



香港女律師協會
HONG KONG FEDERATION OF WOMEN LAWYERS

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The Hon. Ms. Miriam Kin-yea LAU, J.P.

By email

15 April 2008

Corporate Communications Department
Re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Hong Kong and Exchanges and Clearing Limited
12th Floor, One International Finance Centre,
1 Harbour View Street, Central,
Hong Kong

Dear Sirs,

Combined Consultation Paper on Proposed Changes to the Listing Rules (the "Consultation Paper")

We refer to our letter dated 7 April 2008 and are pleased to attach the Hong Kong Federation of Women Lawyers' response on the Consultation Paper.

If you have any questions, please feel free to contact the undersigned on [REDACTED].

Yours faithfully,

[REDACTED]

Berita Yu
Council Member
For and on behalf of the
Hong Kong Federation of Women Lawyers

QUESTIONNAIRE ON PROPOSED CHANGES TO THE LISTING RULES

The purpose of this questionnaire is to seek views and comments from market users and interested parties regarding the issues discussed in the Combined Consultation Paper on Proposed Changes to the Listing Rules (the “Combined Consultation Paper”) published by The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), in January 2008.

Amongst other things, the Exchange seeks comments regarding whether the current Main Board Listing Rules and Growth Enterprise Market Listing Rules should be amended.

A copy of the Combined Consultation Paper can be obtained from the Exchange or at <http://www.hkex.com.hk/consul/paper/consultpaper.htm>.

Please return completed questionnaires on no later than **7 April 2008** by one of the following methods:

By mail or hand delivery to: Corporate Communications Department
Re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

By fax to: (852) 2524-0149

By email to: cvw@hkex.com.hk

The Exchange’s submission enquiry number is (852) 2840-3844.

Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages as necessary.

Issue 1: Use of websites for communication with shareholders

Question 1.1: Do you agree that the Rules should be amended so as to remove the requirement that all listed issuers must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong with regard to how they make corporate communications available to shareholders (as proposed in paragraph 1.20(a) of the Combined Consultation Paper)?

Yes

No

Please provide reasons for your views.

This will enhance environmental protection and is welcomed.

Question 1.2: Do you agree that the Rules should be amended so as to allow a listed issuer to avail itself of a prescribed procedure for deeming consent from a shareholder to the listed issuer sending or supplying corporate communications to him by making them available on its website?

Yes

No

Please provide reasons for your views.

Question 1.3: In order for a listed issuer under our proposal to be allowed to send or supply corporate communications to its shareholders by making them available on its website, its shareholders must first have resolved in general meeting that it may do so or its constitutional documents must contain provision to that effect. Do you concur that, as in the UK, the listed issuer should also be required to have asked each shareholder individually to agree that the listed issuer may send corporate communications generally, or the corporate communications in question, to him by means of the listed issuer's website and to have waited for a specified period of time before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer's website?

Yes

No

Please provide reasons for your views.

Question 1.4: If your answer to *Question 1.3* is “yes”, do you agree that:

(a) the specified period of time for which the listed issuer should be required to have waited before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer’s website should be 28 days;

Yes

No

(b) where a shareholder has refused to a corporate communication being made available to him solely on the listed issuer’s website, the listed issuer should be precluded from seeking his consent again for a certain period of time; and

Yes

No

(c) if your answer to (b) is “yes”, should the period be 12 months?

Yes

No

Please provide reasons for your views.

Do you have any other comments you consider necessary to supplement your reply to this *Question 1.4*?

No.

Question 1.5: Do you consider that the Rules should be amended to remove the requirement for express, positive confirmation from a shareholder for the sending of a corporate communication by a listed issuer to the shareholder on a CD?

Yes

No

Please provide reasons for your views.

Shareholders may not necessarily have the right equipment to read CDs at home.

Question 1.6: Do you agree that the draft Rules at Appendix 1 will implement the proposals set out in Issue 1 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Issue 2: Information gathering powers

Question 2.1: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information?

Yes

No

Question 2.2: Do you agree that the draft Main Board Rule 2.12A at Appendix 2 will implement the proposal set out in *Question 2.1* above?

Yes

No

Issue 3: Qualified accountants

Question 3.1: Do you agree that the requirement in the Main Board Rules for a qualified accountant should be removed?

Yes

No

Please provide reasons for your views.

Our views are diverse:

For small-cap issuers, it is recommended that they should continue to be required to hire a qualified accountant in order to enhance the quality of financial reporting. However the qualified accountant may hold professional accounting qualifications in any of a number of key jurisdictions where there is convergence of accounting standards to IFRS.

For large-cap issuers (especially those with overseas listings in jurisdictions such as London or New York), the issuer should be exempted from this requirement if it could satisfy the Stock Exchange that it has sufficient resources to enable a proper discharge of its obligations of financial reporting under the Listing Rules.

Question 3.2: Do you agree that the requirement in the GEM Rules for a qualified accountant should be removed?

Yes

No

Please provide reasons for your views.

Please see our response to question 3.1. above.

Issue 4: Review of sponsor's independence

Question 4.1: Do you agree that the Rules regarding sponsor's independence should be amended such that a sponsor is required to demonstrate independence at any time from the earlier of the date when the sponsor agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of the price stabilisation period, whichever is the later?

Yes

No

Please provide reasons for your views.

We are in principle agreeable to extending the independence requirement over a period of time, but please see our response to Question 4.2.

Question 4.2: Do you agree that the draft Rules at Appendix 4 will implement the proposals set out in *Question 4.1* above?

Yes

No

Please provide reasons for your views.

A sponsor's independence should commence from the filing of Form A1 (rather than the commencement of work as a sponsor) and end on the listing date when a sponsor's role technically ends.

Issue 5: Public float

Question 5.1: Do you agree that the existing Rule 8.08(1) (d) should be amended?

Yes

No

Question 5.2: If your answer to *Question 5.1* is "yes", do you agree that the existing Rule should be amended as proposed at Appendix 5?

Yes

No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

No

Question 5.3: Do you have any other comments on the issue of public float? Please be specific in your views.

We welcome this especially due to the difficulties experienced by H+A share issuers which often are required to sell more A than H shares.

Question 5.4: Do you agree that the existing Rule 8.24 should be amended?

Yes

No

Question 5.5: If your answer to *Question 5.4* is “yes”, do you agree that the existing Rule should be amended as proposed at Appendix 5?

Yes

No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

- (1) In order to maintain a consistent approach in the classification of shareholders who are in a position to exert considerable influence over the issuer or have a close relationship with the issuer, the definition of "public" should only exclude substantial shareholders holding 10% or more of the shares (ie connected persons) and not shareholders holding 5% or more;
- (2) Strategic investors may be discouraged from investing in the issuer as a less than 5% shareholding may be seen to be too small a stake. This will affect the fund-raising capability of issuers especially in a bear market;
- (3) Strategic investors are not allowed by the Stock Exchange to hold any special rights such as board representation rights and information rights upon the listing of the issuer. Therefore, these strategic investors do not exert any more influence over the issuer than other shareholders;
- (4) Part XV of the SFO is only a disclosure regime and the 5% threshold does not necessarily mean that the substantial shareholder can exert any material influence over the issuer.

Question 5.6: Do you consider that there is the need to regulate the level of market float?

Yes

No

Question 5.7: If your answer to *Question 5.6* is “yes”, do you have suggestions as to how it should be regulated, e.g. in terms of percentage or value, or a combination of both? Please provide reasons for your views.

Issue 6: Bonus issues of a class of securities new to listing

Question 6.1: Do you agree that the requirement for a minimum spread of securities holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) should be disapplied in the event of a bonus issue of a class of securities new to listing?

Yes

No

Please provide reasons for your views.

Question 6.2: Do you consider it appropriate that the proposed exemption should not be available where the listed shares of the issuer may be concentrated in the hands of a few shareholders?

Yes

No

If so, do you consider the five-year time limit to be appropriate?

Yes

No

Please provide reasons for your views.

Question 6.3: Do you agree that the draft Rules at Appendix 6 will implement the proposals set out in *Questions 6.1 and 6.2* above?

Yes

No

Please provide reasons for your views.

Issue 7: Review of the Exchange's approach to pre-vetting public documents of listed issuers

Question 7.1: Do you agree that the Exchange should no longer review all announcements made by listed issuers?

Yes

No

Please provide reasons for your views.

Again our views are diverse:

The proposal gives rise to a concern that issuers might not be as willing to disclose relevant information as compared to if they were required to do so by the Stock Exchange under mandatory pre-vetting. In addition, mistakes in evaluating and applying the Listing Rules may occur. The

time and expense involved in remedying those mistakes could be put to better use by preventing their occurrence in the first place.

On the other end of the spectrum, some members welcome the proposal as this could enhance the timing at which transactions could be executed without undue suspension of trading in shares pending the Stock Exchange's clearance of the announcement, provided sufficient resources are retained by the Stock Exchange to handle pre-announcement consultations.

Question 7.2: Do you have any views on the proposed arrangements and issues the Exchange should consider in order to effect an orderly transition from the current approach to the new approach with a further reduction in the scope of pre-vetting of announcements?

If pre-vetting is retained, it would be preferable to exclude from pre-vetting only those straight-forward disclosure matters such as amendments to bye-laws, share option schemes, pledging of shares in issuers and matters affecting trading arrangements..

Question 7.3: Do you support the proposal to amend the pre-vetting requirements relating to:

(a) circulars in respect of proposed amendments to listed issuers' Memorandum or Articles of Association or equivalent documents; and

Yes

No

(b) explanatory statements relating to listed issuers purchasing their own shares on a stock exchange?

Yes

No

Please provide reasons for your views.

Please see our response to Question 7.2 above.

Question 7.4: Do you agree that the Exchange should continue to pre-vet (pursuant to a new requirement in the Rules) the categories of documents set out in paragraph 7.50 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Please see our response to Question 7.1 above.

Question 7.5: Do you support the proposal to amend the circular requirements relating to discloseable transactions including the proposal regarding situations where the Rules currently require that expert reports are included in a circular?

Yes

No

Please provide reasons for your views.

Question 7.6: Do you have any comments on the proposed minor Rule amendments described at paragraphs 7.59 to 7.63 of the Combined Consultation Paper? Please provide reasons for your views.

No.

Question 7.7: Do you agree that the draft (Main Board and GEM) Rules at Appendix 7 will implement the proposals set out in Issue 7 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Issue 8: Disclosure of changes in issued share capital

Question 8.1: Are there any other types of changes in issued share capital that should be included in the Next Day Disclosure Return?

Yes

No

If so, please provide reasons for your views, together with the types of changes.

Question 8.2: Have the various types of changes in a listed issuer's issued share capital been appropriately categorised for the purpose of next day disclosure, bearing in mind the need to strike a balance between promptly informing the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other?

Yes

No

Question 8.3: Is 5% an appropriate *de minimis* threshold for those categories of changes to which it applies?

Yes

No

Please provide reasons for your views.

We suggest that all categories as set out in paragraph 8.8 of the Consultation Paper should be subject to a non-cumulative 5% de minimis threshold as otherwise it would be unduly burdensome for a listed issuer to have to monitor such changes and file extra returns.

Question 8.4: Do you have any comments on the draft of the Next Day Disclosure Return for equity issuers?

No.

Question 8.5: Do you have any comments on the draft of the Next Day Disclosure Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

No.

Question 8.6: Is 9:00 a.m. of the next business day an achievable deadline for the Next Day Disclosure Return?

Yes

No

Please provide reasons for your views.

We should follow the timing requirement for SFO Part XV filings - within 3 business days from the day of the relevant transaction.

Question 8.7: Do you have any comments on the draft of the revised Monthly Return for equity issuers?

No

Question 8.8: Do you have any comments on the draft of the revised Monthly Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

No

Question 8.9: Do you have any comments on the draft of the revised Monthly Return for open-ended CISs listed under Chapter 20 of the Main Board Rules?

No

Question 8.10: Is 9:00 a.m. of the fifth business day following the end of each calendar month an achievable deadline for publication of the Monthly Return?

Yes

No

Please provide reasons for your views.

As the new form of Monthly Return requires more information to be provided by the issuer, the issuer should at least be given the same amount of time as before to gather relevant and accurate information.

Question 8.11: Should the Exchange amend the Rules to require listed issuers to make an announcement as soon as possible when share options are granted pursuant to a share option scheme?

Yes

No

If so, do you have any comments on the details which we propose to require listed issuers to disclose in the announcement?

These are not always material to the issuer..

Question 8.12: Do you agree that the draft Rules at Appendix 8A will implement the proposals set out in Issue 8 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Subject to our views above.

Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue

Question 9.1: Do you support the proposal to amend Main Board Rule 13.28 and GEM Rule 17.30 to extend the specific disclosure requirements to other categories of issues of securities for cash and to include additional items of information in the amended Rule?

Yes

No

Please provide reasons for your views.

This is codyfying existing practice.

Question 9.2: Do you agree that the draft Rules at Appendix 9 will implement the proposal set out in *Question 9.1* above?

Yes

No

Please provide reasons for your views.

We do not agree with the proposed additions of subparagraphs (4), (10), and (15) to Rule 13.28 for the reasons set out below.

1. The proposal to include the basis for determining the issue price of each security under Rule 13.28(4) will not be meaningful as this is usually arrived at after of arm's length negotiations between the parties.
2. The proposal to require disclosure of the "principal terms of the underwriting/placing arrangements" would be inappropriate as some of the terms may be commercially sensitive. Rule 2.13 already requires the disclosure of all material information.
3. The proposed requirement under rule 13.28(15) to disclose "any other material information with regard to the issue..." is redundant in the light of Rule 2.13.

Question 9.3: Do you support the proposal to amend Main Board Rules 7.21(1) and 7.26A(1) and GEM Rules 10.31(1) and 10.42(1) to require listed issuers to disclose the basis of allocation of the excess securities in the announcement, circular and listing document for a rights issue/open offer?

Yes

No

Please provide reasons for your views.

We agree with the proposal as this will enhance the requirement that allocations of securities available for excess applications are done so on a fair basis.

Issue 10: Alignment of requirements for material dilution in major subsidiary and deemed disposal

Question 10.1: Should the Rules continue to impose a requirement for material dilution, separate from notifiable transaction requirements applicable to deemed disposals?

Yes

No

Please provide reasons for your views.

We agree with the reasons as stated in the Consultation Paper.

Question 10.2: Do you agree that the requirements for material dilution under Main Board Chapter 13 and GEM Chapter 17 should be aligned to those for deemed disposal in Main Board Chapter 14 and GEM Chapter 19?

Yes

No

Please provide reasons for your views.

Question 10.3: Do you agree that the draft Rules at Appendix 10 will implement the proposals set out in *Question 10.2* above?

Yes

No

Please provide reasons for your views.

Issue 11: General mandates

Question 11.1: Should the Exchange retain the current Rules on the size of issues of securities under the general mandate without amendment?

Yes

No

If yes, then please provide your comments and suggestions before proceeding to *Question 11.3* below.

This will continue to give flexibility to the issuer. This is already subject to shareholders' approval.

Question 11.2: Should the Exchange amend the current Rules to restrict the size of the general mandate that can be used to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities to: (*choose one of the following options*)

10%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should be the percentage of the issued share capital for issuing securities for such other purposes?

5%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should the percentage of the issued share capital be for issuing securities for such other purposes?

10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)?

a percentage other than 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)? If you support this option, then please state the percentage you consider appropriate. _____

Please provide your comments and suggestions.

N/A

Question 11.3: Should the Exchange amend the current Rules so as to exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the granting of the general mandate? (In other words, the listed issuer's issued share capital as at the date of the granting of the general mandate would remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting.)

Yes

No

If yes, please provide your comments and suggestions.

N/A

Question 11.4: Should the Exchange amend the current Rules such that:

- (a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the “benchmarked price” would apply only to placings of shares for cash;
- (b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
- (c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information?

Yes

No

Question 11.5: Do you have any other comments or suggestions in relation to general mandates? Please specify.

Issue 12: Voting at general meetings

Question 12.1: Should the Exchange amend the Rules to require voting on all resolutions at general meetings to be by poll?

Yes

No

Question 12.2: If your answer to *Question 12.1* is “no”, should the Exchange amend the Rules to require voting on all resolutions at annual general meetings to be by poll (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders’ approval and transactions where an interested shareholder will be required to abstain from voting)?

Yes

No

Question 12.3: If your answer to *Question 12.1* is “no”, should the Exchange amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to make an announcement on the total number of proxy votes in respect of which proxy appointments have been validly made together with: (i) the number of votes exercisable by proxies appointed to vote for the resolution; (ii) the number of votes exercisable by proxies appointed to vote against the resolution; (iii) the number of votes exercisable by proxies appointed to abstain on the resolution; and (iv) the number of votes exercisable by proxies appointed to vote at the proxy’s discretion?

Yes

No

Question 12.4: In the case of listed issuers other than H-share issuers, the Rules currently require 14 days notice for the passing of an ordinary resolution and 21 days notice for the passing of a special resolution. 21 days notice is also required for convening an annual general meeting. In the case of H-share issuers, 45 days notice of shareholder meetings is required under the “Mandatory Provisions for Companies Listing Overseas” for all resolutions. Should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings?

Yes

No

If so, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

N/A

Question 12.5: If your answer to *Question 12.4* is “no”, should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all annual general meetings, but not extraordinary general meetings (or, depending on the listed issuer’s place of incorporation, special general meetings)?

Yes

No

If the answer is “yes”, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

N/A

Question 12.6: Do you have any other comments regarding regulation by the Exchange on the extent to which voting by poll should be made mandatory at general meetings or the minimum notice period required for convening shareholders meetings?

1. The Companies Ordinance already contains provisions enabling shareholders to demand a poll.

2. The UK, Australia and Singapore jurisdictions do not require voting by poll on all resolutions.

We also do not agree on increasing the minimum notice period because:

1. The current provisions in the Listing Rules reflect the provisions existing companies legislation concerning notice of general meetings.

2. This would not affect H-share issuers which under PRC laws are required to give 45 days' notice for all shareholder resolutions.

3. An extended notice period would affect the timing in which the issuer could complete transactions. This could adversely affect its ability to close transactions.

Issue 13: Disclosure of information about and by directors

Question 13.1: Do you agree that the information set out in draft new Rule 13.51B should be expressly required to be disclosed by issuers up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or re-designation?

Yes

No

Please provide reasons for your views.

This is too onerous on issuers, which should be allowed to rely on Listing Rule 13.09 to decide whether an announcement is required.

Question 13.2: Do you agree that the relevant information should be discloseable immediately upon the issuer becoming aware of the information (i.e. continuously) rather than, for example, only in annual and interim reports?

Yes

No

Please provide reasons for your views.

Question 13.3: Do you agree that, to ensure that the issuer is made aware of the relevant information, a new obligation should be introduced requiring directors and supervisors to keep the issuer informed of relevant developments?

Yes

No

Please provide reasons for your views.

We agree in principle, but the duty to notify the issuer should only arise if in the judgement of the director, the event falls with Listing Rule 13.09.

Question 13.4: Do you agree that paragraphs (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2) should be amended to clarify that the disclosure referred to in those Rules need not be made if such disclosure would be prohibited by law?

Yes

No

Please provide reasons for your views.

Question 13.5: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.1, 13.2, 13.3 and 13.4* above?

Yes

No

Please provide reasons for your views.

N/A

Question 13.6: Do you agree that the Rules should be amended to clarify that issuers should publicly disclose in the Appointment Announcements their directors', supervisors' and proposed directors' and supervisors' current and past (during the past three years) directorships in all public companies with securities listed in Hong Kong and/or overseas?

Yes

No

Please provide reasons for your views.

This is too onerous on issuers and the information may not be meaningful to HK investors.

Question 13.7: Do you agree that Main Board Rule 13.51(2)(c) and its GEM Rules equivalent, GEM Rule 17.50(2)(c), should be amended to clarify that issuers should publicly disclose their directors', supervisors' and proposed directors' and supervisors' professional qualifications?

Yes

No

Please provide reasons for your views.

This enhances transparency.

Question 13.8: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.6 and 13.7* above?

Yes

No

Please provide reasons for your views.

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Question 13.9: Do you agree that Main Board Rule 13.51(2)(m)(ii) should be amended to include reference to the Ordinances referred to in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii)?

Yes

No

Please provide reasons for your views.

Question 13.10: Do you agree that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended so as to put beyond doubt that the disclosure obligation arises where a conviction falls under any one (rather than all) of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii))?

Yes

No

Please provide reasons for your views.

Question 13.11: Do you agree that the draft Rules at Appendix 13 will implement the proposal set out in *Questions 13.9 and 13.10* above?

Yes

No

Please provide reasons for your views.

Issue 14: Codification of waiver to property companies

Question 14.1: Do you agree that the Proposed Relief should provide relaxation of strict compliance with the shareholders' approval requirements of the Rules only to listed issuers that are actively engaged in property development as a principal business activity?

Yes

No

Please provide reasons for your views.

However, this should be extended to issuers in other business sectors for acquisitions of assets for use in their core business activities, subject to the obtaining of a shareholders' general acquisition mandate.

Question 14.2: Do you agree with the proposed criteria in determining whether property development is a principal activity of a listed issuer (described at paragraphs 14.12 and 14.13 of the Combined Consultation Paper)?

Yes

No

Please provide reasons for your views.

We suggest that to qualify as a Qualified Issuer, the issuer's revenue or profit derived from property development should meet a certain threshold.

Question 14.3: Do you agree that the scope of the Proposed Relief should be confined to acquisition of property assets that fall within the definition of Qualified Property Projects?

Yes

No

Please provide reasons for your views.

The scope of the proposed relief should also be extended to include public auctions in other jurisdictions,

Are you aware of any examples of Hong Kong listed issuers encountering difficulties in strict compliance with the Rules when participating in other types of auctions or tenders? If yes, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.

No

Question 14.4: Do you agree that Qualified Property Projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules set out in Main Board Chapter 14?

Yes

No

If yes, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.

No. It would be too restrictive to impose a percentage cap. It would also be difficult to formulate rules on how to account for what constitutes "revenue" or "capital". The issuer, at the stage of the auction bid, may not yet have formulated its detailed development plans for the property under public auction to determine the split between revenue and capital.

Question 14.5: Do you agree that the scope of the exemption from strict compliance with Main Board Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons should be limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects?

Yes

No

Please provide reasons for your views.

Question 14.6: Do you agree that the General Property Acquisition Mandate is useful to confer protection on shareholders and is necessary as regards property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures)?

Yes

No

If yes, should the General Property Acquisition Mandate include any limit on the size of the Annual Cap by reference to some quantifiable thresholds? Please provide reasons for your views.

Question 14.7: Are the disclosure obligations described at paragraph 14.51 of the Combined Consultation Paper appropriate?

Yes

No

Please provide reasons for your views.

Question 14.8: Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out in Issue 14 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Issue 15: Self-constructed fixed assets

Question 15.1: Do you agree that the notifiable transaction Rules should be amended to specifically exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary and usual course of its business?

Yes

No

Please provide reasons for your views.

Question 15.2: Do you agree that the draft Rules at Appendix 15 will implement the proposal set out in *Question 15.1* above?

Yes

No

Please provide reasons for your views.

Issue 16: Disclosure of information in takeovers

Question 16.1: Do you agree that the current practice of the Exchange, i.e. the granting of waivers to listed issuers to publish prescribed information of the target companies in situations such as hostile takeovers, should be codified in the Rules?

Yes

No

Please provide reasons for your views.

We agree that the granting of waivers to listed issuers to publish prescribed information of the target companies should be codified in the Rules, but the proposed change to the Listing Rules should be extended to:

(A) minority investments by a listed issuer as the issuer does not control the company in question and cannot command dissemination of information as if it were under its control;

(B) recommended takeovers;

(C) takeovers by way of schemes of arrangement;

(D) target companies listed in Hong Kong.

Moreover, the requirement to provide a supplemental circular should only apply to situations where the listed issuer will acquire statutory control of the target after the completion of the acquisition.

Question 16.2: Do you agree the new draft Rule should extend to non-hostile takeovers where there is insufficient access to non-public information as well as hostile takeovers?

Yes

No

Please provide reasons for your views.

The reasons to support the new draft Listing Rules to extend to recommended takeovers are similar to those applicable to hostile takeovers and are set out below:

- target companies are often bound by regulatory requirements of confidentiality;*
- target companies are already subject to financial reporting requirements;*
- the listed issuer's shareholders would later be provided with a supplemental circular which would provide all relevant information required by the applicable Rules.*

Question 16.3: Paragraph (3) of the new draft Rule proposes that the supplemental circular must be despatched to shareholders within 45 days of the earlier of the following:

- the listed issuer being able to gain access to the offeree company's books and records for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under Rules 14.66 and 14.67 or 14.69; and
- the listed issuer being able to exercise control over the offeree company.

Do you agree that the 45-day time frame is an appropriate length of time?

Yes

No

Please provide reasons for your views.

We suggest following the deadline for release of interim results: i.e. at least three months.

Question 16.4: Do you have any other comments on the draft new Rule 14.67A at Appendix 16? Please provide reasons for your views.

Please see our above responses for issue 16.

Issue 17: Review of director's and supervisor's declaration and undertaking

Question 17.1: Do you agree that the respective forms of declaration and undertaking for directors and supervisors (i.e. the DU Forms) should be streamlined by deleting the questions relating to the directors' and supervisors' biographical details?

Yes

No

Please provide reasons for your views.

Question 17.2: Do you agree that the DU Forms for directors should be amended by removing the statutory declaration requirement?

Yes

No

Please provide reasons for your views.

Question 17.3: Do you agree that the GEM Rules should be amended to align with the practice of the Main Board Rules as regards the timing for the submission of DU Forms by GEM issuers, such that a GEM issuer would be required to lodge with the Exchange a signed DU Form of a director or supervisor after (as opposed to before) the appointment of such director or supervisor?

Yes

No

Please provide reasons for your views.

Question 17.4: Do you agree that the Rules should be amended such that the listing documents relating to new applicants for the listing of equity and debt securities must contain no less information about directors (and also supervisors and other members of the governing body, where relevant) than that required to be disclosed under Main Board Rule 13.51(2) or GEM 13.50(2), as the case may be?

Yes

No

Please provide reasons for your views.

Question 17.5: Do you agree that the application procedures should be amended as discussed in paragraph 17.20 to harmonise with the proposed amendments for the purpose of streamlining the respective DU Forms?

Yes

No

Please provide reasons for your views.

Question 17.6: Do you agree that the draft Rules at Appendix 17 will implement the proposals set out in Issue 17 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Question 17.7: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information from directors?

Yes

No

Question 17.8: Do you agree that the draft paragraph (c) to the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.7* above?

Yes

No

Question 17.9: Do you agree that paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules should be amended to include detailed provisions for service similar to those of the GEM Rules?

Yes

No

Question 17.10: Do you agree that the proposed amendment to paragraph (e) of the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.9* above?

Yes

No

Question 17.11: Do you agree that the Rules should be amended to make express the ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking?

Yes

No

Issue 18: Review of Model Code for Securities Transactions by Directors of Listed Issuers

Question 18.1: Do you agree with the proposed new exceptions to paragraph 7(d) of the Model Code?

- Yes
 No

Please provide reasons for your views.

The proposed new exception (c) is too wide and might be open to abuse. Perhaps this could be limited to the case where a director acquires shares by transmission pursuant to the operation of law.

Question 18.2: Do you agree with the proposal to clarify the meaning of “price sensitive information” in the context of the Model Code?

- Yes
 No

Question 18.3: Do you agree that the draft new Note to Rule A.1 of the Code would implement the proposal set out in *Question 18.2* above??

- Yes
 No

Please provide reasons for your views.

Notes 9 and 10 to rule 13.09(1) should also be added to the Note.

Question 18.4: Do you agree that the current “black out” periods should be extended to commence from the listed issuer’s year/period end date and end on the date the listed issuer publishes the relevant results announcement?

- Yes
 No

Please provide reasons for your views.

If a particular director is aware of price sensitive information, he is already bound by law and the Code from dealing in the relevant securities.

Question 18.5: Do you agree that there should be a time limit for an issuer to respond to a request for clearance to deal and a time limit for dealing to take place once clearance is given?

Yes

No

Question 18.6: Do you agree that the proposed time limit of 5 business days in each case is appropriate?

Yes

No

Please provide reasons for your views.

We believe that an issuer is in a better position to determine the appropriate time limit for such notification purposes.

Minor Rule amendments

The Exchange invites your comments regarding whether the manner in which the proposed minor Rule amendments set out in Appendix 19 have been drafted will give rise to any ambiguities or unintended consequences.

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Do you have any other comments in respect of the issues discussed in the Combined Consultation Paper? If so, please set out your additional comments.

No

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