shareholders		
	A. Establishing a communication policy **New CP E.1.4**	Introduced a CP stating that issuers should establish a shareholder communication policy.	*1 April 2012*
	B. Publishing constitutional documents on website **MB R 13.90, GEM R 17.102**	Introduced a Rule requiring an issuer to publish an updated and consolidated version of its constitutional documents on its own website and the HKEx website.	*1 April 2012*
	C. Publishing procedures for election of directors **MB R 13.51D, GEM R 17.50C**	Introduced a Rule requiring an issuer to publish on its website the procedures shareholders can use to propose a person for election as a director.	*1 April 2012*
	D. Disclosing significant	An issuer must disclose any significant change to the issuer's constitutional documents during the	*1 April 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
	changes to constitutional documents **New mandatory disclosure requirement under Paragraph P of the Code**	year in its Corporate Governance Report. Previously this was a recommended disclosure.	
20.	Company secretary's qualifications, experience and training **MB Rs 3.28, 3.29, and 19A.16, GEM Rs 5.14, 5.15 and 25.11**	Moved the company secretary's qualifications and experience requirements from Rule 8.17 to a new section in Chapter 3. Set out in a Note to the Rule the academic or professional qualifications that the Exchange would consider acceptable. They include a member of Hong Kong Institute of Chartered Secretaries, a lawyer or an accountant. Also clarified in a Note the factors the Exchange would consider in assessing "relevant experience". These include the length of employment with an issuer, training received, familiarity with the Rules and relevant laws, and qualifications in other jurisdictions. Removed the requirement for a company secretary to be ordinarily resident in Hong Kong. Repealed Rule 19A.16 to make the requirements for company secretaries of Mainland issuers the same as for other issuers. Introduced a Rule requiring company secretaries to have 15 hours' professional training in a financial year. Provided transitional arrangements for implementing this Rule.	*1 January 2012* *(Except for company secretary training which has specified implementation dates)*
21.	New section in Code on Company Secretary **New Section F of the Code**	Introduced a new section to the Code (Section F) setting out the role and responsibilities of a company secretary. Introduced new CPs to this section stating that: (i) the company secretary should be an employee of the issuer. If the issuer engages an external service provider, it should disclose the identity of the person with	*1 April 2012*

	Subject and Relevant Rules/Code	Summary of the Proposals Adopted	Implementation Date
		sufficient seniority at the issuer for the external provider to contact; (ii) the selection, appointment, or dismissal of the company secretary should be a board decision; (iii) the company secretary should report to the board chairman and/or the chief executive; and (iv) all directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable laws, rules and regulations are followed.	

Significant Issues

Directors' time commitments

21. A majority of respondents, mostly issuers, did not support the proposals on directors' time commitments.

22. Respondents that opposed the proposals said they were over-prescriptive. Many believed it would be difficult to judge how much time a director needed to perform his responsibilities. It would also be difficult to review whether he was spending sufficient time performing them.

23. We note these concerns. Instead of adding a prescriptive provision we revised the Code to add, as a Principle, that the board should regularly review the time required of a director to perform his responsibilities to the issuer and whether he is spending sufficient time performing them. We also introduced a CP that directors inform their board of any change to their significant commitments in a timely manner.

Eight hours training for directors

24. Whilst a majority of respondents were in favour of directors attending training, some were concerned about our proposal that a director completes eight hours of training in a financial year. They argued that the optimal length of training would vary by director, type of company and the company's operations in any given year. So, we should not specify the amount of training a director should complete. We have instead introduced a Rule requiring issuers to disclose in its Corporate Governance Report how directors complied with the CP on training. We have also introduced a Note to the CP on training stating that directors should provide issuers with records of the training they received.

Corporate governance committee

25. We did not receive majority support for several of our corporate governance committee proposals. Respondents opposed to the proposals stated that corporate governance is the responsibility of the whole board and it should not be delegated to a committee.

26. Instead of adopting our proposals, we have added a CP that the board should be responsible for performing the corporate governance duties set out in the terms of reference. Otherwise it may delegate the responsibility to a committee or committees. We also added a new CP setting out the terms of reference for the board's corporate governance functions.

Providing monthly information to board members to enable them to discharge their duties

27. A majority of respondents, mostly issuers, did not support the proposal to provide monthly management accounts or updates to board members. They argued that the CP would be unduly burdensome, especially for conglomerates and their INEDs. They further argued that it may give excessive information to some directors, making it more difficult for them to perform their duties. Many respondents suggested that this information should be given to directors quarterly rather than monthly, while some wanted it to be given on an "as needed" basis. Several respondents were also concerned that receiving monthly updates would prevent directors from trading in the issuers' shares. They consider that monthly management accounts or updates are likely to contain price-sensitive information.

28. Respondents that supported the proposal consider monthly management accounts or updates to be important information and in fact the minimum directors should receive to enable them to discharge their duties and responsibilities. They argued that issuers should have internal control systems in place to enable the monthly information to be generated and provided to directors, and this should not impose much burden on issuers. They also questioned directors' ability to discharge their duties, particularly the duty to monitor the financial affairs of the issuer and disclose price-sensitive information in a timely manner, without monthly management accounts or management updates.

29. The purpose of introducing a CP for issuers to provide monthly updates to board members is to help directors fulfil their duties and responsibilities. The concern that some directors, particularly INEDs and NEDs lacked sufficient information and knowledge of the issuers' affairs to effectively perform their duties and responsibilities is not unfounded. In Exchange disciplinary proceedings, NEDs and INEDs often claimed not to be informed of the issuers' affairs including financial matters. As a result, they were unable to intervene in time when necessary. The consequences of directors failing in their duties to effectively supervise an issuer could be severe, and could include financial losses to investors and damage to the reputation of the issuer and our market.

30. Monthly management accounts or updates need not necessarily contain price-sensitive information. Under normal circumstances, where the issuer's performance is in line

with market expectation based on previous disclosure by the issuer, we consider it unlikely that a director would be precluded from dealing in the issuer's securities merely because he had received a monthly update from management. The information in the monthly updates may be "sensitive" or confidential, in that it may contain matters that the issuer would not want to disclose to external parties. So, one should not equate "sensitive" or confidential with "price-sensitive information".[4] If, however, the update revealed undisclosed price-sensitive information, the director would, of course, be precluded from dealing until the information had been properly disclosed to the market. In any event, the Rules require the issuer to disclose price-sensitive information as soon as reasonably practicable. The new CP would not absolve directors from their obligation to set up adequate systems or processes and procedures to identify price-sensitive information and make relevant disclosures.

31. Against this background we consider that, as a minimum, directors should receive a monthly management update (although not necessarily in the form of management accounts) that gives them a balanced and understandable assessment of the issuer's performance, position and prospects in sufficient detail to enable them to discharge their duties under the Rules.

32. We envisage monthly updates to be in the form of either monthly management accounts or updates. An update may or may not contain financial data. For example, it may be a narrative statement to the effect that the issuer's business is operating as expected, nothing unusual has happened to change the issuer's performance, position and prospects from the last update. So, for these issuers, the update would be relatively straightforward. For monthly management accounts, the issuer may produce a short summary for directors, rather than detailed management accounts. We have introduced the provision as a CP rather than a Rule to allow each issuer the flexibility to develop the approach that suits it the best.

Chairman to meet INEDs and NEDs separately once a year

33. About 50% of respondents supported this proposal. Generally, issuers opposed the proposal and professional bodies and market practitioners supported it.

34. Supporters argued it is important for INEDs to have a forum to voice their views without the presence of the executive management and NEDs. Those that objected to the proposal argued that directors should represent all shareholders and INEDs and NEDs should not represent different shareholders' interests. Therefore it should not be necessary for the chairman to meet them separately. They also said that this is not a requirement in other jurisdictions. Some respondents said that the chairman can communicate with INEDs and NEDs at any time without formal meetings.

35. Instead of adopting our proposal, we upgraded to a CP the current RBP stating that the chairman should at least annually hold meetings with the NEDs including INEDs without executive directors being present.

[4] For more guidance on what constitutes price-sensitive information, please refer to the "Guide on Disclosure of Price-sensitive Information" published by the Exchange in January 2002 which is available on the Exchange's website.

Disclosure of senior management's remuneration by band

36. A slight majority of respondents, mostly issuers, opposed our proposal to require disclosure of senior management's remuneration by band. These respondents argued that although we proposed an issuer disclose senior management remuneration by band, it would be possible for someone to indirectly ascertain the salary range of new and past employees whenever there was staff turnover. This disclosure may cause an upward spiral of senior management remuneration. Many also pointed out that the Rules already require disclosure of the remuneration of directors and the five highest paid individuals.

37. Supporters of the proposal argued that it would enable shareholders to see whether or not company resources were spent rewarding non-performing executives.

38. We have decided to introduce a CP on disclosure of senior management remuneration by band rather than a Rule.

Board evaluation

39. A majority of market practitioners and professional bodies, were in favour of our proposal on board evaluation but a significant majority of issuers opposed it.

40. Opponents believed that board evaluation would become a mere box-ticking exercise. Supporters felt that it would incentivise directors to devote more time to the issuer's business and enable the board to understand if there are areas for improvement in its performance. These respondents also commented that the proposal would align Hong Kong with international best practice. Many respondents said they would support the proposal if we recommended board evaluation without evaluation of individual directors.

41. Noting the concerns, we have limited the RBP to recommending evaluation of the board and not individual directors.

Company secretary's selection, appointment or dismissal

42. A substantial majority of respondents supported our proposals on the role of the company secretary.

43. A majority of respondents, mostly issuers, disagreed with our proposed Note to a CP stating that the board's decision to appoint or dismiss the company secretary should be made at a physical meeting and not dealt with by a written resolution. They argued that directors can be appointed by written resolution. They also said it is inappropriate to distinguish written resolutions from physical resolutions when both have the same legal effect.

44. We believe that the appointment and dismissal of the company secretary is an important matter which merits the board's careful consideration. The qualification and experience of a prospective company secretary or the reasons for a company secretary's dismissal should be discussed at a physical board meeting. We have

revised the Note to the CP to state that the appointment and dismissal of a company secretary should be discussed at a physical board meeting.

CHAPTER 3: MARKET FEEDBACK AND CONCLUSIONS

45. This chapter contains our proposals for Rule and Code amendments, a summary of the comments we received, our response and conclusions.

46. The Main Board and GEM Rule amendments are available at the HKEx website at: "Rules & Regulations – Rules and Guidance on Listing Matters – The Rules and Procedures – Rule Updates – Amendments to Main Board Listing Rules" and "Rules & Regulations – Rules and Guidance on Listing Matters – The Rules and Procedures – Rule Updates – Amendments to GEM Listing Rules".

Plainer Writing Amendments

(Consultation Question 1)

The proposal

47. We proposed re-drafting the sections of the Rules and Code affected by our policy proposals in plainer language and asked whether there might be unintended consequences.

Comments received

48. Nearly all respondents supported this proposal. Many respondents commented that plainly written Rules and Code will be more user-friendly.

The Exchange's response

49. We welcome the broad support for our plain writing proposals.

Consultation conclusion

50. We have adopted the proposed plainer writing amendments.

PART I: DIRECTORS

1. Directors' Duties and Time Commitments

A. Directors' duties

(Consultation Questions 2 and 3)

The proposals

51. We proposed expanding Rule 3.08 to clarify directors' responsibilities. We proposed requiring directors to take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to their attention.

52. We also proposed adding a Note to Rule 3.08 to provide guidance to directors, referring to guidelines issued separately by the Companies Registry and HKIoD.

Comments received

53. A substantial majority of respondents supported the proposal to expand Rule 3.08. Many respondents agreed the proposal would provide clarity and guidance.

54. Some respondents had concerns about the proposed wording. One professional body said the proposed change would prevent delegation of powers and responsibilities. They agreed with the proposed amendment only if the caution on delegation were limited. Another professional body echoed this view and suggested adding "substantially" after "delegating".

55. Respondents that disagreed with the proposal considered the existing Rule 3.08 sufficiently clear. They said statutory and case law already provides sufficient additional detail.

56. There were mixed comments on the references in our proposed Note to Rule 3.08 to guidelines issued by the Companies Registry and HKIoD. A majority of respondents found the references useful as they added clarity to Rule 3.08. Some remarked that it would help directors understand their duties in practice to a level of detail that cannot be included in the Rules.

57. Some respondents were concerned the Companies Registry guidelines were not specifically drafted for listed companies. One issuer suggested the reference to the "Companies Registry's Guide of July, 2009" should exclude the reference to the year, as the Guide may be amended over time.

58. Many respondents that disagreed with the HKIoD guideline reference in the Note to Rule 3.08 commented that HKIoD is not a statutory body. They were concerned this would outsource standard-setting to a private organisation. Some respondents recommended incorporating the HKIoD's guidelines into the Rules. Others commented that the Companies Registry and HKIoD guidance may evolve at a

different pace or in a different direction to our Rules. They queried how the Exchange would endorse future changes to the guidance.

The Exchange's response

59. We agree the wording of Rule 3.08 could be improved to clarify its intention. We have revised the Rule to clarify that directors may delegate their functions but doing so does not absolve them from the required levels of skill, care and diligence. The Rule further states that directors do not satisfy these required levels if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention. We also cautioned that directors failing to discharge their legal duties and responsibilities may be disciplined by the Exchange and may attract civil and/or criminal liability.

60. We believe it is beneficial to refer to the Companies Registry's and HKIoD's guidance for directors because they provide useful and practical guidance to directors which is not possible to include in the Rules. The guidelines do not form part of the Rules but are considered helpful guidance on best practice. Given respondents' comments, we have revised the wording of the Note, replacing "to follow" with "to be guided by" in relation to the HKIoD guidelines. We omitted the date of publication of the Guide issued by the Companies Registry.

Consultation conclusion

61. We have modified the proposed wording of Rule 3.08 as discussed in paragraph 59.

62. We have adopted the proposed Note to Rule 3.08 with minor amendments as discussed in paragraph 60.

B. Time commitments

(Consultation Questions 4 to 10)

The proposals

63. We proposed introducing:

(i) the following two new paragraphs to the CP on a nomination committee's duties included in its terms of reference:

(a) regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time performing them; and

(b) review NEDs' annual confirmations that they have spent sufficient time on the issuer's business;

(ii) a Rule requiring a nomination committee to disclose in the issuer's Corporate Governance Report it has received and reviewed the NEDs' annual confirmation;

(iii) a CP that a director should limit his other professional commitments and should acknowledge to the issuer that he will have sufficient time to meet his obligations to the issuer;

(iv) a CP that an NED should confirm annually to the nomination committee he has spent sufficient time on the issuer's business;

(v) a CP that the wording of letters of appointment for NEDs should set out the time commitment expected of them; and

(vi) a CP that directors should inform the issuer's board of any change to their significant commitments in a timely manner.

Comments received

64. All proposals relating to directors' time commitments, except for the proposal described in paragraph 63(vi), received less than majority support. Opponents of the proposals were mainly issuers.

65. Most respondents opposing the proposals criticised them as overly prescriptive.

66. Many respondents said it would be difficult to judge how much time a director needed to perform his responsibilities and review whether he was spending sufficient time performing them. Some respondents commented that it is more important for a director to satisfy the required levels of skill, care and diligence reasonably expected of him in performing his responsibilities than to measure how much time he has spent performing them.

67. Respondents supporting the proposals argued that focussing on directors' time commitments is in line with the practice in other jurisdictions. They said reviewing the time directors are required to spend (and have spent) performing their responsibilities helps set benchmarks for other directors. This will act as a reminder to directors and encourage them to devote sufficient time to the issuer's business, reducing non-compliance with the Rules. They also argued that directors are already required by the Rules to devote sufficient time and attention to the issuer's affairs, so the new proposals should not place any additional burden on them.

The Exchange's response

68. The proposed amendments were intended to address market concerns that some directors, particularly INEDs, may not devote sufficient time to their duties to the issuer. This may be caused by directors taking on too many directorships and other professional commitments.

69. We suggested adopting the proposals as CPs, to give issuers the flexibility to comply or explain. This balanced the practicalities faced by issuers with the need to address market concerns regarding directors' time commitments.

70. We decided to revise some of our original proposals by introducing a Principle on directors' time commitments. This will provide issuers the flexibility to determine their own specific measures to ensure directors commit sufficient time to the issuer. We have retained the proposal described in paragraph 63(vi) but given the strong opposition, we have dropped the proposals described in paragraph 63(i) to (v).

Consultation conclusion

71. We have amended the Code to include a Principle that the board should regularly review the time required from a director to perform his responsibilities to the issuer, and whether each director is spending sufficient time performing them.

72. We have amended the Code to include a CP that directors should inform the issuer's board of any change to their significant commitments in a timely manner.

C. Limit on the number of INED positions an individual may hold

(Consultation Questions 11 to 13)

The proposals

73. We sought market views on whether to introduce a requirement limiting the number of INED positions an individual may hold. If respondents agreed with this proposal we asked what the limit should be.

Comments received

74. An overwhelming majority of respondents opposed a cap on the number of INED positions an individual may hold. The reasons given included:

(i) a meaningful limit cannot be set because a person's available time and attention is affected by a range of factors;

(ii) multiple directorships of Hong Kong issuers are not common;

(iii) an individual himself should determine whether he is able to devote the necessary amount of time and attention to an issuer;

(iv) an issuer's board will not appoint an individual unless it is satisfied that the candidate is suitable and will consider the number of directorships the candidate holds in its assessment of him; and

(v) not imposing a limit may encourage a culture of professional directorships in Hong Kong, where more qualified and experienced individuals could build careers providing independent advice to board members.

The Exchange's response

75. We note the market clearly objects to a cap on the number of directorships that an individual can hold and the reasons given by respondents.

Consultation conclusion

76. Given the strong opposition, we will not pursue this issue further.

2. Directors' Training and INEDs

A. Directors' training

(Consultation Questions 14 to 16)

The proposals

77. We proposed to upgrade to a CP the RBP on directors' training and proposed that directors should undertake eight hours of training per year.

Comments received

78. A majority of respondents supported the proposal to upgrade the RBP to a CP on directors' training. However, many respondents did not agree we should set an eight-hour minimum in the CP.

79. A number of respondents criticised the proposal as over-prescriptive. They argued that the optimal length of training would vary by director, type of company and the company's operations in a particular year.

80. Some respondents also argued directors are already subject to a wide range of statutory and common law duties as well as regulatory obligations. The consequences for non-compliance are serious. For this reason every director has (or should have) a vested interest in ensuring that he complies with the relevant rules and regulations. This may include engaging legal advisors and receiving training. Opponents also argued that imposing an eight-hour training timeframe is too rigid, counter-productive, and inflexible.

81. Respondents in favour of introducing the proposed CP, including the eight-hour minimum training, believed directors should receive regular training to keep informed of developments in law, regulations and other areas relevant to their role and responsibilities. Supporters also argued that in most cases, this would not impose an extra burden on them because many directors are also members of HKIoD, HKICS and professional bodies such as Hong Kong Institute of Certified Public Accountants (**HKICPA**) and the Law Society. Most of these organisations require their members to undergo training which would count towards the training described in the proposed CP.

The Exchange's response

82. We agree that different directors require different levels of training and the eight-hour time frame may not suit everyone. So, we will not adopt the CP on directors' training proposed in the Consultation Paper. Instead, we will leave it to the directors to undergo whatever training they consider appropriate. We have modified the proposal to require disclosure in an issuer's Corporate Governance Report on how directors complied with the CP on training. We have also introduced a Note to the CP on directors' training stating that directors should provide a record of the training they received to the issuer.

Consultation conclusion

83. We have adopted our proposed upgrade of the RBP to a CP on directors' training and added a Note as described in paragraph 82.

84. We have not adopted the proposal that directors should attend a minimum of eight hours of training per year.

85. We have amended Appendix 14 to require disclosure in the issuer's Corporate Governance Report on how directors complied with the CP on training.

B. INEDs to form one-third of board and transitional period

(Consultation Questions 17 and 18)

The proposals

86. We proposed upgrading to a Rule the recommendation that at least one-third of an issuer's board should be INEDs. We proposed requiring issuers to comply with the proposed Rule by 31 December 2012.

Comments received

87. A substantial majority of respondents supported the proposal. They generally recognised that this was consistent with recommendations or requirements in other major jurisdictions, including the Mainland. One issuer observed that strong representation from INEDs is increasingly recognised as a significant component of a modern corporate governance regime. This should be reflected by an increase in the proportion of INEDs represented on the board. A number of respondents also advocated the introduction of an RBP that recommends half of the board be INEDs.

88. Many respondents, including those that supported the proposals, stressed the importance of the quality of INEDs. Several respondents, including two professional bodies, were concerned about INEDs' independence. One respondent argued for a Rule requiring INEDs to be elected by minority shareholders only. If this was not done, the respondent believed INEDs may not be truly independent and so increasing the number of INEDs on the board would not improve issuers' corporate governance.

89. There was broad support for the suggested transitional period for implementing our proposals.

The Exchange's response

90. We believe our proposal strikes the right balance between promoting strong INED representation on the board and imposing a greater burden on issuers. As at 30 June 2011, approximately 20% of the issuers do not have INEDs constituting one-third of their boards. However, approximately 80% of these issuers only need to appoint one additional INED to comply with the requirement. Some issuers could also reduce the number of NEDs on their board to meet the requirement. So, the new Rule should not impose an undue burden on issuers. The new Rule is also aligned with international best practice.

91. We do not agree that INEDs should be elected by minority shareholders only. All directors, including INEDs, owe a duty to the issuer and its shareholders as a whole. The board, or a nomination committee, should set fair and transparent procedures to select board members and determine the expertise and experience needed for board members.

92. We believe the changes resulting from this review, including upgrading to CPs the RBPs on the establishment, terms of reference and composition of a nomination committee, will promote a fairer and more transparent system for the INED election.

93. To be consistent with the Rules on remuneration committee (Rule 3.27) and the requirement for at least three INEDs (Rule 3.11), we will adopt a 3-month grace period if the number of INEDs falls below the required one-third of an issuer's board.

Consultation conclusion

94. We have adopted the proposed Rule amendments to require one-third of the issuer's board to be INEDs. Issuers that do not comply with the new Rule will have until 31 December 2012 to comply. We have also introduced a Rule to allow an issuer a three-month period to appoint a sufficient number of INEDs to comply with the one-third Rule after failing to meet the requirement.

C. An INED who has served nine years

(Consultation Question 19)

The proposal

95. We proposed upgrading to a CP the RBP that shareholders vote on a separate resolution to retain an INED who has served on the board for more than nine years.

Comments received

96. About half of respondents supported this proposal. Nearly all market practitioners, slightly less than half of issuers, and a majority of professional bodies that responded supported the proposal. Supporters generally agreed with the rationale given in the

Consultation Paper. They suggested that issuers should remind shareholders before they cast their vote that an INED who offers himself for re-election has already served more than nine years. Some Mainland-based companies supported the proposal as it would bring this aspect of our Rules closer to Mainland regulations.

97. Over half (58%) of the issuers responding opposed the proposal, arguing that the issue was best left as an RBP, and that long service did not necessarily imply lack of independence.

The Exchange's response

98. We believe it is good practice to draw shareholders' attention to INEDs seeking re-election when they have served more than nine years. This will also bring this aspect of the Code more in line with international best practice.

Consultation conclusion

99. We have adopted our proposal to upgrade to a CP the RBP that shareholders vote on a separate resolution to retain an INED who has served on the board for more than nine years.

D. Circular nominating INED for election

(Consultation Question 20)

The proposal

100. We proposed to upgrade to a CP the RBP that an issuer should include an explanation of its reasons for an INED's election and the reasons it considers the INED independent in a circular nominating the INED for election.

Comments received

101. A substantial majority of respondents supported this proposal. Most agreed with the rationale given in the Consultation Paper. Some added that increasing transparency and the quality of information disclosed to shareholders sufficiently in advance of the meeting improves the chances that truly independent directors will be appointed.

102. A number of respondents opposing the proposal said that the information would not be useful for shareholders. They thought issuers are likely to include superficial information only to comply with the CP.

The Exchange's response

103. It is good corporate governance for an issuer to clearly explain to shareholders the reasons for an INED's election and his independence. We believe setting a standard on this for issuers will improve the quality of disclosure for shareholders in circulars nominating an INED for election.

Consultation conclusion

104. We have adopted the proposal to upgrade to a CP the RBP that an issuer should include an explanation of its reasons for an INED's election and the reasons it considers the INED independent in a circular nominating the INED for election.

3. Board Committees

A. Remuneration committee

(Consultation Questions 21 to 29)

The proposals

105. We proposed new Rule and Code amendments on the establishment and operation of the remuneration committee.

106. We proposed the following new Rules requiring:

(i) issuers to establish a remuneration committee with a majority of INED members;

(ii) an INED as chairman for the remuneration committee;

(iii) written terms of reference for the remuneration committee; and

(iv) an issuer that fails to comply with these three Rules to immediately announce its reasons for not doing so and any other relevant details. The issuer will have a three-month period to rectify its non-compliance.

107. We proposed the following Code amendments:

(i) adding the word "independent" to the professional advice made available to a remuneration committee;

(ii) accommodating a model in which the remuneration committee performs an advisory role to the board, with the board retaining the final authority for approval of executive directors' and senior management's remuneration;

(iii) upgrading to a CP the RBP recommending a board to disclose in its Corporate Governance Report the reasons it approves remuneration with which the remuneration committee disagrees; and

(iv) deleting the term "performance-based" from the description of remuneration and stating that management's remuneration proposals should be reviewed by the remuneration committee "with reference to the board's corporate goals and objectives".

Comments received

108. Respondents supported most of the proposals relating to remuneration committees except for the proposal in paragraph 107(iii).

Remuneration committee Rule amendments

109. Nearly all market practitioners, a substantial majority of professional bodies and just over half of the issuers that responded supported the proposed Rule requiring a remuneration committee to be chaired by an INED.

110. Supporters believed the proposal would help maintain the independence of the remuneration committee. Those disagreeing did not consider it essential for the chairman to be an INED. Several respondents said the proposal would not make a substantial difference in Hong Kong, where the composition of boards is determined by controlling shareholders.

111. Most respondents supported the proposal to upgrade to a Rule the requirement for issuers to establish a remuneration committee with a majority of INED members. Respondents commented that this change would bring Hong Kong in line with other markets. One market practitioner suggested a grace period for issuers that do not currently comply with the requirement. Those opposing the proposal suggested that the obligation should remain a CP, to retain flexibility.

112. Professional bodies, market practitioners and a majority of issuers supported upgrading to a Rule the CP for a remuneration committee to have written terms of reference. Some respondents commented that the terms of reference are just as effective as a CP as it retained flexibility for issuers.

113. A substantial majority of respondents supported the proposal to require an issuer to make an immediate announcement if it fails to meet the requirements of proposed Rules 3.25 and 3.26. Most also said it would help improve issuers' compliance and transparency.

114. Some of the respondents that opposed the proposals commented that:

(i) non-compliance is not important enough to warrant immediate disclosure; and

(ii) Rules 3.25, 3.26 and 3.27 should remain CPs to avoid being over-prescriptive and retain flexibility for issuers.

115. Most respondents supported the proposal to grant issuers that did not comply with Rules 3.25 and 3.26 three months to rectify their non-compliance. Several respondents suggested the Rules should allow an extension of the grace period for a further three months. Other respondents said the matter should remain a CP.

Remuneration committee Code amendments

116. Most respondents favoured the proposal to add the word "independent" to the professional advice made available to a remuneration committee. They said this was

important to enable a remuneration committee to achieve its objectives and duties. Some issuers supporting the proposal suggested the Exchange may wish to consider the cost implications of the proposal for issuers with smaller market capitalisations.

117. Most respondents supported the proposal to accommodate the remuneration committee model described in paragraph 107(ii). Issuers, market practitioners and professional bodies said the proposal allowed issuers more flexibility to structure their remuneration committees as appropriate. A few respondents, including one professional body, voiced concerns that the model described in paragraph 107(ii) would weaken the current CP. Another professional body revealed that its members had diverse views on the issue.

118. The proposal to delete "performance-based" from the description of management remuneration received substantial majority support. One respondent opposing the proposal thought the term was an important consideration for remuneration committees and it should not be removed.

119. A slight majority of respondents, including market practitioners and a substantial majority of professional bodies and individuals, favoured the proposed CP recommending a board to disclose in its Corporate Governance Report its reasons for approving remuneration with which the remuneration committee disagrees. A substantial majority of issuers opposed the proposal.

120. Supporters of the proposal argued that:

(i) it would promote transparency, fairness and would be a check and balance on the board for the protection of shareholders;

(ii) the function and importance of the remuneration committee will be undermined if the board can simply disregard its decisions without explanation; and

(iii) shareholders have a right to know the reason a board decides against the remuneration committee's recommendations. These respondents said the Corporate Governance Report is an appropriate place to disclose these reasons.

121. Opponents made the following points:

(i) the proposed disclosure would be commercially damaging, and may have the unintended consequence of discouraging the remuneration committee from pressing its dissenting views;

(ii) dissent and disagreement should be resolved within the board, not taken to shareholders;

(iii) the disagreement may involve issues that are sensitive and confidential and not in the best interest of the issuer to disclose; and

(iv) a full board decision should prevail as long as no director is involved in deciding his own remuneration.

The Exchange's response

122. We believe it is important to safeguard the independence of the remuneration committee so that no director is involved in deciding his own remuneration. It is also important that an issuer's interests as a whole are considered when executive directors' and senior management's remuneration is decided.

123. We agree with some of the opposing views to the proposal on disclosures of disagreements between the remuneration committee and the board. In particular, we believe it may have the unwanted effect of discouraging the remuneration committee, or individuals within the committee, from pressing their dissenting views. We have decided to retain it as an RBP.

124. We consider that we should allow issuers to adopt the remuneration committee model that works for them, and takes into account the characteristics of the local market.

125. We do not agree with keeping "performance-based" in the CP described in paragraph 107(iv) for the reasons given in paragraph 118 of the Consultation Paper.

Consultation conclusion

126. We have adopted the proposed Rule and Code amendments for remuneration committees described in the Consultation Paper except for RBP B.1.8 (re-numbered B.1.6) on disclosure of board disagreements with a remuneration committee. This remains an RBP.

B. Nomination committee

(Consultation Questions 30 to 38)

The proposals

127. We proposed to upgrade the following RBPs to CPs (with some amendments) to enhance the role of the nomination committee:

(i) establishing a nomination committee with a majority of INEDs;

(ii) a nomination committee to be chaired by an INED;

(iii) describing the nomination committee's terms of reference;

(iv) encouraging the nomination committee to review the structure, size and composition of the board at least once a year to implement the issuer's corporate strategy;

(v) making a nomination committee's terms of reference available on both the issuer's and the HKEx websites;

(vi) ensuring the nomination committee has sufficient resources; and

(vii) clarifying that a nomination committee should be able to seek independent professional advice at the issuer's expense.

Comments received

128. A majority of respondents supported the proposals to upgrade to CPs the RBPs described in paragraph 127 except (ii) and (iv). Professional bodies and market practitioners strongly supported all of our nomination committee proposals. A number of issuers opposed the proposal that an INED chair the committee (paragraph 127(ii)). Our proposal for an annual review of board structure and composition was supported by just over half of respondents (paragraph 127(iv)).

129. Many respondents considered the nomination committee an essential part of all boards. They said that a requirement for the majority of the committee to be INEDs would help the board recruit and nominate suitable board candidates. Some respondents suggested this RBP should not be upgraded as issuers should be given the flexibility to decide whether nomination committee functions are best performed by the board as a whole.

130. Respondents supporting the proposal for a nomination committee's terms of reference to be upgraded to a CP wanted to encourage best practice in this area. A substantial majority of respondents considered the contents of a nomination committee's terms of reference set out in the Code to be essential. A minority of respondents disagreed with the proposal as it was not possible to have "one size fits all" terms of reference for nomination committees.

131. A majority of respondents agreed the terms of reference of the nomination committee should be made available on the HKEx website. They also agreed it would be beneficial for the HKEx website to be used as a central repository of this information. However, some respondents said it is sufficient for these terms of reference to be published on the issuer's website only.

132. A majority of respondents supported the proposal to upgrade to a CP the RBP recommending the nomination committee have sufficient resources. These respondents said this would ensure the board and its committees had access to the external professional advice necessary to discharge their duties.

133. Most respondents considered the proposal enabling a nomination committee to seek independent professional advice at the issuer's expense necessary.

<u>INED to chair the nomination committee</u>

134. Half of all respondents supported this proposal, including one-third of issuers, a substantial majority of market practitioners, professional bodies and institutional investors.

135. Those that disagreed with the proposals argued that:

(i) there is no need in Hong Kong, for board appointments to be made or influenced by persons independent of controlling shareholders. It is

unreasonable to restrict the right of controlling shareholders to choose board members. Major shareholders will vote on the appointment of new directors, so nothing is gained by excluding NEDs associated with major shareholders from chairmanship of the committee;

(ii) having a majority of INEDs on a nomination committee is sufficient to safeguard its independence. Requiring the chairman to be an INED would not lead to greater independence; and

(iii) it would be reasonable for the board chairman to chair a nomination committee. This is because he is responsible for corporate governance and general management of the board. Also, one issuer dual listed in the UK stated that although the UK Corporate Governance Code (**UK Code**) says a board chairman should be independent at appointment, it does not consider the board chairman independent after appointment. This respondent believed its board chairman should be eligible for the chairmanship of the nomination committee even if he is not considered independent after appointment under the UK Code.

136. Respondents supporting the proposal argued that:

(i) if the chairman is not an INED, it may compromise the independence and quality of the nomination committee and potentially influence its decisions to favour certain parties. A non-independent director chair may be related to management or a controlling shareholder and may nominate candidates for the board that are not truly independent;

(ii) as many companies in Hong Kong are controlled by families, it is important for the chairman of the nomination committee to be an INED to minimise conflicts of interest; and

(iii) an independent nomination committee chairman would ensure the effective working of the board and provide better governance.

Annual review of board structure and composition

137. A slight majority of respondents supported this proposal. These comprised half of issuers, all institutional investors, a substantial majority of market practitioners and professional bodies that responded. A substantial majority of individuals and other entities opposed the proposal.

138. Supporters of the proposal said that the primary responsibility of the nomination committee is to review the size, structure and composition of the board and assess candidates for election and re-election. The nomination committee's objective is to ensure the board has members that can deliver its approved strategy. These respondents therefore believed it was logical to have an annual review of board structure and composition as a CP. A number of these respondents suggested using the term "complement" regarding the issuer's corporate strategy (as stated in paragraph 132 of the Consultation Paper) rather than "implement".

139. Respondents that opposed the proposal commented that it was unnecessary because the review should be done as and when it was needed. These respondents wanted the matter to remain an RBP because the board, not the nomination committee, should implement corporate strategy. They also believed the proposal was overly prescriptive.

The Exchange's response

140. We note that a majority of the respondents supported the proposals to upgrade to CPs the RBPs described in paragraph 127. We believe the benefits of these proposals outweigh any increased burden on issuers. These revisions to the Code will also bring us more in line with international best practices. So, we have decided to adopt these proposals.

141. We agree with the comments that the prescribed terms of reference may not fit all nomination committees (paragraph 130). However, it is not our intention for every issuer to adopt the same terms of reference as set out in the CP. They should be tailored to the issuer's own circumstances and an issuer should explain its reasons in the Corporate Governance Report.

142. On paragraph 127(iv), we consider it an important function of the nomination committee to review the structure, size and composition of the board at least once a year and the arguments against the proposal are not convincing. We have adopted the suggestion to use the word "complement" instead of "implement" regarding the issuer's corporate strategy, revising the CP stated in paragraph 127(iv).

143. We agree the board chairman should be able to chair the nomination committee and have revised the relevant CP.

Consultation conclusion

144. We have adopted the proposed Code amendments on nomination committee described in the Consultation Paper with two amendments as described in paragraphs 142 and 143.

C. Corporate governance committee

(Consultation Questions 39 to 45)

The proposals

145. We proposed:

(i) a new RBP recommending the issuer to establish a corporate governance committee;

(ii) if an issuer did not establish a corporate governance committee, the RBP recommended their duties be carried out by an existing board committee or committees;

(iii) a new CP on the terms of reference for the corporate governance committee;

(iv) a new CP that a corporate governance committee (or an existing committee or committees performing this function) should have a majority of INEDs as its members; and

(v) a note to a CP explaining that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations.

146. We sought market views on whether the corporate governance committee should submit a written report to the board on its work annually to be published as part of the issuer's Corporate Governance Report.

Comments received

147. Some of our proposals received less than majority support and some received slight majority support from respondents.

148. A slight majority of respondents supported the proposals described in paragraphs 145(ii), (iii) and (v). Approximately half of the issuers that responded opposed these proposals.

149. A majority of respondents did not support the proposals described in paragraphs 145(i) and (iv).

150. A substantial majority of respondents opposed the proposal that a corporate governance committee annually submit to the board a written report on its work. Issuers were mainly opponents whilst a substantial majority of market practitioners and institutional investors supported this proposal. Professional bodies that responded were evenly split on this point.

151. A substantial majority of respondents opposed the proposal for issuers to produce a report on the corporate governance committee's work to be published as a part of the issuer's Corporate Governance Report. Opponents included most issuers, professional bodies and most market practitioners.

152. Respondents opposing the proposal to introduce an RBP to establish a corporate governance committee argued that:

(i) the work of a corporate governance committee can be carried out by an existing committee. Therefore there is no need to set up a new committee;

(ii) corporate governance is the responsibility of the whole board and should not be delegated to a committee; and

(iii) a corporate governance committee is not required in the corporate governance codes of the UK, Australia, Singapore or the Mainland. The proposal will confuse, rather than enhance, responsibility for corporate governance.

153. Supporters of the proposal for a corporate governance committee said this raised the importance of corporate governance generally. One professional body commented that it is fundamental to good corporate governance for a board to have a suitable body performing a corporate governance committee's duties. However, most respondents agreed that ultimately good corporate governance is a matter for the whole board.

The Exchange's response

154. We intended to give issuers the flexibility to decide whether to establish a corporate governance committee or use an existing board committee to carry out these functions. We therefore proposed the establishment of a corporate governance committee should be made an RBP.

155. Although respondents supported the proposal for existing committees to carry out the functions of a corporate governance committee, they did not support the RBP to establish a corporate governance committee itself. This suggests that some respondents may have misunderstood the meaning and nature of RBPs. So, we will clarify the purpose of CPs and RBPs in the introduction of the Code.

156. The duties described in the proposed terms of reference for a corporate governance committee do not relieve directors of their corporate governance responsibilities. They retain these responsibilities whether these functions are performed by the board itself or a board committee. So, we will modify the proposals to emphasise that a board can retain responsibility for corporate governance duties, or alternatively, delegate them to a committee. We have therefore dropped the proposals set out in paragraphs 145(i), (ii), (iv) and (v), and revised (iii).

157. We believe requiring the issuer to disclose the performance of corporate governance duties in its Corporate Governance Report would encourage the board to focus on corporate governance matters.

Consultation conclusion

158. We have adopted new CPs on the duties described in the terms of reference to be performed by the board or a committee or committees delegated by the board.

159. We have also adopted a new Rule requiring the issuer to disclose the performance of corporate governance duties in its Corporate Governance Report.

160. We have not adopted the proposals set out in paragraphs 145(i), (ii), (iv) and (v).

D. Audit committee

(Consultation Questions 46 to 48)

The proposals

161. We proposed to:

(i) upgrade to a CP the RBP that an audit committee's terms of reference include arrangements for employees to raise concerns about improprieties in financial reporting;

(ii) amend a CP to state that audit committees should meet the external auditor at least twice a year instead of the current once a year; and

(iii) introduce a new RBP recommending the audit committee establish a whistleblowing policy.

Comments received

162. A substantial majority of respondents supported all three proposals.

Audit committee's terms of reference

163. Respondents emphasised the importance of having effective channels of communication for employees to raise concerns about irregularities in the issuer's financial reporting. Some market practitioners said the proposal is consistent with international best practice.

164. Some issuers were concerned whistleblowing arrangements may lead to unfounded or unsubstantiated allegations. One respondent said that if INEDs can be elected by controlling shareholders and executive directors, employees will not have the confidence to raise concerns with the audit committee.

165. Some respondents questioned whether the audit committee should be the recipient (or sole recipient) of whistleblowing complaints. They said complainants should have the option to raise these concerns with the internal auditor, external auditor, chairman or an INED. They believed it should be left to the discretion of the employee in question to whom he complained. One market practitioner suggested an issuer should keep a record of all whistleblowing complaints that its general counsel and audit committee should review.

Audit committee to meet external auditor at least twice a year

166. Several professional bodies and market practitioners said that meetings with the external auditor are very helpful to audit committees. However, some respondents thought the CP should state these meetings should be held at least annually and otherwise on an ad-hoc basis during the year. Respondents that disagreed with the proposal were primarily issuers. They generally believed that an annual meeting with an external auditor was sufficient and said it was unnecessary to state the number of meetings that should be held in a year.

Whistleblowing policy

167. Although this proposal received substantial support, some respondents commenting on the proposed RBP suggested that a whistleblowing "system", not "policy", should be established. They also said we should adopt the proposal as a CP to be consistent with the proposal in paragraph 161(i). Respondents cautioned that disgruntled

employees or ex-employees may misuse a whistleblowing policy. Some respondents, primarily issuers, disagreed with the proposal on the basis that it should be a function of the board, rather than the audit committee, to establish a whistleblowing policy.

The Exchange's response

168. We agree with supporters of the proposals and have adopted them. We note concerns regarding the possibility of unfounded and unsubstantiated allegations. However, we do not consider this an issue because we do not expect allegations to be taken at face value. Proper enquiries and investigations should be carried out on each reported incident.

169. We also agree with the comments that the audit committee should not necessarily be the sole recipient of whistleblowing complaints. Again, as this is a CP, the issuer has the flexibility to adopt a policy and system according to its own circumstances, with an explanation of how it has done so in the Corporate Governance Report.

170. We disagree with the comment that employees will not have the confidence to raise concerns with the audit committee if INEDs were elected by controlling shareholders. If the independence of an INED is in question, this should be addressed as a separate issue and is not, in our view, a reason to object to the proposal.

Consultation conclusion

171. We have adopted the proposed Code amendments described in the Consultation Paper on audit committees with minor modifications to reflect respondents' comments referred to in paragraph 167.

4. Remuneration of Directors, CEO and Senior Management

A. Disclosure of senior management remuneration by band

(Consultation Questions 49 and 50)

The proposal

172. We proposed adding a new Rule that issuers must disclose senior management's remuneration by band.

Comments received

173. A majority of respondents did not support this proposal. While market practitioners generally favoured the proposal, a majority of issuers disagreed with it, and professional bodies were evenly split.

174. Respondents that opposed the proposal were concerned that information regarding remuneration is highly sensitive. They said that although the disclosure would be by band, whenever there is staff turnover it would be possible to indirectly ascertain the

salary range of both the new and past employees. This may cause an upward spiral of senior management's remuneration.

175. Many respondents commented that disclosure of senior management's remuneration does not benefit shareholders. They argued the proposal is unnecessary because issuers are already required to disclose directors' remuneration and that of the five highest paid individuals. They said shareholders are mostly concerned with the total amount of remuneration.

176. Respondents that supported the proposals believed that disclosure of senior management's remuneration would improve transparency. They said shareholders are entitled to know whether or not an issuer's resources are expended to reward non-performing executives. They also said there should not be a privacy issue because the proposed disclosure would be made anonymously.

The Exchange's response

177. Given respondents' strong objections, we have decided to introduce a CP, not a Rule, stating that senior management remuneration should be disclosed by band.

Consultation conclusion

178. We have amended our proposal so that the disclosure of senior management's remuneration by band will be a CP rather than a Rule.

B. Disclosure of chief executive's remuneration

(Consultation Question 51)

The proposals

179. We proposed amending Appendix 16 to require an issuer to disclose, by name, the chief executive's remuneration in its annual report if he is not a director.

Comments received

180. A substantial majority of respondents supported this proposal. Respondents that disagreed said the current disclosure requirements are sufficient.

181. One market practitioner respondent noted that Rule 1.01 refers to "chief executive" not "chief executive officer" or "CEO".

The Exchange's response

182. We intended the term "CEO" to have the same meaning as "chief executive" as defined in Chapter 1 of the Rules. For consistency, we have amended the terms "CEO" and "chief executive officer" in the Code to "chief executive".

Consultation conclusion

183. We have adopted the proposed Rule amendments described in the Consultation Paper on disclosure of the chief executive's remuneration.

C. Performance-linked remuneration

(Consultation Question 52)

The proposal

184. We proposed upgrading to a CP the RBP that a significant proportion of executive directors' remuneration should be structured to link rewards to corporate and individual performance.

Comments received

185. A slight majority of respondents opposed the proposal while a majority of professional bodies and market practitioners were in favour.

186. Those against the proposal argued that:

(i) it may lead to short-termism;

(ii) the Code should not be prescriptive because different industries and companies have different compensation practices;

(iii) remuneration of executive directors is a matter between employers and employees; and

(iv) corporate performance is subject to many factors, so an issuer needs to have the flexibility to design an appropriate remuneration package.

187. Respondents supporting the proposal said it should incentivise directors to devote more time to the issuer's business, but they cautioned that more emphasis should be placed on long-term growth and success.

The Exchange's response

188. We consider there is merit in the comments against the proposal and will not upgrade the RBP to a CP.

Consultation conclusion

189. We will not upgrade to a CP the RBP on performance-linked remuneration. We have made minor amendments to the RBP's wording as proposed in the Consultation Paper.

5. Board Evaluation

(Consultation Question 53)

The proposal

190. We proposed adding an RBP that an issuer should conduct a regular evaluation of its own, and individual directors', performance.

Comments received

191. The proposal was opposed by over two-thirds of responding issuers, but gained majority support from market practitioners and professional bodies.

192. Respondents opposed to the proposal said that most Hong Kong issuers are not ready for board evaluation. This is because established corporate and cultural values would reduce individual performance evaluation to a mere box-ticking exercise.

193. Many respondents said they would support the proposal if we omitted the evaluation of individual directors from the proposed RBP.

194. Those supporting the proposal said it would:

(i) incentivise directors to devote more time to the issuer's business;

(ii) enable the board to understand whether improvements were needed and ensure the proper and effective functioning of the board; and

(iii) be in line with practice in other major jurisdictions.

The Exchange's response

195. We believe that there is sufficient market support for the proposed RBP on board evaluation. We consider there is merit in the respondents' view opposing the recommendation for performance evaluation of individual directors at this time and have decided to drop it for the time being.

Consultation conclusion

196. We adopted a new RBP recommending evaluation of the board. The new RBP does not recommend evaluation of individual directors.

6. Board Meetings

A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

(Consultation Questions 54 and 55)

197. We proposed:

(i) retaining a CP, with some amendments to the wording, stating that issuers should hold a physical board meeting to discuss resolutions on a material matter where a substantial shareholder or a director has a conflict of interest; and

(ii) adding a Note to this CP stating that attendance at board meetings can be achieved by telephonic means or video conferencing.

Comments received

198. A substantial majority of respondents agreed with the proposal described in paragraph 197(i).

199. Respondents supporting the proposal said that a physical board meeting would encourage an exchange of views and deeper debate more effectively.

200. Respondents disagreeing with the proposal said the board should have flexibility when deciding the best way to consider a resolution. They said we should not assume that directors pay less attention to a paper resolution than one discussed at a physical meeting. Other respondents commented that meetings held in person and resolutions in writing both have the same effect in law. One issuer argued that if there is known to be unanimity amongst non-conflicted directors over an issue, circulation of the matter by written resolution is an efficient and acceptable way of considering it.

201. Almost all respondents agreed that a Note should be added that attendance at board meetings can be achieved by telephonic or video-conferencing. One respondent commented that the issuer's constitutional documents and the law of its place of incorporation would determine whether attendance by telephone or video-conferencing may be counted as attendance. This respondent suggested the proposed Note should be deleted. This is because if INEDs attended a meeting in a way in which was not legally counted, their status could be downgraded to observers.

The Exchange's response

202. We believe that when a board considers connected transactions or transactions involving a conflict of interest, it is important that board members have an opportunity to discuss matters at a physical board meeting. This helps safeguard the interests of minority shareholders and is good corporate governance. This is an existing CP and the amendments do not alter its original policy intention. The compliance rate of this CP has been 100% according to our "Analysis of Corporate Governance Practices Disclosure in 2009 Annual Reports", published by the Exchange on 24 September 2010. We therefore do not foresee any difficulties in issuers complying with this CP.

203. We agree telephonic and video-conferencing attendance at board meetings is subject to the issuer's constitutional documents and the applicable law of the issuer's place of incorporation. We have modified the proposals to take this into account.

Consultation conclusion

204. We adopted the Code amendments described in paragraph 197(i).

205. We amended the Note to CP A.1.7 to reflect our response in paragraph 203 stating that subject to the applicable law of the issuer's place of incorporation, attendance at board meetings can be achieved by telephonic or video-conferencing.

B. Directors' attendance at board meetings

(Consultation Questions 56 to 58)

The proposals

206. We proposed:

(i) adding a Note to Appendix 14 (Note 1 to Paragraph I(c)) clarifying that board meeting attendance must be either in person or by electronic means, such as telephonic or video-conference;

(ii) adding a Note to Appendix 14 (Note 2 to Paragraph I(c)) stating that if a director is appointed part way during a financial year, his attendance should be stated by reference to the number of board meetings held during his tenure;

(iii) introducing a new requirement in Appendix 14 that attendance by an alternate should not be counted as attendance by the director himself; and

(iv) requiring, in Appendix 14, that an issuer disclose, for each named director, the number of board or committee meetings he attended and the number of these meetings attended by his alternate.

Comments received

207. An overwhelming majority of respondents supported the proposal described in paragraph 206(i). Most respondents also agreed with the proposal described in paragraph 206(ii). Most respondents thought the proposals were fair, clarified the meaning of "attendance", and ensured accurate reporting.

208. Several issuers that responded disagreed with the proposal, arguing that it would be unfair to directors if we did not consider the circulation of a written resolution to be a board meeting.

209. Approximately half of the issuers that responded disagreed with the proposal described in paragraph 206(iii), arguing that the proposed change conflicted with the Companies Ordinance and other company legislation. This permits the appointment of alternates, and makes the director vicariously liable for the acts of the alternate. They suggested that attendance by an alternate should be counted and disclosed.

210. Respondents that supported this proposal were mainly market practitioners and professional bodies. Many commented that attendance by directors themselves at

meetings enabled them to participate in discussions, express their views and better understand those of other directors. This is beneficial to the management of the issuer's business. One respondent said that an alternate's attendance demonstrated a lack of commitment from a director to the issuer and board affairs.

211. An overwhelming majority of respondents supported the proposal described in paragraph 206(iv). Most respondents considered it reasonable to disclose this information to encourage directors to attend board meetings themselves. They thought it would not impose an excessive administrative burden on issuers. Several issuers disagreed with the proposal, arguing that appointing an alternate is permissible by law and disclosure would increase the information contained in the annual report.

The Exchange's response

212. The aim of the proposal is to increase transparency of a director's (and not his alternate's) attendance at board meetings. We do not consider that our proposal conflicts with the Companies Ordinance. We are not proposing that alternates cannot be appointed. Instead, we are proposing disclosure on attendance at board meetings by the director himself and attendance by his alternate. We believe it is undesirable for a director to claim full attendance at board meetings during a year if he has sent an alternate director to them in his place.

213. The comments referred to in paragraph 208 may be the result of a misunderstanding of the Rule. The board meeting described in paragraph 206(i) means physical board meeting. The amended Rule does not affect the validity of a written resolution.

Consultation conclusion

214. We adopted the proposed Notes described in paragraphs 206(i) and (ii) with some modifications to reflect comments made by respondents (see paragraph 203).

215. We have adopted the Rule amendments described in paragraphs 206(iii) and (iv).

C. Removing five percent threshold for voting on a resolution in which a director has an interest

(Consultation Question 59)

The proposal

216. We proposed revising Rule 13.44 to remove the 5% exemption for transactions where a director has an interest.

Comments received

217. A slight majority of respondents favoured removing this threshold. They included a substantial majority of professional bodies, a slight majority of market practitioners and half of issuers.

218. Respondents that supported the proposal agreed that the 5% threshold is not an appropriate test, because a director may have a material interest in a transaction, even if he has less than a 5% interest. They also commented that the Rule does not contain a definition of "material interest".

219. Those respondents disagreeing with the proposal argued that the current 5% standard is clear, while "materiality" is difficult to implement. Several respondents suggested reducing the threshold percentage instead.

220. One respondent also commented that if a director is a shareholder, he should not abstain from voting when the board considers dividend payments.

The Exchange's response

221. It is not possible for us to define a "material interest". Materiality assessment should be made considering all relevant facts and circumstances. However, the explanation in Rule 2.16[5] of how "material interest" should be determined also applies to directors.

222. We agree with the comments in paragraph 220 and will provide clarification by way of FAQs.

Consultation conclusion

223. We adopted the proposed amendment to Rule 13.44 to remove the 5% exemption for transactions where a director has an interest.

7. Chairman and Chief Executive Officer

(Consultation Questions 60 to 67)

The proposals

224. We proposed:

(i) removing the words "at the board level" from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer's business;

(ii) amending CP A.2.3 to add "accurate" and "clear" to describe the information that the chairman should ensure directors receive;

(iii) upgrading RBP A.2.4 to a CP to give greater emphasis to the chairman's duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.;

[5] Rule 2.16 states: "There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.".

(iv) upgrading RBP A.2.5 to a CP and amending it to state: "the chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established";

(v) upgrading RBP A.2.6 to a CP to emphasise the chairman's responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus;

(vi) upgrading RBP A.2.7 to a CP and amending it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year;

(vii) upgrading RBP A.2.8 to a CP to highlight the chairman's role in ensuring effective communication between the board and shareholders; and

(viii) upgrading RBP A.2.9 to a CP to emphasise the chairman's role in enabling NED contributions and constructive relations between EDs and NEDs.

Comments received

225. Almost all of these proposals received overwhelming support from respondents, except for the proposal described in paragraph 224(vi). On this proposal, respondents were evenly split. A substantial majority of the issuers that responded opposed this proposal. A majority of professional bodies and market practitioners supported it.

226. Those respondents disagreeing with the proposal described in paragraph 224(vi) said that:

(i) the interests and responsibilities of NEDs and INEDs should be aligned;

(ii) all directors owe a duty to all shareholders and it is incorrect to say that INEDs and NEDs represent different shareholder interests; and

(iii) it should remain an RBP because it is not a requirement in other jurisdictions.

227. Respondents supporting the proposal said a forum where INEDs can voice their opinion and share their views without the presence of executive management (i.e. EDs) is important. Although they are not part of the executive management team, an NED can be a controlling shareholder or have a relationship with a controlling shareholder. His presence at a meeting of INEDs with the chairman could compromise the objective of the meeting.

228. Almost all respondents agreed with the proposal described in paragraph 224(i). Those that commented said removing these words clarified the separation of roles between the management of the board and the day-to-day management of the issuer's business.

229. Respondents also supported the proposal described in paragraph 224(ii).

230. Although the remaining proposals described in paragraph 224(iii) to (viii) received overwhelming support, a few respondents, including market practitioners and issuers, suggested that the RBPs should not be upgraded to CPs.

The Exchange's response

231. We note the concerns raised by respondents on the proposal for the chairman to have separate meetings with INEDs and NEDs. The chairman may communicate with INEDs and NEDs at any time without a formal meeting. So, we retained the current RBP A.2.7 wording (the chairman should at least annually hold meetings with the NEDs including INEDs without the EDs being present) but upgraded it to a CP.

Consultation conclusion

232. We adopted the Code amendments described in paragraph 224 except for paragraph 224(vi). We retained the existing wording of RBP A.2.7 but have upgraded it to a CP.

8. Notifying Directorship Change and Disclosure of Directors' Information

(Consultation Questions 68 to 73)

The proposals

233. We proposed the following Rule changes:

(i) amending Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor;

(ii) amending the same Rule to include the appointment, resignation, re-designation, retirement or removal of a chief executive;

(iii) amending Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty, or other misconduct involving dishonesty; and

(iv) amending Rule 13.51B(3)(c) to clarify that the sanctions referred to are those made against the issuer.

234. We also proposed to revise the wording of RBP A.3.3 and upgrade it to a CP. The proposed CP states directors' information should be published on an issuer's website and the HKEx website.

Comments received

235. An overwhelming majority of respondents agreed with the proposals described in paragraph 233.

236. Supporters of the proposals described in paragraphs 233(i) and (ii) argued that shareholders have a right to know of any changes to the board and the reasons for them. Matters regarding the chief executive are significant for both regulators and investors.

237. The minority of respondents that disagreed with these two proposals considered that current disclosure requirements for directors are sufficient.

238. Nearly all respondents agreed on requiring disclosure of misconduct involving dishonesty (paragraph 233(iii)), and all respondents agreed with the proposed clarification to Rule 13.51B(3)(c) (paragraph 233(iv)).

239. An overwhelming majority of respondents agreed with the proposed CP (described in paragraph 234) requiring publication of directors' information on the issuer's website. The publication of directors' information on the HKEx website was supported by a substantial majority. Supporters favoured transparency. Those disagreeing with the proposal to publish the information on the HKEx website thought that publication on the issuer's website alone was sufficient.

The Exchange's response

240. We believe that publishing updated directors' information on the issuer's as well as the HKEx website would enable investors and others to easily search for current information about directors, supervisors and chief executives. This would not impose undue administrative burden on issuers.

Consultation conclusion

241. We have adopted the Rule and Code amendments as set out in paragraphs 233 and 234.

9. Providing Monthly Management Accounts or Management Updates to the Board

(Consultation Question 74)

The proposal

242. We proposed introducing a CP (C.1.2) that an issuer's management should provide board members with monthly management accounts or updates.

Comments received

243. Most respondents supported the proposal for management to provide regular updates to members of the board. However, less than a majority of respondents supported the proposal for them to be provided with monthly management accounts or updates. Only one-third of issuers that responded supported this. Some respondents suggested

the CP should refer to "timely and regular updates" only. A majority said updates should be given quarterly.

244. Respondents that did not support the proposal also said that:

(i) a CP stating that management should provide monthly management accounts or updates to board members would be over-prescriptive and unduly burdensome for conglomerates and their INEDs;

(ii) monthly is too frequent. It may give excessive information to some directors. The board should determine how often it wishes to receive updates;

(iii) every director has a right to ask for information at any time to discharge his responsibilities;

(iv) given that the performance of most issuers is fairly constant, monthly updates would not be useful; and

(v) monthly management accounts or updates are likely to contain price-sensitive information that may prevent directors from trading.

245. Respondents that supported the proposal consider monthly management accounts or updates to be important information and in fact the minimum directors should receive to enable them to discharge their duties and responsibilities. They stated that issuers should have internal control systems in place to enable the monthly information to be generated and provided to directors, and this should not be burdensome for issuers. They questioned directors' ability to discharge their duties, particularly the duty to monitor the financial affairs of the issuer and disclose price-sensitive information in a timely manner, without monthly management accounts or updates.

246. One respondent that supported a higher level of disclosure than the proposal pointed out that Note 1 to CP A.6.2 already states that management should supply the board "monthly and other relevant internal financial statements". The respondent called for the proposed CP to refer only to management accounts and not to allow "management updates" as a "soft alternative".

The Exchange's response

247. The purpose of introducing a CP for issuers to provide monthly updates to board members is to help directors to fulfill their duties and responsibilities. There are concerns that some directors, particularly INEDs and NEDs lacked sufficient information and knowledge of the issuers' affairs to effectively perform their duties and responsibilities. At Exchange disciplinary proceedings, INEDs and NEDs often claimed not to be informed of the issuers' affairs including financial matters. As a result, they were unable to intervene in time when necessary. Directors failing in their duties to effectively supervise an issuer could cause financial losses to investors and damage to the reputation of the issuer and our market.

248. A director has a right to ask for information at any time to discharge his responsibilities. However, without sufficient information given to him, he may not

know what to ask for. He may also not want to ask for the information to avoid causing trouble. It is therefore not appropriate to require directors to ask for information. The focus should be on encouraging issuers to establish systems to provide information to directors that would enable them to fulfil their responsibilities.

249. Monthly management accounts or updates need not necessarily contain price-sensitive information. If the issuer's performance is in line with market expectation based on previous disclosure by the issuer, it is unlikely that a director would be precluded from dealing in the issuer's securities merely because he had received a monthly update from management. The information in the monthly update may be "sensitive" or confidential, in that it may contain matters that the issuer would not want to disclose to external parties. But one should not equate "sensitive" or confidential with "price-sensitive information". If, however, the update revealed undisclosed price-sensitive information, the director would, of course, be precluded from dealing until the information had been properly disclosed to the market. In any event, the Rules require the issuer to disclose price-sensitive information as soon as reasonably practicable. The new CP would not absolve directors from their obligation to set up adequate systems or processes and procedures to identify price-sensitive information and make relevant disclosures.

250. We envisage monthly updates to be in the form of either monthly management accounts or updates. For monthly management accounts, the issuer may produce a short summary for directors, rather than detailed management accounts. An update may or may not contain financial data. For example, it may be a narrative statement to the effect that the issuer's business is operating as expected, nothing unusual has happened to alter the issuer's performance, position and prospects from the previous update. For these issuers, the update would be relatively straightforward.

251. Against that background, we consider as a minimum, directors should receive a monthly management update (although not necessarily in the form of management accounts) that gives them a balanced and understandable assessment of the issuer's performance, position and prospects. This should be in sufficient detail to enable them to discharge their duties under the Rules. We have introduced the provision as a CP rather than a Rule so as to allow each issuer the flexibility to develop its own approach. An issuer will need to give reasons for its non-compliance.

252. As a consequential amendment, we have moved Note 1 to A.6.2 (re-numbered A.7.2) to a Note to the new C.1.2 with minor modification to the wording to allow flexibility in the information that issuers may provide to directors.

Consultation conclusion

253. We have introduced a CP stating that management should provide all members of the board with monthly updates giving a balanced and understandable assessment of the issuer's performance, position and prospects in sufficient detail to enable the board as a whole and each director to discharge their duties under Rule 3.08 and Chapter 13.

254. We have made consequential changes to a Note as discussed in paragraph 252.

10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer's Subsidiaries

(Consultation Questions 75 and 76)

The proposals

255. We proposed a Rule amendment to remove the need for issuers to publish a Next Day Disclosure Form following the exercise of an option for shares in the issuer by a director of a subsidiary.

256. We proposed a Rule amendment so that options for shares in the issuer exercised by a director of a subsidiary only triggers an announcement if the change in its share capital, individually or when aggregated with other events, is 5% or more since its last Monthly Return.

Comments received

257. Most respondents, including almost all issuers, a substantial majority of market practitioners and professional bodies that responded, supported the proposals described in paragraphs 255 and 256.

258. A number of respondents were against the proposals. One argued that there should not be any exemptions to disclosure of new share issues because investors need to know when new shares are issued and therefore tradable and could impact on the market. The respondent dismissed the concern that for a large corporation with overseas subsidiaries, it would be difficult to monitor. The respondent stated that an increase in share capital is not triggered by the submission of an exercise form in the issuer's overseas' subsidiary but by the issue of shares in Hong Kong or wherever the register is kept. So, if a large corporation has a vast number of option-holders, it can aggregate the exercise on the relevant date when it authorises the issue of the relevant shares and file the Next Day Return Form with the Exchange. This, it was argued, would not overburden issuers.

The Exchange's response

259. We note the comments raised by the respondent on the proposal. However, Rule 13.25A(1) requires immediate disclosure if, when aggregated, the events described in Rule 13.25A(2)(b) result in a change of 5% or more of the issuer's issued capital. Given the safeguard provided by Rule 13.25A and the clear market support for the proposal, we consider it appropriate to make the Rule amendments. Also under the Rules, issuers must file monthly returns. So there is only a short period when information on the total issued share capital may not be up-to-date.

Consultation conclusion

260. We adopted the Rule amendments on next day disclosures described in paragraphs 255 and 256.

11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value

(Consultation Question 77)

The proposal

261. We proposed to introduce a CP for directors to include in the annual report an explanation of the basis on which the company generates or preserves value over the long term and the strategy for delivering the objectives of the company.

Comments received

262. A slim majority of all respondents supported the proposal.

263. Some market practitioners commented the proposal would lead to improved transparency for investors, enabling them to make informed investment decisions. Some also thought that the disclosure would encourage issuers with smaller market capitalisations to consider their business model and define a clear strategy. One market practitioner said the proposal would align with international best practice and wanted directors also to highlight the key risks around the business model, and the counter measures in place to mitigate them.

264. Some respondents that opposed the proposal argued it would not provide additional value and it would not be necessary. One respondent was concerned that issuers without a clear strategy or core business may consider the proposed CP a box-ticking exercise. Some suggested the proposal should be introduced as an RBP. Some issuers said the information could be included in the "management discussion and analysis" section of the annual report and it should not be necessary to issue a separate statement.

The Exchange's response

265. We believe the disclosure would promote greater transparency to investors and would not overburden issuers. Since this is a CP, not a mandatory disclosure in the Corporate Governance Report, the issuer has the flexibility to comply or explain.

Consultation conclusion

266. We have adopted the proposal described in paragraph 261.

12. Directors' Insurance

(Consultation Questions 78 and 79)

The proposal

267. We proposed upgrading to a CP the RBP that issuers should arrange appropriate insurance for directors and the insurance should be "adequate and general".

Comments received

268. Although respondents overwhelmingly supported the proposed CP, a significant number of the issuers that responded questioned the addition of the wording "adequate and general". Many suggested that "appropriate" is sufficient because "adequate" is difficult to determine as one does not know for sure if an insurance coverage is adequate before a claim arises.

The Exchange's response

269. We note the comments regarding the additional wording "adequate and general' and agree they can be omitted from the CP.

Consultation conclusion

270. We adopted the proposal described in paragraph 267 but dropped the proposal to add "adequate and general" to the existing wording.

PART II: SHAREHOLDERS

1. Shareholders' General Meetings

A. Notice of meeting and bundling of resolutions

(Consultation Question 80)

The proposal

271. We proposed amending CP E.1.1. to state that issuers should avoid "bundling" resolutions and where the resolutions are "bundled", issuers should explain the reasons and material implications in the notice of meeting.

Comments received

272. This proposal met with almost unanimous approval. One respondent suggested that the CP should be reworded to state that issuers should avoid "bundling" significant resolutions, unless they are interdependent and linked and form one significant proposal.

The Exchange's response

273. We consider the proposed wording clear and do not consider it necessary to revise it.

Consultation conclusion

274. We adopted the Code amendment on "bundling" resolutions described in paragraph 271.

B. Voting by poll

(Consultation Questions 81 to 84)

The proposals

275. We proposed:

(i) amending a Rule to allow the chairman at a general meeting to exempt procedural and administrative matters from voting by poll and asked respondents for further examples of procedural and administrative matters;

(ii) clarifying a Rule concerning disclosure of poll results; and

(iii) removing the statement from a CP that an explanation of the detailed procedures for conducting a poll should be conducted "at the commencement" of a general meeting.

Comments received

276. The proposals were supported by nearly all respondents.

277. One professional body suggested the specific examples of "procedural and administrative" matters in paragraph 275 of the Consultation Paper should be included as Notes to Rule 13.39(4).

278. A couple of respondents opposing the proposed amendment to Rule 13.39(4) were concerned the definition of "procedural and administrative" matters was unclear. One suggested the definition should be clarified and an explanation of procedural and administrative matters included to cover various scenarios to prevent abuse.

279. Several market practitioners suggested the relevant CP should state that the explanation of the procedures for conducting a poll should occur before polling rather than at the commencement of the general meeting.

The Exchange's response

280. The proposed Notes to Rule 13.39(4) setting out the procedural and administrative resolutions and the precise situation that may be used to adjourn a general meeting safeguard against the chairman using an adjournment to "rig" the vote. The chairman is only permitted to exercise his discretion in a very limited and prescribed set of situations, which should reduce the risk of abuse. Given the respondents' comments, we will publish guidance on the examples of procedural and administrative matters as FAQs.

281. For the comments in paragraph 279, we would clarify that the intention of the amended CP is to give flexibility to the chairman of the meeting to explain the procedures for conducting a poll at any time, not just at the commencement of the meeting.

Consultation conclusion

282. We adopted the Rule amendments described in paragraph 275 and will publish FAQs as guidance.

C. Shareholders' approval to appoint and remove an auditor

(Consultation Questions 85 to 87)

The proposals

283. We proposed a new Rule 13.88 to require shareholder approval at a general meeting of any proposal to appoint an auditor. We also proposed to require shareholder approval to remove an auditor before the end of its term of office. We proposed to require the issuer to send a circular to shareholders containing any written representation from the auditor on its removal. The auditor would also be allowed to make written and/or verbal representations at the general meeting to remove it.

Comments received

284. All the proposals received support from respondents. Comments in support included:

(i) the new requirement for shareholder approval of auditor appointment is consistent with normal practice for issuers in most markets;

(ii) it is important an auditor is allowed to make written or verbal representations at a general meeting on its removal. Shareholders should understand why an auditor is removed. This is because there may be a difference of opinion between internal auditors, external auditors and the audit committee. This could have a huge impact on shareholders and the value of the issuer if the dispute is related to material discrepancies in its financial accounts.

(iii) the circular to shareholders containing the auditor's written representations is important because shareholders should have full information on the reasons behind the removal. Greater transparency will help prevent unjustifiable dismissal of auditors;

(iv) the new Rule harmonises requirements for Hong Kong incorporated issuers and those incorporated overseas; and

(v) this change will align with proposed changes in the Hong Kong Company Law bill.

285. Other comments and suggestions from respondents supporting the proposals included:

(i) the Exchange may want to clarify that the new Rule contemplates an ordinary resolution to be passed by all shareholders on an auditor's appointment or removal; and

(ii) an exemption for emergency situations should be established, such as when the auditor's organisation suddenly collapses.

286. Some respondents said the proposals do not address the core issue. This is because, in practice, auditors are rarely removed by the issuer. They are usually forced to resign or say they have "failed to agree fees" with the issuer as a pretext for their resignation.

287. A professional body noted practical concerns of removing an auditor, including the two examples quoted in paragraphs 284 and 285 of the Consultation Paper. They said it would be unduly cumbersome and expensive to convene a shareholders' meeting to remove an auditor and we proposed no alternative arrangement. Some respondents also thought shareholders would be unlikely to be in a position to exercise sound judgment on the matter.

288. Respondents suggested:

(i) shareholders ratify the change of the auditor at the next AGM, with the board required to recommend and explain the change;

(ii) requiring a physical board meeting with a majority of INEDs present to consider and make any change of auditor, with the outgoing auditor having the right to attend and make representations; and

(iii) requiring the audit committee to meet with both the auditor and management and make a recommendation to the board on whether the auditor should be removed.

The Exchange's response

289. For the comment that auditors are sometimes forced to resign or resign under the pretext that they could not agree fees with the issuer, we consider the new Rules should create a channel for auditors to present their side of the story to shareholders.

290. We are not persuaded that it would be unduly cumbersome and expensive to convene a general meeting to remove an auditor. We consider the expense justifiable given the important role played by auditors in maintaining investors' confidence in the issuer's financial affairs.

291. For the comments in paragraph 288(i), we consider it undesirable to wait for any time up to a year for the auditor's case to be heard by shareholders if he is to be removed shortly after an AGM. So, we do not agree with this suggestion.

292. We also disagree that the board or board committees should have the power to remove auditors without shareholders' approval. These suggestions would be at odds with the Companies Ordinance and the purpose of introducing the Rule.

Consultation conclusion

293. We adopted the Rule amendments described in paragraph 283 on shareholders' approval of the appointment and removal of an auditor.

D. Directors' attendance at meetings

(Consultation Questions 88 to 91)

The proposals

294. We proposed the following regarding directors' attendance at meetings:

(i) upgrading to a CP the RBP that NEDs, including INEDs, should attend board meetings, board committee meetings and general meetings and contribute to the issuer's strategy and policies;

(ii) requiring mandatory disclosure by issuers of attendance at general meetings of each director by name; and

(iii) amending the CP concerning attendance of the board chairman and chairmen of the audit, remuneration, and nomination committees at general meetings.

We amended this CP to state that the chairman of the board should arrange for the chairmen of "any other committees" to attend meetings.

Comments received

295. The proposals described in paragraphs 294(i) and (ii) received substantial majority support whilst (iii) was only supported by a small majority of respondents and by less than half of issuers that responded.

NEDs should attend meetings and contribute to strategy and policies

296. Most respondents said the proposal described in paragraph 294(i) would encourage greater director participation at meetings. Several respondents said attending and actively participating in these meetings is a director's basic responsibility. A professional body said developing and deciding on an issuer's strategies and policies is an essential function of the board. One professional body recommended we make the CP a Rule.

297. However, several respondents supporting the proposal said the wording is "aspirational rather than quantifiable" and they would be surprised if any issuer reported non-compliance with this CP.

298. Respondents disagreeing with the proposal, including several issuers and market practitioners, generally considered the provision should remain an RBP. Several commented that determining "positive contribution" is subjective and difficult to define. They also said that it would be difficult to "comply or explain" against the proposed CP. Several issuers noted that NEDs may be appointed for their positive contribution to areas other than strategy and policies.

Disclosure of directors' attendance at general meetings by name

299. Most respondents said disclosure of directors' attendance at general meetings by name would encourage directors to attend and participate at these meetings, and improve transparency. An institutional investor said detailed disclosure of attendance by each director would help investors decide whether NEDs contribute enough time to the board. One professional body and an issuer said the proposal may incorrectly imply that attendance at general meetings is the most important directors' contribution.

300. Several respondents disagreeing with this proposal recommended that the disclosure of directors' attendance at general meetings should remain an RBP. Others said it is more important for directors to attend board and committee meetings. They thought disclosure of attendance at general meetings does not serve the same corporate governance purposes as attendance at board and committee meetings.

Chairman to arrange for chairmen of "any other committees" to attend meetings

301. An issuer said the chairman of other committees should attend the AGM to gain a better understanding of minority shareholders' concerns.

302. A number of respondents, particularly issuers, said the word "arrange" implied the other committee chairmen are at the disposal of the board chairman. They suggested the word "invite" would be more appropriate. Several issuers said the board chairman can invite committee chairmen to attend, but cannot force their attendance. Other respondents said the term "any other committees" is too broad. The chairman should determine whether forthcoming AGM discussions would be relevant to the work of ad-hoc committees before inviting their chairmen. One professional body also commented that a committee's work may have little relevance to general meeting discussions. Some thought only chairmen of key committees should be required to attend the AGM. A market practitioner questioned whether the issuer should arrange attendance by committee chairmen rather than the board chairman.

The Exchange's response

303. The purpose of the proposal set out in paragraph 294(i) is to encourage greater participation in board matters by NEDs including INEDs. "Strategy and policies" could relate to a wide spectrum of areas and we believe that an NED of an issuer should be able to make "positive contribution" in formulating these. Given the importance of NEDs' participation in board matters, we do not agree that the provision should remain an RBP.

304. Given the respondents' comments, we will replace the word "arrange" with "invite" in the CP described in paragraph 294(iii).

305. We agree with the comment that the term "any other committees" is broad but it is qualified by "as appropriate". This gives the chairman discretion to invite the chairmen of only relevant committees to a general meeting.

Consultation conclusion

306. We adopted the Code amendments described in paragraph 294 with an amendment to reflect our response described in paragraph 304.

E. Auditor's attendance at AGMs

(Consultation Question 92)

The proposals

307. We proposed amending a CP (E.1.2) to state that the issuer's management should ensure the external auditors attend the AGM to answer questions about the conduct of the audit, the preparation and content of the auditor's report, accounting policies and auditor independence.

Comments received

308. This proposal received overwhelming support. Many respondents said it is consistent with current practice.

309. Two accounting firms said the recommendation is consistent with a recent European Union consultation recommendation on audit policy and provides a forum for shareholders to ask relevant questions of the auditors.

310. A significant number of respondents, including several accounting firms, said the duty of care of the external auditor should not be extended in this way. They recommended we issue guidance on the application of the proposal, agreed with HKICPA, using Australian guidance as a model.

311. Several respondents, including issuers and a market practitioner, said neither the chairman nor the issuer has the power to require an auditor's attendance at a general meeting. Several respondents queried whether the issuer's "management" or "chairman" should make these arrangements. They said the chairman should not be liable if an auditor failed to attend a general meeting and management can only "invite" an auditor to attend.

312. Other respondents said the CP should not include accounting policy as one of the matters the external auditor should address at a general meeting. They said this is a matter for the board or management, not the external auditors. They said the CFO or a senior management member should answer questions on an issuer's financial statements. Another respondent said the auditor should answer questions on the application of accounting policy.

313. Many respondents supported having auditors present at an AGM, but objected to this being a CP. They also objected to the chairman having to "ensure" the auditor's attendance. A market practitioner said the proposal should be an RBP rather than CP. Several issuers that responded said the CP may be difficult to implement.

314. One accounting firm said external auditors should only answer questions on the content of the auditor's report. They should not address questions about the conduct of the auditor, the preparation of the auditor's report, accounting policies, and auditor independence. The respondent was concerned about the legal implications of auditors answering specific questions about the conduct of the audit and details of preparation of the auditor's report.

The Exchange's response

315. We understand that in practice, most auditors attend AGMs, not least because their appointment and fees are approved at these meetings. So it should not be difficult for chairman to ensure their attendance.

316. We note the comment that the accounting policies are an issuer's responsibility. However, the auditors may be able to explain these policies more clearly than the issuer.

317. We believe issuers can overcome concerns about the possible extension of an auditor's duty of care by making shareholders aware of the limitations of the auditor's role at the outset of a general meeting or before shareholders ask the auditor questions. We do not intend for the CP to result in an auditor answering questions beyond the scope of its mandate.

Consultation conclusion

318. We adopted the proposals described in paragraph 307 on the auditor's attendance at AGMs.

2. Shareholders' Rights

(Consultation Question 93)

The proposals

319. We proposed upgrading to a mandatory disclosure the recommended disclosure of "shareholders' rights" in the Corporate Governance Report described in Paragraph 3(b) of Appendix 23 (re-numbered Paragraph O of Appendix 14). This requires disclosure of:

(i) how shareholders can convene an extraordinary general meeting;

(ii) the procedures for submitting enquiries to the board with sufficient contact details to enable such enquiries to be properly directed; and

(iii) the procedures for putting forward proposals at shareholders' meetings with sufficient contact details.

Comments received

320. A vast majority of respondents supported the proposals. A number of professional bodies, market practitioners and issuers said mandatory disclosure would help shareholders understand and exercise their rights. Shareholders would otherwise have difficulty accessing this information.

321. Some issuers and a market practitioner said there is no evidence that shareholders want disclosure of this material, no other jurisdictions have a similar requirement, and the disclosure required may potentially be lengthy. Several issuers suggested posting this information on issuers' websites.

The Exchange's response

322. We believe disclosure of these shareholders' rights in the Corporate Governance Report will provide greater transparency and improve communication between the issuer and its shareholders. It will also help shareholders to understand and exercise their rights. We believe the benefits of this disclosure outweigh any additional burden on issuers.

Consultation conclusion

323. We adopted the proposals described in paragraph 319 on disclosure of shareholders' rights.

3. Communication with Shareholders

A. Establishing a communication policy

(Consultation Question 94)

The proposal

324. We proposed a new CP stating that issuers should establish a shareholder communication policy.

Comments received

325. We received strong support for this proposal. Over two-thirds of issuers supported it. A professional body said the board should ensure stakeholders are given information about the issuer. Many respondents suggested we provide guidance to issuers specifying the minimum information to be included in a shareholder communication policy. One market practitioner asked us to clarify the meaning of the words "access to balanced and understandable information about the company".

326. A respondent proposed a Rule that issuers provide an active e-mail address or form on their websites for submission of messages. The respondent proposed a CP stating that an issuer should acknowledge communications within three days. Automated responses should be permitted.

327. Those respondents opposing the proposal included some issuers and several market practitioners. One issuer said effective and timely dissemination of information to shareholders is key to successfully competing for capital. However, a board-level policy may not be a complete solution. Respondents disagreeing with the proposal did not believe a CP formalising shareholder communication was necessary. They said issuers should be given flexibility to decide whether or not to comply. Several issuers that responded thought shareholder communication through interim and annual reports was sufficient.

The Exchange's response

328. We believe it is important and necessary for an issuer to have a shareholder communication policy rather than communication only through interim and annual reports. We do not consider it appropriate to mandate how this is to be implemented and have decided to leave it as a CP.

Consultation conclusion

329. We adopted the proposal for a new CP stating that issuers should establish a shareholder communication policy.

B. Publishing constitutional documents on website

(Consultation Question 95)

The proposal

330. We proposed adding a new Rule requiring an issuer to publish an updated and consolidated version of its memorandum and articles of association or constitutional documents on its own website and the HKEx website.

Comments received

331. The proposal received strong support from respondents, including about two-thirds of issuers that responded. Respondents supporting the proposal said constitutional documents contain important information for shareholders and should be published online to make them easily accessible. Several issuers said publishing these documents on their own websites was sufficient. A professional body recommended issuers disclose these documents on their websites and the HKEx website within five days after approval. Another professional body said publication of changes to constitutional documents may be useful to investors when assessing an issuer's corporate governance. The consolidated version of these documents should contain appropriate annotations of changes or amendments.

332. Approximately one-third of respondents disagreed with the proposal. These respondents were mostly issuers and professional bodies. Many said providing a constitutional document to shareholders was not beneficial. Some said these documents are generally similar, so publishing them would not add much value for shareholders and investors. Several said the constitutional documents of Hong Kong incorporated companies and those registered under Companies Ordinance Part XI could be accessed on the Hong Kong Companies Registry's online search service. Some respondents said we should strike a better balance between enhancing accessibility of information and overburdening issuers. Others said issuers' constitutional documents are too technical for shareholders to understand.

The Exchange's response

333. We believe the issuer's constitutional documents should be published on both its website and the HKEx website. The publication of issuers' constitutional documents in one place on the HKEx website will provide easy access for shareholders to this important information.

Consultation conclusion

334. We adopted the proposal for a new Rule requiring issuers to publish their constitutional documents on their websites and HKEx website.

C. Publishing procedures for election of directors

(Consultation Question 96)

The proposal

335. We proposed a new Rule requiring an issuer to publish on its website procedures for shareholders to propose a person for election as a director.

Comments received

336. A strong majority of respondents supported this proposal. A number of market practitioners, professional bodies and issuers said the proposal would increase transparency, provide useful information to shareholders, and was practical. However, some issuers and market practitioners said these procedures are usually described in an issuer's constitutional documents. They suggested issuers draw shareholders' attention to the relevant sections of these documents rather than separately publish them.

337. Respondents disagreeing with the proposal said there is no similar requirement in other comparable jurisdictions. Shareholders would already have access to the procedures for proposing a person for election as a director if constitutional documents were published by issuers as proposed (see paragraph 330).

The Exchange's response

338. We believe the publication on an issuer's website of the procedures for shareholders to propose a person for election as a director will provide greater transparency for shareholders. This requirement is not onerous for issuers.

Consultation conclusion

339. We adopted the proposal for issuers to publish on their websites the procedures for shareholders to propose a person for election as a director.

D. Disclosing significant changes to constitutional documents

(Consultation Question 97)

The proposal

340. We proposed to upgrade the recommended disclosure on any significant change to the issuer's articles of association during the year to a mandatory disclosure in the Corporate Governance Report.

Comments received

341. This proposal received support from about two-thirds of all respondents. Many respondents agreed with the proposal as it would bring to the attention of shareholders changes in the issuer's articles of association that may have an impact on their rights.

Changes to constitutional documents require shareholders' approval. So, issuers would be required to file a circular with the Exchange. However, disclosure would not be burdensome because it could be made by referring to the circular.

342. Several respondents asked us to clarify the definition of a "significant change". One accounting firm recommended we change the wording of the disclosure requirement to refer to "all" changes rather than "significant" changes. This is because it is unlikely that an issuer's articles of association will change frequently.

343. One professional body commented that the disclosure requirement should refer to "constitutional documents", not "articles of association".

344. Most respondents disagreeing with the proposal said the proposed disclosure is unnecessary because changes to the issuer's articles of association would have been approved by shareholders and disclosed in a circular to shareholders.

The Exchange's response

345. We believe the changes in an issuer's constitutional documents should be disclosed in the Corporate Governance Report rather than by cross-referencing to circulars. However, we do not expect issuers to reproduce the entire contents of the circular. A summary of the changes would suffice. This should not be a burden as changes would be infrequent.

346. We agree to use the wording "constitutional documents" as suggested in paragraph 343.

Consultation conclusion

347. We adopted the proposal set out in paragraph 340 with minor amendments referred to in paragraph 346.

PART III: COMPANY SECRETARY

1. Company Secretary's Qualifications, Experience and Training

(Consultation Questions 98 to 104)

The proposals

348. We proposed moving the company secretary's qualifications and experience requirements from Rule 8.17 to a new Rule 3.28 in Chapter 3. The new Rule sets out the academic/professional qualifications or relevant experience that enables a person to carry out the functions of a company secretary.

349. We proposed a list of qualifications for company secretaries that the Exchange would consider acceptable. These are:

(a) HKICS membership; or

(b) being a solicitor or barrister (as defined in the Legal Practitioners Ordinance); or

(c) being a professional accountant (as defined in the Professional Accountants Ordinance).

350. We also asked for views on the following list of items when deciding whether a person has the relevant experience to perform company secretary functions:

(i) length of employment with the issuer and other issuers;

(ii) familiarity with the Exchange Listing Rules;

(iii) relevant training taken and/or to be taken in addition to the minimum requirement under the proposed Rule 3.29; and

(iv) professional qualifications in other jurisdictions.

351. We also proposed removing the requirement for company secretaries to be ordinarily resident in Hong Kong.

352. We proposed repealing Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other issuers.

353. We proposed to introduce a new Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year.

354. We proposed a transitional arrangement for issuers' compliance with new Rule 3.29 which states that a person who was a company secretary:

(i) on 1 January 2005 does not need to comply with rule 3.29 until 1 August 2011;

(ii) between 1 January 2000 to 31 December 2004 does not need to comply with rule 3.29 until 1 August 2013;

(iii) between 1 January 1995 to 31 December 1999 does not need to comply with rule 3.29 until 1 August 2015; and

(iv) on or before 31 December 1994 does not need to comply with rule 3.29 until 1 August 2017.

Comments received

355. We received strong support for these proposals.

Academic/professional qualifications or experience

356. We received overwhelming support for our proposal to introduce a new Rule 3.28 setting out requirements for company secretaries' qualifications and experience. It was opposed by only a few issuers and individuals.

357. Respondents supporting the proposal said the proposed changes provide clarity and promote accountability, enhance flexibility, and are in line with the Exchange's goal to become a global listing venue. It will also enhance the standard of company secretaries' performance and promote consistent standards among issuers.

358. The few respondents disagreeing with the proposals generally preferred no changes. One issuer said the Exchange should consider both academic/professional qualifications and relevant experience, rather than either one.

List of acceptable qualifications

359. Nearly all respondents approved the proposed list of acceptable qualifications, except for a small number of issuers and individuals.

360. Several issuers (part of the same group) supported the proposal because a person who is a member of one of the recognised bodies listed will be automatically acceptable but a person who is not will have to demonstrate relevant experience. A market practitioner suggested the list of acceptable qualifications be non-exhaustive.

361. One professional body recommended we change the reference to a "professional accountant" to "certified public accountant", under the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004).

Relevant experience

362. Nearly all respondents agreed with the proposed list of items for deciding whether a person has relevant experience to perform company secretary functions. A respondent suggested adding the following new items:

(a) familiarity with the requirements of the Companies Ordinance applicable to Hong Kong or overseas incorporated companies (depending on an issuer's jurisdiction of incorporation);

(b) familiarity with the requirements of the Securities and Futures Ordinance so far as it relates to listed companies, including the provisions on disclosure of interest, insider dealing, market misconduct, false and misleading disclosure; and

(c) disclosure of price-sensitive information.

363. A professional body suggested we include a general understanding of the Hong Kong Takeovers Code and Code on Share Repurchase in our assessment of a person's relevant experience.

364. One respondent thought it unlikely that an overseas company secretary would have the necessary knowledge. So, it would be necessary to have dual company secretaries, one for Hong Kong and another for the issuer's place of incorporation.

365. One market practitioner recommended we amend the reference to the length of employment to include the words "and the roles he/she plays in such employment". This is because the length of a person's employment with the issuer would be irrelevant if he was not employed as a company secretary.

Ordinarily resident in Hong Kong

366. One issuer suggested that a company secretary should be contactable within normal working hours if he is not based in Hong Kong.

367. Respondents supporting the proposal said it would enhance flexibility. They said residence is not related to competence. Several respondents thought it would be beneficial for Hong Kong listed international issuers to have their group head of legal as their company secretary. This person would be familiar with our Rules and SFC practice himself, or else have full-time deputies and officers with the required knowledge. Several issuers suggested an international company appoint a Hong Kong representative familiar with the Rules.

368. A professional organisation and several issuers said removing the Hong Kong residence requirement would be inconsistent with the Hong Kong Companies Ordinance. This requires a company secretary, if a natural person, to reside in Hong Kong, or if a body corporate, to have its registered office or place of business in Hong Kong.

369. Several respondents said requiring Mainland issuers' company secretaries to meet the same requirements as those of other issuers was a natural consequence of removing the requirement for a company secretary to be ordinarily resident in Hong Kong. They agreed there should be a common set of rules and requirements for all issuers' company secretaries.

370. A professional organisation disagreed with the proposal and said Mainland issuers' company secretaries should be professionals ordinarily resident in Hong Kong.

Professional training

371. Several issuers that responded thought the proposal for company secretaries to attend 15 hours of professional training per financial year was too much. Other issuers thought it was appropriate. Many respondents recommended we clarify the definition of professional training, accreditation of professional training, details on the prescribed form of the training, and whether those who met the HKICS ECPD requirements would comply with the proposed Rule.

372. Respondents disagreeing with the proposal, primarily issuers, said one Rule for all company secretaries was unnecessary. They preferred for professional organisations to set training requirements. One issuer said the training hours proposed would result in company secretaries attending technical briefing sessions rather than attaining

business knowledge and soft skills such as influencing, negotiating, and leadership. Two other issuers said the proposed requirements are consistent with the annual requirements for attaining or maintaining practitioner's endorsement under HKICS's ECPD programme.

373. Several respondents considered the proposed transitional schedule too lenient compared to, for example, HKICS's mandatory ECPD programme. One issuer also suggested we shorten the transitional period. Several respondents thought the Rule requiring company secretaries to take 15 hours' training a year should be applied immediately.

374. One market practitioner said:

(i) the proposed compliance date of 1 August 2011 for a person who was a company secretary on 1 January 2005 is too tight. We should require company secretaries to start accumulating training hours from 1 August 2011;

(ii) the proposed differentiation of company secretaries by date does not accommodate company secretaries who have taken a break from the profession; and

(iii) professionals should be accountable to their professional bodies rather than to us.

375. A market practitioner asked us to clarify:

(i) whether "a person who was a company secretary" meant a company secretary of an issuer; and

(ii) the definition of "relevant professional training" in proposed Rule 3.29 and the content and methodology of the required training and accreditation.

376. One professional body said the transitional arrangement is not consistent with paragraph 340 of the Consultation Paper that states corporate governance standards, which can be complex, change frequently, and should be tailored to an issuer's circumstances.

The Exchange's response

377. Given the clear market support, we will adopt the proposals. However, we accept respondents' comments described in paragraphs 361 and 365. We do not find the arguments of the minority of respondents that disagreed with the proposals compelling.

378. In response to the question in paragraph 375(i), the answer is "yes", we intended for it to mean a company secretary of an issuer. On the timing of professional training, the 15 hours' training is to be completed within a financial year. So, we consider it more practical to change the original proposal for specific dates for compliance to financial periods.

Consultation conclusion

379. We have adopted the proposals described in paragraphs 348 to 354 with modifications referred to in paragraphs 377 and 378.

2. New Section in Code on Company Secretary

(Consultation Questions 105 to 112)

The proposals

380. We proposed introducing a new section of the Code on company secretaries (Section F) with a principle describing their role and responsibilities. These are:

(i) supporting the board;

(ii) ensuring good information flow within the board;

(iii) ensuring board policy and procedures are followed;

(iv) advising the board on governance matters; and

(v) facilitating induction and directors' professional development.

381. We proposed a new CP stating that a company secretary should be an employee of the issuer and have knowledge of its day-to-day affairs. If an issuer employs an external service provider as company secretary, it should disclose to the service provider the identity of its contact person at the issuer.

382. We proposed a CP stating that the selection, appointment, or dismissal of the company secretary should be the subject of a board decision.

383. We also proposed a Note to this CP that the board's decision to appoint or dismiss the company secretary should be made at a physical board meeting.

384. We proposed adding a CP stating that the company secretary should report to the chairman or chief executive, and a CP stating that the company secretary should maintain a record of directors' training.

Comments received

<u>Introducing a new Code section</u>

385. Nearly all respondents supported the proposal to include a new section of the Code on company secretaries. Most thought codification of a company secretary's role and responsibilities is very helpful.

386. Those respondents disagreeing with the proposal thought a new Code section unnecessary.

387. Nearly all respondents supported the proposed principle for the new section. Many respondents commented that the principle succinctly defines a company secretary's role and responsibilities. One issuer suggested the role of the company secretary should also include facilitating communication and good information flow between an issuer's board/committees and management.

Company secretary as issuer's employee with knowledge of issuer's affairs

388. This proposal was supported by over half of respondents, including over half of issuers.

389. Some respondents said a transitional period would be required to enable issuers to appoint company secretaries that met the proposed criteria.

390. One professional body said the proposed CP was contradictory, and proposed the first sentence of the CP state "the company secretary should preferably be an employee of the issuer and have day-to-day knowledge of the issuer's affairs".

Disclosure of issuer contact person

391. Nearly all respondents supported the proposal that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person. One issuer thought an external service provider should always have a formal contact within each issuer. A number of respondents thought the proposal would help external service providers perform their role more effectively.

392. One market practitioner said an external service provider should already have established reporting lines to an issuer. One issuer said the external service provider may need to contact different management personnel depending on the relevant issue so it is difficult to designate a single contact person.

Selection, appointment and dismissal of the company secretary

393. Most respondents supported the new CP stating that the selection, appointment or dismissal of a company secretary should be the subject of a board decision.

394. One professional body said we should adopt the proposal as a Rule rather than a CP. This is because the board is ultimately responsible for corporate governance matters. Several market practitioners and issuers said it would be sensible to have the board decide on the selection, appointment, and dismissal of the company secretary, particularly given the possible pressure the company secretary may face from management.

395. Those respondents disagreeing with the proposal generally said the selection and dismissal of a company secretary are executive matters. Other respondents said it may be necessary in some circumstances to dismiss a company secretary immediately and appoint a replacement without seeking prior board approval.

Note on physical board meetings

396. A majority of respondents, primarily issuers, disagreed with the proposed Note to CP F.1.2 stating that a board's decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by a written resolution.

397. These respondents gave the following reasons:

(i) the appointment of directors can be by written board resolution, so it should be possible to appoint company secretaries in the same way;

(ii) if open informal discussions have been held among directors before formal resolutions are circulated, there may be no need for a physical meeting;

(iii) it is inappropriate to draw a distinction between meetings held in person and resolutions in writing when both have the same effect in law; and

(iv) directors are expected to fully consider any matter put before them for approval whether it is a written resolution or a physical board meeting.

398. Some respondents that supported the proposal said a physical meeting gives the board an opportunity to hear and understand all relevant circumstances properly. Another market practitioner felt that important decisions should not be made by circulation of written resolutions.

Company secretary should report to chairman and/or chief executive

399. A majority of respondents supported the proposal that the company secretary should report to the chairman or chief executive. We received relatively few responses to this proposal. One issuer said a company secretary should report to the board/chairman and, where appropriate, also the chief executive. Another issuer mentioned that if the chairman is a non-employee, the company secretary may need an additional administrative reporting line to a senior manager.

400. Respondents disagreeing with the proposal said that:

(i) in many organisations the company secretary may report either to the chief financial officer or general counsel and this is appropriate;

(ii) there should be more flexibility for each issuer to determine its own company secretary reporting line;

(iii) the appropriate reporting line for a company secretary depends on the management structure; and

(iv) the company secretary should report to both the board chairman and the chief executive, not "and/or" as the CP is worded. It may be necessary for a company secretary to maintain close contact with an INED if the issuer has a combined chief executive/chairman.

401. One professional body said the company secretary should report to the whole board, because he or she may sometimes have to take a position opposed to that of the chairman or chief executive.

402. A vast majority of respondents supported the proposal that the company secretary should maintain a record of directors' training.

403. The respondents supporting the proposal generally said the company secretary was the appropriate person to undertake this obligation. One market practitioner suggested the CP state that the company secretary may delegate this administrative task to someone under his supervision. Another market practitioner proposed the company secretary be required to maintain his own training record.

404. Those that disagreed with the proposal said it was not sensible to be prescriptive about training. They also thought it unnecessary to incorporate the proposal into the Code, and that the proposal would be difficult to implement.

The Exchange's response

405. In response to the suggestion in paragraph 389, we do not consider it necessary to provide a transitional period because the changes to the requirements are minor. We also disagree with the suggestion in paragraph 390 because it is not the intention of the CP to "prefer" an employee over an external service provider for the reasons given in paragraph 354 of the Consultation paper.

406. We believe the decision on appointment and dismissal of a company secretary is important. Directors should carefully consider the qualifications and experience of a company secretary and the reasons for dismissal at a physical board meeting. We have therefore revised the Note to state that the appointment and dismissal of the company secretary should be dealt with by a physical board meeting rather than a written resolution.

407. On the reporting line of the company secretary, we note the concerns raised by respondents but believe that the proposed CP will provide flexibility and have decided to retain it.

408. We have decided not to adopt the proposed CP on eight-hour professional training for directors (see paragraph 84). So, we will also not adopt the proposal for a company secretary to maintain a record of directors' training.

Consultation conclusion

409. We have adopted the proposals described in paragraphs 380 to 384 with minor modification to take into account a respondent's drafting comment.

410. We will not adopt the proposed CP stating that the company secretary should maintain a record of directors' training as discussed in paragraph 408.

CHAPTER 4: NON-SUBSTANTIVE AMENDMENTS

1. Definition of "Announcement" and "Announce"

(Consultation Question 113)

The proposals

411. The phrase "publish an announcement in accordance with rule 2.07C" is repeated frequently in the Rules. We proposed replacing this phrase with the terms "announcement" and "announce", defined as "publication of an announcement in accordance with rule 2.07C".

Comments received

412. Nearly all respondents agreed with the proposal. We received a couple of drafting comments.

The Exchange's response

413. Given the strong support, we will adopt the Rule amendment.

Consultation conclusion

414. We adopted the proposal to add the definitions "announcement" and "announce" to the Rules with minor modification to reflect drafting comments from respondents.

2. Authorised Representatives' Contact Details

(Consultation Question 114)

The proposal

415. We proposed to amend Rule 3.06(1) to add a reference to authorised representatives' mobile and other telephone numbers, email and correspondence addresses and other contact details as the Exchange may prescribe from time to time.

Comments received

416. Nearly all respondents agreed with the proposal. Respondents said that:

(i) it is essential for the Exchange to be able to contact authorised representatives and it will also be beneficial to issuers for the Exchange to be able to do so;

(ii) it would make communications easier, especially if an issue is time critical;

(iii) they agreed with the reasons given in the Consultation Paper; and

(iv) we should also provide authorised representatives with the mobile numbers of the relevant Listing Division team members.

417. Those respondents disagreeing with the proposal suggested the existing reference is sufficient. One issuer said the provision "any other contact details that the Exchange may prescribe from time to time" is unnecessary.

The Exchange's response

418. We consider the existing contact details in the Rules to be insufficient. Given the general support for the proposal, we will proceed with the Rule amendment.

Consultation conclusion

419. We adopted the proposal described in paragraph 415.

3. Merging Corporate Governance Report Requirements into Appendix 14

(Consultation Questions 115 and 116)

The proposals

420. We proposed merging Appendix 23 into Appendix 14 for ease of reference. The requirements for the Corporate Governance Report will form paragraphs G to P of Appendix 14, headed "Mandatory Disclosure Requirements", and paragraphs Q to T, "Recommended Disclosures".

421. We also proposed streamlining Appendix 23 and making plain language amendments to it.

Comments received

422. A high percentage of respondents, including all issuers, market practitioners and professional bodies, supported merging Appendix 23 into Appendix 14. They said it would promote better understanding of the requirements and was reasonable to improve ease of reference.

423. The few respondents disagreeing with the proposal said the current structure is sufficiently clear.

424. Respondents almost unanimously supported the proposal to streamline Appendix 23 and make plain language amendments to it. Respondents said this would enable readers to better understand the requirements. They said plain language initiatives

should be supported as they make the Rules more user-friendly and promote better understanding.

The Exchange's response

425. Given the broad support, we will proceed with the proposed Rule and Code amendments described in paragraphs 420 and 421.

Consultation conclusion

426. We adopted the proposed Rule and Code amendments described in paragraphs 420 and 421.

4. Amendment of Appendix 14 Title

427. We have deleted the word "Practices" from the title of Appendix 14. It is now entitled "Corporate Governance Code and Corporate Governance Report".

428. We have made consequential Rule amendments to reflect the change in name of the Code.

5. House-keeping Rule Change to GEM Rules

429. The Note to GEM Listing Rule 5.01 has already been included in GEM Listing Rule 17.50, so this Note is now redundant and has been removed.

APPENDIX I: LIST OF RESPONDENTS

Issuers (67 in total)

1	AIA Group Limited
2	C C Land Holdings Limited
3	Cathay Pacific Airways Limited
4	Cheung Kong (Holdings) Limited
5	China Agri-Industries Holdings Limited
6	China Petroleum & Chemical Corporation
7	China Resources Cement Holdings Limited
8	China Resources Enterprise, Limited
9	China Resources Land Limited
10	China Resources Microelectronics Limited
11	China Resources Power Holdings Company Limited
12	Chuang's China Investments Limited
13	Chuang's Consortium International Limited
14	CLP Holdings Limited
15	Esprit Holdings Limited
16	Great Eagle Holdings Limited
17	Henderson Investment Limited
18	Henderson Land Development Company Limited
19	Hong Kong Aircraft Engineering Company Limited
20	Hopewell Holdings Limited
21	HSBC Holdings plc
22	Hutchison Harbour Ring Limited
23	Hutchison Telecommunications Hong Kong Holdings Limited
24	Hutchison Whampoa Limited
25	Industrial and Commercial Bank of China Limited
26	ITC Corporation Limited
27	ITC Properties Group Limited
28	Midas International Holdings Limited
29	MTR Corporation Limited
30	Paul Y. Engineering Group Limited
31	Power Assets Holdings Limited
32	PYI Corporation Limited
33	Rosedale Hotel Holdings Limited
34	SEE Corporation Limited
35	Standard Chartered Plc
36	Sun Hung Kai Properties Limited
37	Swire Pacific Limited
38	The Hong Kong and China Gas Company Limited
39	The Link Real Estate Investment Trust
40	TOM Group Limited
41	Unity Investments Holdings Limited
42	Vitasoy International Holdings Limited
43	Wing Hang Bank, Limited
44-67	24 issuers requested anonymity (1 issuer also requested its response not to be published)

Market Practitioners (14 in total)

68	Baker & McKenzie
69	DLA Piper Hong Kong
70	Ernst & Young
71	J. S. Gale & Co
72	KPMG
73	Latham & Watkins
74	Mayer Brown JSM
75	P.C. Woo & Co.
76	PricewaterhouseCoopers
77	Protiviti Hong Kong Co. Limited
78	Slaughter and May
79	Stephenson Harwood
80	Tricor Services Limited
81	1 market practitioner requested anonymity

Individuals (15 in total)

82	Ho Kit Man Emily
83	Ivan Choi
84	Joseph M Lai
85	Li Chun Fung
86	Shek Lai Him / Tong Wui Tung
87	Suen Chi Wai
88	Wong H.Y. Peter
89	Wong KC
90-96	7 individuals requested anonymity

Professional Bodies (8 in total)

97	CFA Institute and The Hong Kong Society of Financial Analysts
98	Hong Kong Institute of Certified Public Accountants
99	The Chamber of Hong Kong Listed Companies
100	The Hong Kong Institute of Chartered Secretaries
101	The Hong Kong Institute of Chartered Secretaries affiliated representatives
102	The Hong Kong Institute of Directors
103	The Law Society of Hong Kong
104	The Society of Chinese Accountants and Auditors

Institutional Investors (3 in total)

105	F&C Management Ltd.
106	Guoco Management Co., Ltd.
107	Hermes Equity Ownership Services

Other Entities (11 in total)

108	Association for Sustainable & Responsible Investment in Asia Ltd
109	Independent Commission Against Corruption
110	Webb-site.com
111	Women's Commission
112	The Hong Kong Polytechnic University
113	Asian Corporate Governance Association
114-118	5 other entities requested anonymity

Remarks:

1. *One submission is counted as one response.*

2. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*