Herbert Smith

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

[redacted]

Our ref
2369/30885024
Your ref

Date
15 April 2008

By fax: 2524 0149 and hand

Dear Sirs

Re: Combined Consultation Paper on Proposed Changes to the Listing Rules (January 2008)

We, together with Freshfields Bruckhaus Deringer, act on behalf of a group of 12 investment banks listed below (the "**Group**") in preparing the Group's joint response to the Combined Consultation Paper on Proposed Changes to the Listing Rules dated 11 January 2008 (the "**Consultation Paper**") issued by The Stock Exchange of Hong Kong Limited:

(a) ABN AMRO Bank N.V., Hong Kong Branch;

(b) BOCI Asia Limited;

(c) China International Capital Corporation (Hong Kong) Limited;

(d) Citigroup Global Markets Asia Limited;

(e) Credit Suisse (Hong Kong) Limited;

(f) Deutsche Bank AG, Hong Kong Branch;

(g) Goldman Sachs (Asia) L.L.C.;

(h) J.P. Morgan Securities (Asia Pacific) Limited.;

(i) Merrill Lynch Far East Limited;

(j) Morgan Stanley Asia Limited;

Herbert Smith

Date
15 April 2008
Letter To
Corporate Communications
Department

(k) Nomura International (Hong Kong) Limited; and

(l) UBS AG.

We refer to our fax of 3rd April 2008 requesting an extension of time for the Group to deliver its joint response to the Consultation Paper. We now enclose the joint response on behalf of the Group.

Please do not hesitate to contact Ashley Alder ([redacted]), John Moore ([redacted]), Matt Emsley ([redacted]) or Nicky Cardno ([redacted]) of this office, or Teresa Ko ([redacted]), Terri Poon ([redacted]) or Andrea Chee ([redacted]) of Freshfields Bruckhaus Deringer, if you have any queries in relation to the Group's joint response.

Yours faithfully

[redacted]

Herbert Smith FRESHFIELDS BRUCKHAUS DERINGER

COMBINED CONSULTATION PAPER ON PROPOSED CHANGES TO THE LISTING RULES

JOINT RESPONSE FROM HERBERT SMITH AND FRESHFIELDS BRUCKHAUS DERINGER ON BEHALF OF A GROUP OF 12 INVESTMENT BANKS

INTRODUCTION

1.1 This is a joint submission by Herbert Smith and Freshfields Bruckhaus Deringer on behalf of a group of 12 investment banks detailed in paragraph 1.2 below (the "**Group**") in response to the Combined Consultation Paper on Proposed Changes to the Listing Rules dated 11 January 2008 (the "**Consultation Paper**") issued by The Stock Exchange of Hong Kong Limited (the "**Exchange**"). The Consultation Paper seeks comments from the market regarding a number of substantive policy issues as well as some minor amendments to The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**").

Capitalised terms used but not otherwise defined herein have the same meanings as ascribed to them in the Consultation Paper.

1.2 The Group comprises the following organisations:

(a) ABN AMRO Bank N.V., Hong Kong Branch;

(b) BOCI Asia Limited;

(c) China International Capital Corporation (Hong Kong) Limited;

(d) Citigroup Global Markets Asia Limited;

(e) Credit Suisse (Hong Kong) Limited;

(f) Deutsche Bank AG, Hong Kong Branch;

(g) Goldman Sachs (Asia) L.L.C.;

(h) J.P. Morgan Securities (Asia Pacific) Limited.;

(i) Merrill Lynch Far East Limited;

(j) Morgan Stanley Asia Limited;

(k) Nomura International (Hong Kong) Limited; and

(l) UBS AG.

1.3 If you have any questions in relation to this submission, please contact the following:

Ashley Alder

Herbert Smith

[redacted]

Teresa Ko

Freshfields Bruckhaus Deringer

[redacted]

1.4 The Group has focused its response on those areas of the Consultation Paper which have a potential impact on the operations of members of the Group or where the issues raised are significant and the Group considers it important to contribute its views. The Group's responses on these issues are set out in Part A. Part B sets out the Group's responses on those areas of the Consultation Paper where the Group considers the issues are of less significance to the Group but nonetheless wishes to

share its views with the Exchange. Part C sets out brief responses to the remaining areas of the Consultation Paper.

15 April 2008

PART A

In this section we have set out the Group's response to those issues in the Consultation Paper which have a potential impact on the operations of members of the Group or where the issues raised are considered to be of most significance.

Issue 2 and Issue 17B: Information gathering powers

(Paragraphs 2.1 to 2.9 and 17.28 to 17.29 of the Consultation Paper)

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

- The Group generally supports the Exchange's proposal. The Group largely views the proposal as incremental to the existing general powers of the Exchange to make enquiries of listed issuers, as referred to in paragraph 2.4 of the Consultation Paper. Further, the power is likely to be relevant to the Exchange's enforcement powers in the event that the proposed move towards post-vetting is adopted. However, the Group considers it necessary for the Exchange to clarify the scope of the proposed power.

- The proposed Rule 2.12A, together with the proposed undertaking to be given by directors in relation to the provision of information and documents referred to in paragraph 17B of the Consultation Paper, is very broad in scope. In particular, the proposed ability of the Exchange to require "any information that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market", gives the Exchange an extremely broad discretion in which to request information from issuers.

- First, the Group considers that a safeguard should be incorporated into this power, in that the Exchange should be able to request such information if it "reasonably" considers it appropriate.

- Second, the Group believes that it is necessary for the Exchange to clarify the specific circumstances in which the Exchange will exercise this power, as the Securities and Futures Ordinance ("**SFO**") does in respect of the Securities and Futures Commission's ("**SFC**") powers of gathering information in respect of listed companies.

- By comparison, the powers of the SFC to gather information from listed companies, its related companies, financial institutions, auditors and other persons are clearly defined and limited to specific situations (section 179 of the SFO). For example, a request can be made where it appears to the SFC that there are circumstances suggesting that a listed company has conducted business with intent to defraud creditors, or for a fraudulent or unlawful purpose, or in a manner oppressive to members. The Group considers that it is necessary for the Exchange's power to be as clearly defined, so that issuers are certain about the situations in which information can be requested. The Group believes that this is particularly important if the power is explicitly or implicitly linked to an enhanced enforcement regime as a corollary to a move to post-vetting.

- The Group proposes that the scope of the information gathering powers is limited to cover two principal categories: (1) information required to ensure that proper disclosure is made by issuers in accordance with the Listing Rules; and (2) information to verify compliance with the Listing Rules or to investigate

suspected Listing Rule breaches. The Group suggests the following drafting for the proposed Rule 2.12A:

> 2.12A An issuer must provide to the Exchange as soon as possible, or otherwise in accordance with the time limits imposed by the Exchange:
>
> (1) any information that the Exchange reasonably considers is necessary or appropriate to ensure that the issuer makes, or has made, proper [and timely] disclosure of information in accordance with the Exchange Listing Rules; and
>
> (2) any information that the Exchange may reasonably require for the purpose of investigating a suspected breach of the Exchange Listing Rules by the issuer or any of its directors.

- Finally, the Group believes that clarity should be given on the ability of the Exchange to pass information provided to it under this power to any other regulatory or governmental authority or agency in Hong Kong or overseas. This should include specific grounds on which particular categories of information may be shared.

(b) *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?*

- The Group agrees that the draft Main Board Rule 2.12A will implement the proposal set out in question 2.1 above. However, the Group encourages the Exchange to consider clarifying the scope of the power and its limits on the use of the information, as described in the response to question 2.1 above.

(c) *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?*

- The Group generally supports the Exchange's proposal. However, please note the Group's comments and suggestions set out in (a) above in relation to question 2.1 which equally apply to question 17.7.

- From a practical perspective, the Group would like clarify whether all existing directors will be required to sign new undertakings if this proposal is implemented. As the proposed amendment is being made to the Director's Undertaking and not to the Listing Rules, it appears that all directors will need to sign new undertakings in order to be bound by the changes. The Exchange may consider including a specific requirement in the Listing Rules requiring all existing directors to submit a revised Director's Undertaking within a certain period.

(d) *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?*

- The Group agrees that the draft paragraph (c) to the Director's Undertaking will implement the proposal set out in question 17.7 above. However, the Group encourages the Exchange to consider clarifying the scope of the power and its limits on the use of the information, as described in the response to question 2.1 above.

Issue 4: Review of sponsor's independence

(Paragraphs 4.1 to 4.6 of the Consultation Paper)

(a) *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 stabilization period, whichever is the later? Please provide reasons for your views.*

- The Group agrees in principle to the amendment to Rule 3A.07 and the sponsor's statement of independence to clarify that the independence requirement applies not only at the time of submission of the sponsor's declaration pursuant to Rule 3A.13. However, the Group does not agree with the proposed period during which the sponsor's independence would be assessed, for the following reasons:

  (i) listing applicants often are unwilling in practice to agree and sign engagement letters with sponsors and it is often difficult to determine precisely when the sponsor commences work ***as a sponsor*** prior to the submission of the Company's listing application. In addition, up until the point at which an application for listing is filed with the Exchange, there can be no certainty that the applicant will seek a listing in Hong Kong. It is therefore potentially impractical to extend the independence requirement to the period prior to the submission of the listing application. The Group considers that in any event investors' interests will be protected fully if independence can be assured at the time the listing application is made; and

  (ii) the adverse impact on the listing process of activities carried out by a sponsor following the listing of the applicant is not apparent. The sponsor's duties ***as a sponsor*** do not continue beyond the listing date and, in particular, stabilization activities are not carried out ***as sponsor***. The Group considers that it is not appropriate for the independence requirement to extend beyond the listing date, after which any breach of the requirement would, in practice, be incapable of remedy e.g. the appointment of an additional independent sponsor at that stage would be futile. Furthermore, such extension of the sponsor's independence obligation would potentially lead to an anomalous result. For example, would the sponsor's interests under an over-allotment option be regarded as a "holding" of shares for the purposes of Rule 3A.07 (under the SFO, an over-allotment option is regarded as an interest in the underlying shares)? Purchases of shares pursuant to stabilization activities may not be regarded as arising "as a result of an underwriting obligation" for the purposes of the carve out in Rule 3A.07(1). Normal stabilization activities could therefore potentially trigger a breach of the independence requirement under Rule 3A.07(1). In addition, the sponsor group should not be prohibited from trading in the shares of the listed issuer in the secondary market following listing, whether for proprietary purposes or on behalf of clients.

- The Group therefore suggests that the more appropriate test would be to assess independence from the time of filing of the listing application until the listing

date. The Group considers that this, combined with the existing obligation under Rule 3A.09 to notify the Exchange if the sponsor becomes aware of any subsequent change in circumstances, adequately addresses the concerns expressed in the Consultation Paper.

- In addition, the Group considers that Rule 3A.07 should clarify that the tests set out in Rule 3A.07 constitute an **exhaustive** list of the circumstances in which a sponsor will not be considered to be independent.

(b) *Question 4.2: Do you agree that the draft Rules at Appendix 4 will implement the proposals set out above? Please provide reasons for your views.*

- For the reasons set out above, the Group does not agree with the proposed Rule amendments. The Group suggests that the relevant Rules be amended as follows:

Rule 3A.07

At least one sponsor of a new applicant must be independent **of** ~~from~~ the new applicant. A sponsor ~~is not~~ **will be regarded as** independent ~~if~~ **unless** any of the following circumstances exist ~~as~~ at **any time from the date of submission to the Exchange of an application for an advance booking on Form A1 in accordance with rule 9.03 up to the listing date. The sponsor is required to demonstrate to the Exchange its independence or lack of independence as at** the time of making the ~~declaration pursuant to rule 3A.13~~ **statement pursuant to rule 3A.08.**

Paragraphs (a) and (b) of Appendix 18

(a) pursuant to rule 3A.07 the Firm **is and** expects to be independent; *[or]*

(b) pursuant to rule 3A.07 the Firm **is not and** does not expect to be independent because, ~~at the time it expects to make the declaration referred to in rule 3A.13~~.

Additional proposed amendments to the sponsor's independence requirements

- In addition to responding to the Exchange's specific proposals for amendments to the sponsor's independence requirement set out in the Consultation Paper, the Group would also like to invite the Exchange to consider the following amendments to the Listing Rules based on market practitioners' experience with the requirements and developments in international regulation since the implementation of Chapter 3A of the Listing Rules.

Rule 3A.07(9)

- The Group would in particular encourage the Exchange to review and reconsider the current wording of the independence test in Rule 3A.07(9).

- Under Rule 3A.07(9), a sponsor would not be regarded as independent where any of the persons specified therein (please see below) have a current business relationship with the new applicant or a director, subsidiary, holding company or

substantial shareholder of the new applicant which would be reasonably considered to affect the sponsor's independence in performing its duties ... or might reasonably give rise to a perception that the sponsor's independence would be so affected, save and except where the relationship arises pursuant to the sponsor's engagement by the new applicant for the purpose of providing sponsorship services.

Subjective test

- While each of the tests in Rules 3A.07(1) to (8) and (10) achieve the Exchange's original objective in providing "bright line" tests to assist ease of determination, the test in Rule 3A.07(9) is the only test that requires a subjective assessment. In practice, this has led to uncertainty in application and some anomalous results.

Lack of proportionality

- The tests in Rules 3A.07(1) to (8) and (10) identify relationships where a sponsor may derive a material commercial or financial benefit from a listing which is collateral to, or separate from, the direct benefit derived from advisory and underwriting fees which is considered to be of sufficient magnitude to impact adversely on the ability of a sponsor to carry out its work independently and impartially.

- The test in Rule 3A.07(9) has often been applied in a manner disproportionate to the other tests such that relationships between the sponsor group and the listing applicant, its directors or shareholders which are negligible in terms of the fees earned by the sponsor group have been regarded as giving rise to a perception that the sponsor's independence would be affected.

Double jeopardy

- The Group has experienced cases in which members of the sponsor group have engaged in transactions with the listing applicant of a nature falling within the scope of the "bright line" tests in Rules 3A.07(1) to (8) or (10), where, although the transactions were below the relevant "bright line" thresholds specified therein and therefore did not affect the sponsor's independence under those rules, the Exchange took the view that the sponsor concerned was not independent as a result of applying Rule 3A.07(9) to the relevant transaction. Examples would include cases where members of the sponsor group made loans to the listing applicant falling below the thresholds in Rules 3A.07(5) and (6). The application of Rule 3A.07(9) as a "catch all" in these circumstances negates the underlying purpose of the "bright line" tests in Rules 3A.07(1) to (8) or (10) of providing clarity to market practitioners.

Proposed amendment

- The test in Rule 3A.07(9) has therefore been the source of considerable uncertainty and difficulty in application, which has been exacerbated by the fact that the test goes beyond the scope of some of the other tests in applying not only to relationships of the directors of the sponsor but also to those of the directors of other members of the sponsor group and their associates.

- The Group is of the view that the current Rule 3A.07(9) should be replaced with a test similar to that applicable to sponsors of listing applicants set out in the UK Listing Rules as follows:

"a business relationship ... with the ... applicant or any other company in the [group] which would give the sponsor or the sponsor's group a material interest in the outcome of the transaction".

- This Rule should be read in the light of the other tests in Rule 3A.07, and only capture business relationships that might give rise to a collateral benefit or advantage from the listing which is of a magnitude comparable to the "bright line" tests.

- The Group considers that the application of Rule 3A.07(9) should be clarified so that transactions of a nature falling within the scope of one of the "bright line" tests but below the relevant thresholds should not then be subject to examination under Rule 3A.07(9).

Scope of the tests in Rule 3A.07

Sponsor group

- Given the broad definition of "sponsor group" in Rule 3A.01(9), the tests in Rule 3A.07 fail to take into account the large diverse global financial groups of which sponsors often form a part. The independence tests are therefore difficult to implement in practice and require a time consuming assessment by sponsors as to whether any member of the sponsor group, which may include hundreds of companies or more worldwide, has any relationship with the listing applicant, its directors, subsidiaries, holding company or substantial shareholders (the "**Listing Group**"). As set out above, this is exacerbated by the requirement in certain tests to analyze relationships which directors of members of the sponsor group or their associates may have with the Listing Group (see for example Rules 3A.07(1), (3) and (9)).

- The independence tests often therefore catch relationships of members of the sponsor group which are different profit centers from the division conducting sponsor business, are segregated by chinese walls / information barriers and of which the sponsor division itself has no knowledge. In practice, such interests may therefore have no impact on the ability of the sponsor to meet the overriding obligation of impartiality contained in Rule 3A.06 and the Corporate Finance Adviser Code of Conduct. In particular, interests held by members of the sponsor group on behalf of third parties, such as those held by their asset management or private wealth functions, clearly do not affect the sponsor's independence.

International practice

- The Group refers the Exchange to the UKLA Listing Rules, AIM Rules for Nominated Advisers and Listing Manual Rules of Catalist of Singapore ("**Catalist Rules**") attached in Appendix 1. In each case, these Rules provide that a sponsor may be regarded as independent notwithstanding a financial or shareholding interest or business relationship of a member of the sponsor group where the interests or relationship is held by an entity which is adequately separated from the sponsor division of the business. For example, interests in securities of an applicant that arise as a result of the sponsor's discretionary client holdings are not included for the purposes of assessing a sponsor's shareholding interests under Rule 8.3.6 of the UKLA Listing Rules. Interests held by an asset management business where there are proper safeguards in place are similarly excluded from the limits under the Catalist Rules. Under Rule 8.3.7(2) of the

UKLA Listing Rules, in cases where a company in, or an employee of, the sponsor's group has an interest or relationship that may be perceived to cause a conflict, it may be possible to demonstrate to the FSA that adequate separation exists in respect of the transaction.

Listing applicants with existing overseas listings

- The increasing international prominence of the Hong Kong market as a desirable listing venue and the Exchange's initiative to encourage the listing in Hong Kong of companies which have existing overseas listings have in practice given rise to considerable difficulties for sponsors of dual listing applicants in applying the sponsor's independence criteria. While a sponsor of a typical private listing applicant may be able to monitor on an ongoing basis whether members of its sponsor group develop any relationship with the listing applicant or its connected persons which would impact on the sponsor's independence, this has proved impossible to apply where the listing applicant is already listed. In such cases it has, for example, proved impractical for sponsors to monitor, on a continuing basis, trading (whether proprietary or on behalf of clients) in listed securities of the applicant by members of the sponsor group.

- The Group considers that the adoption of an approach of excluding interests of members of a sponsor group segregated by Chinese walls or information barriers, and, in particular, interests held on behalf of third party investors through, for example, asset management or private wealth functions, would alleviate the difficulties currently experienced in respect of listing applicants with existing overseas listings.

Proposed amendment

- The Group therefore considers that a similar concept should be incorporated into Rule 3A.07, such that the tests should exclude interests and relationships of members of the sponsor group which are adequately segregated from the sponsor business and, in particular, interests held on behalf of third party investors through, for example, asset management or private wealth functions.

Sponsors with PRC Government shareholders

- Currently, members of the Group which are ultimately owned by China SAFE Investments Ltd. ("**SAFE Investments**") or other entities owned by the PRC government have adopted a practice of making a submission to the Exchange on a case by case basis in respect of each IPO for which they are appointed as sponsor to exclude the PRC government and entities owned by the PRC government, such as SAFE Investments, and their respective associates, other than the sponsor's own immediate shareholding group, from the scope of their "sponsor group" for the purposes of the independence tests in Rule 3A.07 based on the rationale behind the exclusion of PRC governmental bodies from the scope of the definition of "connected persons" pursuant to Rule 19A.19.

- The Group proposes that Rule 3A.07 should be amended to specifically exclude the PRC government and entities owned by it other than the immediate shareholders of the sponsor from the scope of the sponsor's "sponsor group" for the purposes of that Rule.

Issue 5: Public Float

Issue 5A: Minimum level of public float

(Paragraphs 5.1 to 5.17 of the Consultation Paper)

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

The Group agrees that the existing Rule 8.08(1)(d) should be amended.

(c) 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? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

The Group agrees with the views put forward by the Exchange and supports the Exchange's move to lower the public float requirements to provide greater flexibility to prospective listing applicants in determining their capital structure.

Further consideration

Save for two members of the Group which agree with the proposed amendment to Rule 8.08(1)(d) at Appendix 5, the majority of the Group believes that the proposed amendment to Rule 8.08(1)(d) at Appendix 5 requires further consideration for the following reasons:

Calculation of market capitalisation resulting in thresholds being set too high

- Under the proposed amendment, a company would need to have a market capitalisation at the time of listing in excess of HK$60 billion in order to be entitled to the 10% minimum public float percentage[1]. As the Exchange is aware, the calculation of the expected market capitalisation of a listing applicant would have to be determined at the low end of the price range before marketing and without taking into account any exercise of the over-allotment option. Accordingly, some companies which were considered sizeable deals when listed (for example, China Coal Company Limited and China Communications Construction Company Limited (being the two largest non-bank initial public offerings ("**IPOs**") for the Hong Kong market in 2006), and SOHO China and Country Garden Holdings (being the two largest non-bank IPOs for the Hong Kong market in 2007)), based on the low end of the price range, would not have been able to meet the market capitalisation threshold for the 10% public float.

- The Hang Seng index reached record high levels in the last quarter of 2007, just prior to the issuance of this Consultation Paper, but has since declined substantially. In setting the market capitalisation thresholds, both the peaks and the troughs of the valuation cycle should be taken into account.

Rise in M&A activity

[1] Under the proposed amendments to Rule 8.08(1)(d), as the minimum public float is proposed at the higher of HK$6 billion or 10%. Accordingly a listing applicant must have an expected market capitalisation of at least HK$60 billion to enjoy the lower public float percentage of 10%.

- In the present financial climate, several companies are looking to increase market share and coverage by engaging in merger and acquisition activities. A strong motivating factor for listing applicants is the availability of non-cash currency for acquisitions. A lower public float requirement would provide a larger pool of shares for such use by issuers.

Increasing use of stock-based incentives

- Stock-based compensation is an increasingly important component of incentives offered to existing and potential employees, particularly by technology companies. Many technology companies are now emerging from Greater China. Traditionally, technology companies have preferred a NASDAQ listing, as NASDAQ does not have a minimum public float (as a percentage of shares in issue) requirement. A lower public float requirement would provide an issuer greater flexibility to use stock-based incentives and increase the attractiveness of listing in Hong Kong.

A+H share issuers

- In recent years there has been an expectation that a PRC issuer who issues H-shares in Hong Kong would also issue A-shares in the PRC, with the size of the A-share offer being at least equal to that of the H-share offer. Accordingly, an issuer that has, or intends to have, listings on both the Hong Kong H-share market and the PRC A-share market either simultaneously or within a short period of time (**"A+H share issuer"**) will need to (a) ensure that at the time of listing, the company at least meets the minimum public float percentage with respect to its H-shares; (b) have the size of its A-share offering at least equal to its H-share offering; and (c) ensure that the minimum public float requirements in Hong Kong and the PRC are both satisfied.

- Under PRC securities regulation, the minimum public float requirement in the A-share market for companies whose issued share capital is over RMB400 million is 10% of the issuer's total issued share capital. The Group understands that in the PRC regulators' calculation of the minimum public float, the shares held by the public in the form of H-shares count towards the minimum 10% public float. However, in the Exchange's calculation of the level of public float, shares held by the public on the A-share market as at the time of the issuer's IPO do not count towards the minimum public float on the basis that the shares are not fungible. The Group understands the Exchange's position on this issue.

- In practice therefore, the minimum public float requirements for an A+H share issuer are effectively double that of a non-A+H share issuer.

- The cumulative effect of these requirements and expectations are unnecessarily onerous for A+H share issuers, and even if there are to be reduced thresholds under Rule 8.08(1)(d), such issuers will still need to significantly increase the size of their public offering simply to demonstrate that there will be sufficient liquidity in the trading of their securities.

- A large majority of the Group believes that **the proposed amendment to Rule 8.08(1)(d) does not go far enough to address the issues faced by the A+H share issuers**. If the needs of A+H share issuers are not specifically

addressed, the operation and interpretation of the Listing Rules may pose a significant hurdle for some PRC companies and may result in deterring them from seeking a listing in Hong Kong.

The January Joint Submission

As the Exchange is aware, a submission dated 18 January 2008 was made by 11 organisations[2] ("**January Joint Submission**") in respect of this issue of public float requirements, a copy of which is attached hereto as Appendix 2.

In the January Joint Submission, it was submitted that there was a very strong case, from both a qualitative as well as a quantitative perspective, for the reduction of the public float requirements, and the Exchange was requested to consider lowering the proposed market capitalisation thresholds for Rule 8.08(1)(d) as follows:

Market capitalisation	Proposed minimum public float
Not exceeding HK$8 billion	25%
Over HK$8 billion but not exceeding HK$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$2.0 billion (determined at the time of listing); and (ii) 15%
Over HK$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$3.0 billion (determined at the time of listing); and (ii) 10%

The proposed thresholds ("**Lower Thresholds**") would allow listing applicants with a market capitalisation of HK$30 billion or more to enjoy a 10% public float. The proposal follows the structure of the proposal in the Consultation Paper and is also higher than the thresholds in the existing Listing Rules whereby a company with a market capitalisation of HK$10 billion could enjoy a 15% public float with securities of HK$1.5 billion constituting the value of the public float.

The large majority of the Group who were also signatories to the January Joint Submission support the Lower Thresholds for deals involving A+H share issuers; a few of these members also consider the Lower Thresholds appropriate for all types of deals.

Additional alternative for A+H share issuers: Market float regime

A large majority of the Group notes that there is increasing pressure on PRC issuers to do larger domestic deals, and notes in particular a precedent case where an issuer's H-share offering was benchmarked against its A-share offering price, making the H-share offering particularly challenging.

[2] ABN AMRO Bank N.V., Hong Kong Branch; BOCI Asia Limited; China International Capital Corporation Limited; Citigroup Global Markets Asia Limited; Credit Suisse (Hong Kong) Limited; Deutsche Bank AG, Hong Kong Branch; J.P. Morgan Securities (Asia Pacific) Co., Ltd; Lehman Brothers Asia Limited; Merrill Lynch Far East Limited; and UBS AG.

In order to provide greater flexibility to A+H share issuers, these members of the Group invite the Exchange to consider introducing an alternative "market float" test to the public float requirement, for A+H share issuers with a sufficiently large market capitalisation and broad shareholder base. The market float is proposed to be set at an absolute figure rather than a percentage, and it is suggested that HK$4,000 million may be an appropriate threshold.

Retention of discretion to grant waiver

The Group supports the Exchange's retention of ability to grant waivers where appropriate to the public float requirements (or market float requirements, as the case may be), to deal with further changes in the markets and borderline cases.

Other concerns

The Group is aware that some parties may be concerned that if there is less than 10% of the public float in the form of H-shares, there may be a risk that the compulsory acquisition provisions would be triggered easily and minority shareholders may be prejudiced. In this regard, the Group submits that these concerns are not justified. Under the provisions of the Hong Kong Codes on Takeovers and Mergers, the compulsory acquisition provisions are only triggered when acceptances of the offer made by the offeror and persons acting in concert with it reach or exceed 90% of the disinterested shares. As a result, the reduction of the public float arguably increases the difficulty to the offeror in succeeding with a takeover offer. For example, an offer for a company with a 25% public float would require the offeror to control over approximately 97.5% of the company's total issued share capital to trigger the compulsory acquisition right. In comparison, a company with a public float of 7.5% would require an offeror to obtain control of 99.25% of the company's total issued share capital.

Summary

On balance, the Group supports the Exchange's proposed amendment to Rule 8.08(1)(d) save in relation to deals involving A+H share issuers where a large majority of the Group feels strongly that the proposed amendment to Rule 8.08(1)(d) does not adequately address the issues faced by such companies. The majority of the Group, including a large majority of the signatories to the January Joint Submission, support the Lower Thresholds at a minimum for deals involving A+H share issuers, as a step towards alleviating the issues currently faced by such issuers.

The large majority of the Group would also like the Exchange to consider providing further flexibility to A+H share issuers with an alternative market float regime.

As PRC issuers are, and are likely to remain, a significant source of listings for years to come, the Exchange is encouraged to consider enhancing the attractiveness of Hong Kong as a listing destination, and in particular to facilitate the efforts of issuers who wish to seek dual listings in Hong Kong and on the mainland, especially with the growing competition amongst major exchanges for PRC listings business.

In any event, every member of the Group considers it appropriate, particularly in light of present financial conditions, for the Exchange to retain ultimate discretion to grant waivers to the public float requirements (or market float requirements, as the case may be) to deal with further changes in the markets and borderline cases.

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

Strong support for Exchange's proposals for flexibility

- The Group agrees with and supports the Exchange's proposal that issuers should be afforded the minimum public float as prescribed in the proposed Rule 8.08(1)(d) regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option. The Group supports the Exchange's proposal for the following reasons:

  - the proposal allows controlling shareholders and directors of the listing applicant to acquire more shares without immediately breaching the minimum public float requirements;

  - in a market environment whereby there is an increasing need to issue new classes of shares (for example, A-shares), the Exchange's proposal affords greater flexibility for listed issuers to consider alternative fund raising activities without immediately breaching the minimum public float requirements; and

  - the Exchange's proposal greatly reduces the "place down" risks in merger and acquisitions activities. In takeover situations, the risk of breaching the public float requirements often means that offerors have to take into account the often substantial "place down" risks in determining whether to go ahead with an offer and the consideration they will offer to disinterested shareholders. Further, for a listed issuer, following the completion of a takeover offer which results in an issuer's public float being reduced, it is never easy to request the offeror to voluntarily "place down" the shares they have acquired in the takeover process to maintain the public float. In such circumstances, it will be up to the issuer, at the expense of its minority shareholders, to issue new shares to maintain the public float. The forced issues of shares by the listed issuer inevitably causes (i) its share price to substantially reduce; and (ii) dilution of the shareholdings of each shareholder.

Drafting suggestion

- As a matter of drafting, we would like to suggest that the proposed Rule 8.08(1)(d) as set out in Appendix 5 be amended as follows:

  "**The public float of a listing applicant shall be established by reference to the expected market capitalisation of such listing applicant** at the time of listing in accordance with the following table:

  [table]

  on condition... **The minimum public float percentage as prescribed in the table above shall apply to an issuer notwithstanding that the actual public float attained by such issuer immediately upon listing or upon exercise of the over-allotment option (as the case may be) is higher**."

Further flexibility required

Subsequent overseas listings by listed issuers

- A Hong Kong listed issuer may choose to obtain a subsequent secondary listing on an overseas market. A prime example of this phenomenon is the growing trend for PRC companies with listed H-shares to also list on the A-share market. Any issuance of shares overseas will reduce the percentage of the issuer's issued share capital represented by its Hong Kong listed shares. In reality however, there is no effect on the liquidity of the Hong Kong listed shares, as there is no change in the number of shares held by the public in Hong Kong.

- The Group encourages the Exchange to revisit the requirement under Rule 8.08(1)(b) that "...the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital...". Although a Hong Kong listed issuer may have initially complied with the public float requirement in Hong Kong, the issuance of shares in overseas markets may reduce its Hong Kong public float to below the minimum level required. The Group suggests that the Exchange retain its discretion to lower or waive the minimum public float requirements, not only at the time of an issuer's IPO but on an on-going basis, post-IPO.

Specific industry needs

- The Group notes that there are companies (for example, financial institutions) which are subject to capital adequacy requirements, return on equity ratios and other regulatory or policy requirements which may prevent them from issuing too many shares at the time of their listing. To prevent these companies from listing in Hong Kong solely because they fail to meet the minimum public float requirements would, in our view, be highly detrimental for the Hong Kong securities market as we may be potentially turning away desirable companies from listing in Hong Kong.

- Accordingly, the Group suggests that the Exchange be allowed to, at its discretion and taking into account the specific circumstances of such issuers, lower or waive the minimum public float requirements (whether or not subject to any conditions).

Consequential amendments to Rule 8.08(1)(b)

- In addition, the Group would like to invite the Exchange to revisit Rule 8.08(1)(b). Under Rule 8.08(1)(b):

  > "Where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total issued share capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of not less than HK$50,000,000."

- As the proposed amendments to Rule 8.08(1)(d) are proposed to be applicable to all issuers, consequential amendments should be made to Rule 8.08(1)(b) in the event that Rule 8.08(1)(d) is amended.

- The Group suggests that an additional sub-clause be inserted into Rule 8.08(1)(b), which would provide the Exchange the discretion to deal with changes in the markets by lowering or waiving the requirements under Rule 8.08(1)(b).

Market capitalisation

- The Group notes that the Exchange has proposed that "the expected issue price of securities to be listed on the Exchange will be used as a basis for determining the market value of all issued share capital, including that of the other class(es) of securities that are unlisted, or listed on other regulated markets".

- Given that the calculation of the expected market capitalisation of a listing applicant would have to be determined at the low end of the proposed price range before marketing, such figures will necessarily be estimates. The Group would like to invite the Exchange to provide guidelines where possible as to the "buffer range" which would be acceptable to the Exchange for divergences between estimated calculations and the actual prices.

Issue 5B: Constituents of "the public"

(Paragraphs 5.21 to 5.31 of the Consultation Paper)

(a) *Question 5.4: Do you agree that the existing Rule 8.24 should be amended?*

The Group does not agree that the existing Rule 8.24 should be amended.

(b) *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? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.*

- The Group does not agree that the existing Rule 8.24 should be amended, and suggests that the definition of "the public" in Rule 8.24 remain aligned with the definition of "connected person" in Rule 1.01. The market is familiar with the concept of a "connected person". Adoption of the proposed amendment would create a new category of persons which would be an anomaly in the regulatory framework, existing in the Listing Rules solely for the purpose of calculating the public float of an issuer.

- Although the Group notes the Exchange's point that persons with 5% or more interest in a listed issuer are obliged to disclose their interests and short positions under the SFO, thus facilitating the monitoring of compliance with the proposed Rule 8.24, the Group respectfully submits that this should not form the basis of determining whether an investor constitutes part of "the public".

- The Group notes that the Exchange is concerned about situations where a shareholder with less than 10% (but usually more than 5%) interest in an issuer may be in a position to exert considerable influence over the issuer, for example, where such shareholder is represented on the board of the issuer. The Group respectfully submits that the fact that an investor is entitled to exercise, or controls the exercise of, 5% or more of the voting power at any general meeting of an issuer does not in itself mean that the issuer is in a position to exert considerable influence over the issuer.

- Further, the Group is aware that certain international mutual funds have investment caps of a percentage higher than 5% of the issued share capital of a listed company. Whilst the change proposed by the Exchange should not directly affect or dampen the interest of such international mutual funds to hold positions in a Hong Kong listed company, it may inadvertently result in the

relevant company breaching the Listing Rules if any such mutual fund investing in such listed company utilises its investment cap to the fullest extent. This does not align with the aims of the Exchange to attract more investing by these types of international mutual funds in our securities markets.

Issue 5C: Market float

(Paragraphs 5.34 to 5.39 of the Consultation Paper)

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

- Save for the proposal regarding A+H share issuers as described above in the response to Question 5.2 where a market float regime is suggested (by a majority of the Group) as a fallback option to the public float requirements in order to provide greater flexibility to such issuers, the Group does not think that there is any need to introduce the further requirement of a market float.

- The Group notes the Exchange's description of "market float" as being a "***sub-set of the public float***" (emphasis added). This dual approach is not supported by international practice. Major financial markets such as the London Stock Exchange and the New York Stock Exchange do not place such requirements on its issuers. The Exchange should avoid over-regulation in order to keep Hong Kong competitively positioned to attract listings. In the absence of clear reasons for this additional requirement, the Group is of the opinion that it would be too onerous to request issuers to comply with a market float level as well as a public float level requirement.

(b) *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.*

Not applicable.

The Group would like to invite the Exchange to consider certain other issues as described below.

A. Clawback Structure

- The Group notes that the assured retail entitlement and assured clawback mechanism (under Practice Note 18 to the Listing Rules ("**PN 18**")) is a scheme unique to Hong Kong and does not exist in other comparable financial markets such as the London Stock Exchange, the New York Stock Exchange, NASDAQ, or the Singapore Stock Exchange.

- The Group notes that this mechanism has created special challenges for Hong Kong market participants, of which the following are examples:

  - *Volatility in the after-market* – A clawback of up to 50% of the offer to retail investors has resulted in comparatively high levels of volatility immediately following an IPO. This, coupled with the tendency of retail investors to sell shortly after listing due to significant reliance on margin financing, poses particular challenges for the Hong Kong market.

- *Challenges for stabilisation* - The level of volatility often experienced in Hong Kong immediately following an IPO creates special problems when attempting to stabilise the issuer's share price in the after-market. Significant price fluctuations resulting mainly from trading in the retail tranche are frequent during the 30-day stabilisation period, where stabilisation activities have to be confined within the regulatory regime.

- *Reduced institutional investor interest* – The reduced institutional tranche that can result from the retail entitlement and clawback mechanism may affect the willingness of institutional investors to participate in an offering if they are likely to end up with a very small allocation.

- *Determination of shareholding structure at IPO* - The retail entitlement and clawback mechanism impacts on an issuer's ability to determine the initial make-up of its shareholding base at IPO, which is not the case in some other leading markets. Achieving a balanced shareholder base when an issuer first lists is in the interests of both the issuer and the market, including retail investors who may become shareholders directly or through investment vehicles following the IPO. The often unpredictable outcome for an issuer's shareholder base resulting from substantial retail sales immediately following an IPO poses particular problems for Hong Kong listed issuers.

- *Hong Kong's position as a fund management centre* - Hong Kong has sought to be an attractive fund management centre. Policies whereby often high levels of direct retail participation are assured for IPOs may affect Hong Kong's competitiveness in this area.

- As matters presently stand, a waiver to the clawback mechanism under PN 18 may be granted by the Exchange, but currently is usually only available when the offer size is at least HK$10 billion. Many offer sizes do not meet such a high threshold.

- The Group notes that in 2007, the Exchange granted a waiver to Alibaba.com Limited ("**Alibaba**") to the clawback mechanism under PN 18, although the offer size for Alibaba was below HK$10 billion. The Group believes that the Alibaba clawback structure, which had, amongst other features, a larger initial retail allocation but a lower maximum clawback, is a step in the right direction, but also observes that it does not address some of the challenges mentioned above which are by-products of the assured retail allocation and clawback systems. In addition, the Alibaba clawback structure model was arrived at after due consideration of the potential investor base and institutional investor involvement appropriate for a technology company. As such the Alibaba clawback structure may not be appropriate as a model for all deals going forward.

- It is respectfully submitted that even if waivers to the clawback mechanism were available to all issuers, the current structure is mechanical and fails to take into account the specific considerations of each deal, such as the nature of the business of the issuer, or the interest, demand and sentiment of institutional investors in the transaction, and the market conditions at any relevant time.

- The Group understands that the regulatory authorities in at least one other international financial centre have taken the view that the allocation between the retail sector and the institutional sector of an issuer's IPO shares, should be a matter of determination for the issuer and its underwriters.

- The Group acknowledges the need to consider fully the retail interest and that the Hong Kong public has a strong interest in participating in the IPOs of companies listing in Hong Kong.

- The Group believes that the current regime does not give either the issuers or the sponsors in the Hong Kong markets the best tool to ensure the optimal distribution of investors and to obtain a stable after-market trading in the shares of issuers following listing.

- It is in the Exchange's interest to list companies with global offerings that include investors from around the world, with a wider, deeper and more stable investor base. In light of the increasing competition for business from other financial markets, Hong Kong must continually strive to maintain its position as a leading listing jurisdiction and international financial centre, and should seek to avoid implementing or maintaining policies that may compromise its attractiveness to issuers. Particularly with the present medium-term market outlook, the Group suggests the Exchange review the current assured retail offering structure in order to ensure that the interests of retail shareholders, market intermediaries and Hong Kong as a key international financial centre, are balanced appropriately.

B. Other Issues – Placing Guidelines and Cornerstone and Strategic Investors

Placing Guidelines

The Group encourages the Exchange to review Appendix 6 of the Listing Rules and practices in relation to the current placing guidelines with a view to bringing them in line with international standards and practices, to remove any anomalies between the current Listing Rules and actual practice and to review many of the current unwritten Listing Rules which are too restrictive and may hamper Hong Kong's positioning as a major financial centre. We are happy to assist the Exchange and participate in any working group consultation that the Exchange may decide to initiate later this year.

Pre-IPO investments including cornerstone investors and double-dipping

Should the Exchange wish to review the current parameters governing pre-IPO investments, cornerstone investments, and the rules and practice relating to double-dipping, the Group would be happy to participate in any working group consultation which the Exchange may initiate, and to provide our experiences on the pros and cons of the use of pre-IPO investments, cornerstone investments, and the downside and potential unfairness arising from the current practice of double-dipping. As part of this review, the Group encourages the Exchange to clarify and continue to reduce to writing the rules and practices in these areas, which current application may sometimes be or seen to be arbitrary and cause confusion to the market.

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

(Paragraphs 7.1 to 7.63 of the Consultation Paper)

(a) *Question 7.1: Do you agree that the Exchange should no longer review all announcements made by listed issuers? Please provide reasons for your views.*

- The Group supports and encourages in principle a move towards a post-vetting regime. However, the Group is seriously concerned that the Exchange does not

have sufficient enforcement powers under the Listing Rules to effectively deter against and enforce non-compliance, in the event pre-vetting is dispensed with.

- The proposed move towards post-vetting in the Listing Rules should, in the Group's view, only be implemented as part of, and at the same time as, the implementation of the Revised Approach proposed by the SFC in its Consultation Conclusions on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules published in February 2007 (the "**SFC Consultation Conclusions**"). This would ensure that the Exchange has sufficient enforcement powers to deter against and punish non-compliance with the rules.

- Under the current regime, listed issuers rely heavily on the Exchange's pre-vetting of announcements and circulars, and interact closely with the Exchange in their preparation. Investors also rely implicitly on the pre-vetting regime given that Hong Kong's litigation environment is not conducive to investor suits and regulatory enforcement powers in cases of sub-standard disclosure are weak. A move towards post-vetting without the Exchange being armed with sufficient enforcement powers (or before adequate enforcement powers are in place), may lead to a significant risk of a decline in the overall quality of disclosure by listed issuers.

- It is stated in the Consultation Paper at paragraph 7.2(a) that listed issuers may consult the Exchange on compliance issues before publishing an announcement. The Group agrees that it may be helpful for some issuers to consult the Exchange on such issues prior to publication. However, the Group notes that this process is likely to involve the examination of announcements by the Exchange, which could be, in effect, tantamount to pre-vetting, the very situation that the Exchange is seeking to move away from.

- The Group requests that the Exchange clarifies the scope and mechanics of the proposed consultation process. Further, the Group wishes to impress the importance of the Exchange ensuring a consistent and transparent approach to consultation requests. The Group suggests that the consultation process could be aligned with the existing approach to consultation under the Takeovers Code which provides a formal mechanism for consultation and rulings.

(b) *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?*

- As mentioned above, the Group is concerned that any move towards post-vetting of announcements and circulars under the Listing Rules should be aligned with implementation of the proposals in the SFC Consultation Conclusions, to ensure the regulatory enforcement regime is sufficiently robust to encourage compliance. The statutory enforcement regime should be in place prior to, or at the same time as the Listing Rules are amended.

- The Group appreciates that a move towards post-vetting will involve a significant change for listed issuers. In order to ease the transition, the Group observes that one option is for the post-vetting regime to commence 6-12 months prior to the date that statutory backing to certain Listing Rules comes into effect. This would allow a period of grace for issuers to accustom themselves to the new regime,

without the risk of incurring new statutory penalties for breaches resulting from uncertainty arising from the new rules.

- The Group considers that it would be preferable to retain the pre-vetting regime until such time as statutory backing to certain Listing Rules can be implemented. The Group considers that any overlap during which pre-vetting and statutory backing exist, can be managed by clarifying how this will be affected. For instance, the SFC and Exchange could clarify whether materials that have been pre-vetted by the Exchange would still be subject to enforcement action by the SFC, and whether no action letters should be issued.

(c) *Question 7.3: Do you support the proposal to amend the pre-vetting requirements relating to:*

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

(ii) explanatory statements relating to listed issuers purchasing their own shares on a stock exchange? Please provide reasons for your views.

- The Group supports the proposal to amend the pre-vetting requirements relating to circulars in relation to amendments to listed issuers' Memorandum and Articles of Association and the explanatory statement. The Group agrees with the Exchange's view, in that these circulars are generally of a standard and straightforward nature.

(d) *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 above? Please provide reasons for your views.*

- The Group notes that the Exchange proposes to continue to pre-vet circulars which pose a higher risk of non-compliance with the Listing Rules. However, the Group is concerned that if the SFC Consultation Conclusions are implemented, and certain Listing Rules are given statutory backing, there would be an overlap with certain categories of circulars referred to in paragraph 7.50 which would be subject to the statutory backing regime, but also pre-vetted by the Exchange. The Group is concerned that an unfair situation may arise where the circular is cleared through pre-vetting, but is subsequently subject to enforcement action under the statutory backing regime. The Group would encourage a move to cease the pre-vetting of those circulars where there is an overlap, to ensure the move to a post-vetting regime operates fairly and effectively.

(e) *Question 7.5: Do you support the proposal to amend the circular requirements relating to disclosable transactions, including the proposal regarding situations where the Rules currently require that expert reports are included in a circular? Please provide reasons for your views.*

- The Group supports the proposal to amend the circular requirements relating to disclosable transactions. The Group agrees with the Exchange's view, that disclosable transactions are relatively less significant compared to other categories of notifiable transactions. In general, circulars for disclosable transactions are sent to shareholders for information purposes only and do not contain any significantly important additional information for the market. The Group agrees that shareholders are generally able to obtain all key information

relating to the disclosable transactions from the relevant disclosable transaction announcement or information available elsewhere.

(f) *Question 7.6: Do you have any comments on the proposed minor Rule amendments described at paragraphs 7.59 to 7.63 above? Please provide reasons for your views.*

- The Group supports the proposal to require the Exchange's disclaimer statement to be included in all listing documents, circulars, announcements or notices issued pursuant to the Listing Rules.

(g) *Question 7.7: Do you agree that the draft (Main Board and GEM) Rules at Appendix 7 will implement the proposals set out above? Please provide reasons for your views.*

- The Group considers that the proposed drafting of the revised Main Board and GEM Rules will implement the proposals set out in the Consultation Paper. However, as mentioned above, the Group would encourage the Exchange to ensure that the proposed amendments are aligned with the implementation of a statutory enforcement regime as proposed in the SFC Consultation Conclusions.

Issue 11: General Mandates

(Paragraphs 11.1 to 11.59 of the Consultation Paper)

(a) *Question 11.1: Should the Stock Exchange retain the current Listing Rules on the size of issues of securities under the general mandate without amendment? If so, then please provide your comments and suggestions before proceeding to Question 11.3 below.*

- The Group strongly supports retention of the current Listing Rules on the size of issues of securities under the general mandate without amendment.

- The Group believes strongly that listed issuers should retain their ability to fully utilise their general mandates and be afforded the flexibility to raise funds in the market. The Group notes that issuers use their general mandates to facilitate the participation of strategic investors in their businesses, and that these strategic investors are often crucial to the sustained development of an issuer's business. The Listing Rules should encourage the growth of Hong Kong listed issuers, which would be beneficial to shareholders.

- Although there have been cases of abuse of the general mandate by listed issuers in the past the Exchange has also previously consulted the market on precisely this issue in 2002, which led to the implementation of amendments to the Listing Rules in 2004. We are of the view that the previous round of amendments, which introduced the requirement for independent shareholders' approval for refreshment of general mandates, and imposed a 20% discount limit on issues of securities for cash, adequately addressed the main potential avenues for abuse of the general mandate.

- The Group encourages the Exchange to maintain the balance between providing listed issuers a cost-effective and quick avenue for raising funds and obtaining strategic investors and protecting existing shareholders of listed issuers from dilution.

- The Group notes that under the current Listing Rules, a listed issuer may only issue up to 20% of its issued share capital on a non pre-emptive basis. The

position in Hong Kong is similar to the position in Australia and Singapore. The position in UK is much more permissive, as the UK Companies Act 2006 allows a company to grant a general mandate for non-pre-emptive issues for up to five years. Although the UK Statement of Principles published by the Pre-Emption Group recommends more stringent limits, the Group notes that these Principles do not have the force of law. The Group supports alignment of Hong Kong standards with international standards, but the Group believes that Hong Kong's standards should not be excessively strict. This is particularly important because Hong Kong is attracting developing companies to fuel the growth in China. Hong Kong's Listing Rules should be relatively less restrictive compared to more mature markets such as London and New York, as the issuers listed in Hong Kong are more likely to require the ability to raise funds for growth.

- The Group would also like to highlight the fact that a H-share issuer is specifically restricted to issuing up to 20% of each of the existing issued domestic shares and overseas listed foreign shares, and that any reduction in size limits for general mandates will have a much more drastic effect on H-share issuers. As PRC companies are likely to remain an important source of listings for the Exchange, the Group is of the opinion that adoption of this proposal is likely to reduce Hong Kong's appeal as a listing destination to PRC issuers, and should be carefully deliberated before adoption.

(b) *Question 11.2: Should the Stock Exchange amend the current Listing 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 so, 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 so, 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.

Not applicable.

(c) *Question 11.3: Should the Stock Exchange amend the current Listing 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).

If so, then please provide your comments and suggestions.

The Group does not support the proposed amendment.

(d) *Question 11.4: Should the Stock Exchange amend the current Listing Rules such that:*

- *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;*
- *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*
- *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?*

The Group does not support the proposed amendment.

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

- The Group would like to highlight to the Exchange the situation regarding the mandatory issues of H-shares by PRC issuers to the PRC National Social Security Fund ("**NSSF**").
- Under the current regulatory framework, such issues of shares to the NSSF by issuers are compulsory under PRC law. H-share issuers presently issue these shares under the auspices of their general mandate.
- Pursuant to Rule 19A.38, H-share issuers are already severely limited in terms of their general mandates. H-share issuers must comply with size limits of 20% for each of their existing issued domestic shares and overseas listed foreign shares. Other issuers, by comparison, may issue up to 20% of their entire issued share capital.
- Not only is a H-share issuer able to issue far fewer H-shares under its general mandate than a non-PRC issuer, its fund-raising ability in the Hong Kong stock market is further curtailed by the number of H-shares which it is obliged by law to issue to the NSSF.
- The Group invites the Exchange to consider avenues that would allow a H-share issuer to comply with the PRC regulations and issue shares to the NSSF, without compromising its (already reduced) ability to issue shares in the Hong Kong market.

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

Expanding the list of exceptions to the definition of "dealing" in paragraph 7(d) of the Model Code

(Paragraphs 18.1 to 18.5 of the Consultation Paper)

(a) *Question 18.1: Do you agree with the proposed new exceptions set out above? Please provide reasons for your views.*

- The Group agrees with the proposed new exceptions set out above, and the rationale put forward by the Exchange for each of the new exceptions.

- The Group notes that the proposed new exceptions are already available under the UK Model Code. The Group is in favour of bringing the provisions of the Model Code in alignment with the UK Model Code.

Clarifying the meaning of "price sensitive information" in the context of the Model Code

(Paragraphs 18.7 to 18.8 of the Consultation Paper)

(b) *Question 18.2: Do you agree with the proposal to clarify the meaning of "price sensitive information" in the context of the Model Code?*

- The Group agrees with the proposal to clarify the meaning of "price sensitive information" in the context of the Model Code.

(c) *Question 18.3: Do you agree that the draft new Note to Rule A.1 of the Code would implement the proposal? Please provide reasons for your views.*

- The Group agrees that the draft new Note to Rule A.1 of the Code would implement the proposal. The Group is in favour of aligning the meaning of "price sensitive information" in the Model Code with the meaning contained in the Listing Rules under Rule 13.09 and the Notes thereto via cross-referencing the Model Code to the Listing Rules in order to minimise confusion.

- The Group is of the view that this method of defining "price sensitive information", particularly Note 11 to Rule 13.09, will provide appropriate guidance to issuers as to the meaning of "price sensitive information", whilst retaining sufficient flexibility to address the different situations which may arise in the financial markets.

Proposals in relation to extending the "black out" periods

(Paragraphs 18.11 to 18.21 of the Consultation Paper)

(d) *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? Please provide reasons for your views.*

- The Group disagrees with this proposal to extend the current "black out" periods to commence from the listed issuer's year / period end date and end on the date the listed issuer publishes the relevant results announcement.

- The Group notes that the Exchange's stated rationale for extending the "black out" periods is that unpublished price sensitive information in respect of a listed issuer continues to accrue after the year / period end.

- The Group is of the opinion that the dealing restrictions currently imposed on the directors of listed issuers are already sufficient to achieve the objective of preventing abuse by dealing with unpublished price sensitive information.

  (i) The Model Code expressly prohibits directors from dealing whenever there is unpublished price-sensitive information about the issuer.

  (ii) As an additional safeguard, the Model Code prohibits a director from dealing without first notifying the chairman or a director designated by the board for such specific purpose, and receiving a dated written acknowledgment. The listed issuer is obliged to maintain records of such notifications.

  (iii) Directors are also prohibited from dealing under circumstances falling within the ambits of Parts XIII or XIV of the Securities and Futures Ordinance (insider dealing and market misconduct). These statutes impose criminal as well as civil penalties on offenders.

  (iv) The Group also notes that the Exchange has proposed to impose 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. These time limits will serve as additional preventive hurdles to dealings taking place in a prohibited period and where price sensitive developments have occurred.

- The Group is of the view that Hong Kong's standards should be in line with, but not exceed, recognised international standards. Adoption of the proposed changes would subject directors of Hong Kong listed issuers to "black out" periods of up to eight months. By comparison, in the UK, the "black out" period is a maximum of 60 days. The Singapore and PRC stock exchanges prescribe a "black out" period of 1 month or 30 days prior to the announcement of an issuer's results. Further, there are no prescribed "black out" periods under the Listing Rules of the New York Stock Exchange, the Australian Stock Exchange, or the Toronto Stock Exchange. Hong Kong's stance on this issue would be much stricter than any of these other stock exchanges.

- The Group notes that the UK Model Code was amended in 2007 to remove application to "employee insiders", in order to reduce the administrative burden on issuers who had been obliged to maintain lists of employee insiders, often containing hundreds of names, and regulate dealings by those employee insiders. In direct opposition to this trend, the proposal to extend the "black out" periods would oblige Hong Kong listed issuers to monitor the dealings of its directors and the numerous other persons (directors' family members, trustees and investment managers) subject to the restrictions for up to three-quarters of the calendar year. Such an increased administrative burden may be a significant deterrent to companies choosing Hong Kong as a listing venue or a place of incorporation.

- The Group also notes that the "black out" periods affect not just the directors but also their immediate families, trustees, and investment managers. As many Hong Kong-listed issuers have a December year-end, several persons will only be entitled to sell their shares within certain shared open window periods. This may lead to a high concentration of transactions during these periods, and may result in market instability.

Restricting the time for responding to the request for clearance to deal, and the time for dealing once clearance has been received

(Paragraphs 18.23 to 18.25 of the Consultation Paper)

(e) *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?*

The Group agrees 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.

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

Please provide reasons for your views.

- The Group agrees that the proposed time limit of 5 business days in each case is appropriate.

- The Group agrees with the rationale put forward by the Exchange that time limits should be imposed in order to prevent dealings taking place in a prohibited period. The Group also notes that the UK Model Code sets a time limit of 5 business days to respond to a request for clearance to deal, and a time limit of 2 business days for dealing to take place once clearance is given.

PART B

In this section we have set out the Group's response to those issues in the Consultation Paper which are of less significance to the Group, but nonetheless the Group wishes to share its views with the Exchange.

Issue 3: Qualified accountants

(Paragraphs 3.1 to 3.15 of the Consultation Paper)

(a) *Question 3.1: Do you agree that the requirement in the Main Board Rules for a qualified accountant should be removed? Please provide reasons for your views.*

- The Group does not agree that the requirement for a listed issuer to employ a qualified accountant at all times should be removed. Qualified accountants play an important role for issuers in fulfilling their continuing financial reporting obligations and maintaining effective internal controls for proper financial reporting. Further, the Group believes that qualified accountants should remain a member of senior management of listed issuers.

- In practice, qualified accountants are appointed early in the IPO process and often serve an important role in that process. Qualified accountants are important to an issuer in assessing its internal controls and ensuring that the issuer has adequate financial reporting procedures for a listed company. A qualified accountant also assists sponsors in their due diligence assessment of internal controls and financial reporting systems, in order to enable sponsors to provide the declarations required under Rule 3A.15(5). Without qualified accountants, such assessment would be more difficult to make.

- Whilst the Group is in favour of retaining the requirement for listed issuers to employ qualified accountants, the Group suggests accountants with alternative appropriate qualifications should be eligible to fulfil the role, so as not to discriminate against those qualified outside of Hong Kong. The Group believes that the Exchange should decide which alternative qualifications are appropriate based on the location of the issuer's business and the applicable accounting standards.

(b) *Question 3.2: Do you agree that the requirement in the GEM Rules for a qualified accountant should be removed? Please provide reasons for your views.*

See response to question 3.1 above.

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

(Paragraphs 9.1 to 9.8 of the Consultation Paper)

(a) *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? Please provide reasons for your views.*

- The Group supports 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 Listing Rules.

- The Group is of the opinion that the proposed amendments encourage consistency in disclosure of information.

(b) *Question 9.2: Do you agree that the draft Listing Rules at Appendix 9 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Listing Rules at Appendix 9 will implement the proposals set out above.

(c) *Question 9.3: Do you support the proposal to amend Main Board Listing Rules 7.21(1) and 7.26A(1) and GEM Listing 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?*

- The Group supports the proposal to amend Main Board Listing Rules 7.21(1) and 7.26A(1) and GEM Listing 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.

Issue 12: Voting at general meetings

(Paragraphs 12.1 to 12.50 of the Consultation Paper)

Voting by poll

(a) *Question 12.1: Should the Stock Exchange amend the Listing Rules to require voting on all resolutions at general meetings to be by poll?*

The Group believes that this is an issue which should be responded to by issuers instead of by the Group.

(b) *Question 12.2: If your answer to Question 12.1 is "no", should the Stock Exchange amend the Listing 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)?*

The Group believes that this is an issue which should be responded to by issuers instead of by the Group.

(c) *Question 12.3: If your answer to Question 12.1 is "no", should the Stock Exchange amend the Listing 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?*

The Group believes that this is an issue which should be responded to by issuers instead of by the Group.

Notice of general meetings

(d) *Question 12.4: In the case of listed issuers other than H-share issuers, the Listing 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 Stock Exchange amend the Listing Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings? If so, should the provision be set out in the Listing 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)?*

The Group does not agree that the Exchange should amend the Listing Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings.

(e) *Question 12.5: If your answer to Question 12.4 is "no", should the Stock Exchange amend the Listing 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)? If so, should the provision be set out in the Listing 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)?*

The Group does not agree that the Exchange should amend the Listing Rules to provide for a minimum notice period of 28 clear calendar days for convening all annual general meetings, but not extraordinary general meetings.

(f) *Question 12.6: Do you have any other comments regarding regulation by the Stock Exchange on the extent to which voting by poll should be made mandatory at general meetings or the minimum notice period required for convening shareholder meetings? Please provide reasons for your views.*

Comments on the extent to which voting by poll should be made mandatory at general meetings

- The Group sees the force of the Exchange's arguments, particularly in light of Hong Kong's continuing drive to improve its corporate governance standards. However, the Group believes that it would be more appropriate for the issuer community to respond to the Exchange's queries on this issue.

Comments on the minimum notice period required for convening shareholder meetings

- The Group notes that the proposed amendments to require 28 clear calendar days for general meetings, or only for annual general meetings, both exceed the requirements of the equivalent regulations in the United Kingdom and Singapore. The Group does not agree with the imposition of standards which go beyond international requirements for Hong Kong's issuers, as such a policy is likely to result in the reduction of Hong Kong's appeal as a listing destination and a place

of incorporation for companies. Particularly in light of current market conditions, the Group agrees that the lengthening of notice periods for issuers carries no small risk of adverse consequences for the issuer, e.g. the risk of a market downturn in the interim.

- The Group notes that the primary reason cited by the Exchange for lengthening the notice periods appears to relate to the unsatisfactory situation brought about by the imposition of additional deadlines by the Central Clearing and Settlement System ("**CCASS**") and other intermediary custodians for the receipt of voting instructions, leaving cross-border investors little time in which to vote.

- The Group respectfully suggests that the Exchange directly address the problems faced by cross-border investors by considering the position of the CCASS and the other intermediary custodians involved. The Exchange may consider: (i) promulgating regulations limiting the additional deadlines which may be imposed by such intermediary custodians for the receipt of voting instructions; and/or (ii) encouraging or requesting the intermediary custodians to respond to the needs of the market by improving their operations and processes to achieve greater efficiency in obtaining voting instructions from investors, particularly cross-border investors.

General comments

- The Group notes that methods of voting and notice periods for convening general meetings are governed by the Companies Ordinance, and suggests that any changes to be made in this aspect should be by lobbying for amendments to the Companies Ordinance, rather than by amending the Listing Rules.

Issue 16: Disclosure of information in takeovers

(Paragraphs 16.1 to 16.4 of the Consultation Paper)

(a) *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? Please provide reasons for your views.*

- The Group supports the proposal to codify the Exchange's current practice of granting waivers to issuers to publish information of the target company in situations such as hostile takeovers where the listed issuer has limited access to information. This proposal will facilitate hostile acquisitions of overseas targets by Hong Kong listed issuers and helps address the real practical difficulties faced by issuers in preparing circulars where information on the target is not publicly available or otherwise accessible. The proposal will assist listed issuers in seeking overseas targets and create a level playing field for Hong Kong listed companies in bidding for overseas targets.

(b) *Question 16.2: Do you agree the new Rule should extend to non-hostile takeovers where there is insufficient access to non-public information as well as hostile takeovers? Please provide reasons for your views.*

- The Group considers that the new Rule should extend to non-hostile takeovers where there is insufficient access to public information. Even in recommended takeover transactions, there are often legal or regulatory restrictions on providing access to non-public information on the target company. In cases where a listed

issuer is genuinely unable to obtain all the information required to fulfil the circular content requirements due to legal or regulatory restrictions the new rule would alleviate these difficulties. The Group does not consider that a distinction between hostile and non-hostile takeover should be made, as in reality, the regulatory restrictions on providing non-public information may apply equally to hostile and non-hostile takeovers.

(c) *Question 16.3: Paragraph (3) of the new 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? Please provide reasons for your views.

- The Group considers that the 45 day time frame for producing the supplemental circular is an appropriate length of time. This should be sufficient time to gain access to the target company's books and records and prepare the various supplemental disclosure materials. Where the issuer has genuine difficulties in integrating the target company, the Group assumes that the Exchange would in appropriate circumstances grant to the issuer a waiver in respect of strict compliance with the 45 day time frame to enable the issuer to compile the necessary information and comply with the disclosure requirements.

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

- The Group considers that the remit of the proposed rules should be expanded beyond strictly "takeover offers" to include any acquisition involving either directly or indirectly an interest in a listed entity where the listed issuer is unable to obtain the non-public information it requires to comply with the Listing Rules requirements. This would extend the rule to cover situations where the target company itself is not listed but has a significant interest in a listed company where such information is required for fulfilling the disclosure requirements.
- In addition, the Group suggests expanding the drafting in Rule 14.76A(1)(a) such that "legal restrictions" is expanded to include legal or regulatory restrictions. The rationale behind this suggested amendment is that often, the relevant takeover code or listing rules may not have the force of law but are regulatory rules that the target company is required to comply with.

PART C

In this section we have set out the Group's brief response to the remaining areas of the Consultation Paper.

Issue 1: Use of websites for communication with shareholders

(Paragraphs 1.1 to 1.25 of the Consultation Paper)

(a) *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))? Please provide reasons for your views.*

- The Group supports the proposal to remove the requirement that all listed issuers must comply with the standard which is no less onerous than that imposed under Hong Kong law with regard to corporate communications. The Group agrees that this is necessary in order to allow issuers from jurisdictions other than Hong Kong to benefit from amendments to the Rules, given the existing requirements of the Companies Ordinance. The Group encourages the Exchange to lobby for amendments to the Companies Ordinance to permit Hong Kong incorporated companies to take advantage of the proposed amendments to the Rules.

(b) *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? Please provide reasons for your views.*

- The Group supports the proposed amendments to the Rules permitting a listed issuer to avail itself of a procedure for deeming consent from shareholders in respect of corporate communications. The Group supports the arguments proposed by the Exchange relating to the cost savings and environmental benefits of the proposal. Shareholders will still have the option to request physical copies and should not therefore be unduly prejudiced by the proposed changes.

(c) *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? Please provide reasons for your views.*

- The Group supports the Exchange's proposal that an issuer should be required to ask each shareholder individually for agreement to send corporate communications by means of the listed issuer's website. The administrative burden on the issuer is not unduly significant when considering the benefits this proposal provides in protecting shareholders who may still require physical copies of documentation.

(d) *Question 1.4: If your answer to Question 1.3 is "yes", do you agree that:*

(i) 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;

(ii) 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

(iii) if your answer to (b) is "yes", should the period be 12 months? Do you have any other comments you consider necessary to supplement your reply to this Question 1.4?

- The Group supports the Exchange's proposed time frame of 28 days and restrictions on re-approaching shareholders for 12 months. The Group considers 12 months to be an appropriate balance to ensure that investors are not unduly pressured by issuers to concede to website communication methods.

(e) *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? Please provide reasons for your views.*

- Given that issuers would be able to avail themselves of the new procedure relating to publication of corporate communications on its website, the Group considers that an express positive confirmation from shareholders should still be required before sending corporate communications to listed issuers on a CD.

(f) *Question 1.6: Do you agree that the draft Rules at Appendix 1 will implement the proposals set out above? Please provide reasons for your views.*

- The Group considers that the draft Rules in Appendix 1 sufficiently implement the proposals set out in paragraph 1 of the Consultation Paper.

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

(Paragraphs 6.1 to 6.7 of the Consultation Paper)

(a) *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? Please provide reasons for your views.*

- The Group supports the Exchange's proposal that the requirement for a minimum spread of securities holders at the time of listing should be disapplied. The Group agrees with the rationale for the proposed change set out in paragraph 6 of the Consultation Paper.

(b) *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? If so, do you consider the five year time limit to be appropriate? Please provide reasons for your views.*

- The Group agrees that the proposed exemption should not be available where the listed shares may be concentrated in the hands of a few shareholders. The Group agrees that the basis for the relaxation of the requirement is that there is an open market in the listed shares. However, if the Exchange has reason to suspect that shares are concentrated in the hands of a few shareholders the exemption should not be available.

(c) *Question 6.3: Do you agree that the draft Rules at Appendix 6 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 6 will implement the proposals set out in paragraph 6 of the Consultation Paper.

Issue 8: Disclosure of changes in issued share capital

(Paragraphs 8.1 to 8.28 of the Consultation Paper)

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

- The Group supports the next day disclosure regime proposed by the Exchange. The Group considers that the list of types of changes in issued share capital requiring next day disclosure suggested by the Exchange is sufficient.

(b) *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?*

- The Group considers that the Exchange has struck the appropriate balance in selecting the types of changes in issuer's share capital to be notified by next day disclosure.

(c) *Question 8.3: Is 5% an appropriate de minimis threshold for those categories of changes to which it applies? Please provide reasons for your views.*

- The Group considers that 5% is an appropriate *de minimis* threshold for the relevant categories. The 5% *de minimis* threshold is a sensible limit to avoid excessive disclosure for categories where issuers may regularly be issuing securities but requires disclosure once that limit has been reached.

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

- The Group has no comments on the draft Next Day Disclosure Return form.

(e) *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?*

- The Group has no comments on the draft Next Day Disclosure Return form.

(f) *Question 8.6: Is 9:00 a.m. of the next business day an achievable deadline for the Next Day Disclosure Return? Please provide reasons for your views.*

- The Group considers that issuers are best placed to respond on this question.

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

- The Group has no comments on the draft of the revised Monthly Return form.

(h) *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?*

- The Group has no comments on the draft of the revised Monthly Return form.

(i) *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?*

- The Group has no comments on the draft of the revised Monthly Return form.

(j) *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? Please provide reasons for your views.*

- The Group considers that issuers are best placed to respond on this question.

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

- The Group considers that listed issuers should be required to make an announcement as soon as possible when share options are granted pursuant to a share option scheme. The Group agrees with the Exchange's concern regarding backdating of the grant of share options. The Group supports the greater transparency and visibility of granting of share options which the proposal will achieve.

(l) *Question 8.12: Do you agree that the draft Rules at Appendix 8A will implement the proposals set out above? Please provide reasons for your views.*

- The Group believes that the draft Rules at Appendix 8A will implement the proposals set out in paragraph 8 of the Consultation Paper.

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

(Paragraphs 10.1 to 10.7 of the Consultation Paper)

(a) *Question 10.1: Should the Rules continue to impose a requirement for material dilution, separate from notifiable transaction requirements applicable to deemed disposals? Please provide reasons for your views.*

- The Group believes that there is no need to continue to impose a requirement for material dilution separate from the existing notifiable transaction requirements under the Rules applicable to deemed disposals. The Group considers that two sets of rules which are different create difficulties in properly interpreting and applying the Rules. The Group is of the view that the more stringent requirements under Main Board Chapter 13 do not make sense given that the requirements for major transactions which trigger shareholders' approval under

Main Board Chapter 14 are comparatively less onerous. The Group therefore does not see the need to maintain the separate requirement for shareholders' approval for a material dilution of a major subsidiary under Main Board Chapter 13 and is of the view that the Main Board Chapter 14 requirements are sufficient.

(b) *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? Please provide reasons for your views.*

- The Group agrees that the requirements for material dilution should be aligned with those for deemed disposal in Chapter 14. Please see our response to 10(a) above.

(c) *Question 10.3: Do you agree that the draft Rules at Appendix 10 will implement the proposals set out above? Please provide reasons for your views.*

- The Group considers that the draft Rules at Appendix 10 will implement the proposals set out in paragraph 10 of the Consultation Paper.

Issue 13: Disclosure of information about and by directors

(Paragraphs 13.1 to 13.25 of the Consultation Paper)

(a) *Question 13.1: Do you agree that the information equivalent to that set out in draft new Main Board Rule 13.51B should be expressly required to be disclosed in the Rules by issuers up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or redesignation? Please provide reasons for your views.*

- The Group does not agree that the information equivalent to that set out in draft new Rule 13.51B should expressly be required to be disclosed continuously throughout the director's term of office. The Group considers that such information is not materially important information for immediate disclosure to the market. The proposals would impose an additional burden on issuers in terms of monitoring changes in directors' information and announcing it in a timely fashion. The Group considers that updated biographical information containing the information equivalent to that set out in the draft new Rule 13.51B should be required to be disclosed in the annual report which will be sufficient disclosure. Alternatively, the Group would suggest that the obligation to immediately announce changes in the Main Board Rule 13.51B should only be limited to a restricted list of items in that Rule in relation to disciplinary offences.

(b) *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? Please provide reasons for your views.*

- The Group does not agree that the relevant information should be disclosed immediately upon an issuer becoming aware of it. The Group considers that disclosure in an annual report would be sufficient disclosure to update the market.

(c) *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? Please provide reasons for your views.*

- The Group considers that if the Exchange pursues its proposal to require the issuer to make an immediate announcement a corresponding obligation should be imposed on directors. Otherwise issuers will have severe difficulties in monitoring any updated information on directors relevant for disclosure under the proposed new Rule 13.51B.

(d) *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? Please provide reasons for your views.*

- The Group agrees that the disclosure referred to in paragraph (u) and (v) of Main Board Rule 13.51(2) should be subject to the proviso that disclosure shall not be required if such disclosure is prohibited by law. Otherwise, directors and issuers would be put in a difficult position where the Rules require disclosure but they are otherwise prevented by law from releasing the information.

(e) *Question 13.5: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 13 will implement this proposal.

(f) *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? Please provide reasons for your views.*

- The Group agrees that the Rules should be amended to require disclosure of directors and supervisors current and past directorships in public companies. This would be useful information for the market to assess the qualifications of directors. The Group agrees that the disclosure should be limited to listed companies as being the most relevant and useful information for investors.

(g) *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? Please provide reasons for your views.*

- The Group agrees that the Main Board Rule 13.51(2)(c) and the equivalent GEM Rule should be amended to require disclosure of the professional qualifications of directors and supervisors professional qualifications. The Group believes that this is useful information for investors to assess the qualifications and business acumen of directors.

(h) *Question 13.8: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 13 will implement this proposal.

(i) *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)? Please provide reasons for your views.*

- The Group agrees that the Main Board Rule 13.51(2)(m)(ii) should be amended to include references to the Ordinances referred to in the GEM Rule 17.50(2)(m)(ii). This ensures consistency in the Rules of the Main Board and GEM.

(j) *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))? Please provide reasons for your views.*

- The Group agrees that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended as proposed. The proposed amendment clarifies the interpretation of the Rules in this regard.

(k) *Question 13.11: Do you agree that the draft Rules at Appendix 13 will implement this proposal? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 13 will implement this proposal.

Issue 14: Codification of waiver to property companies

(Paragraphs 14.1 to 14.51 of the Consultation Paper)

(a) *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? Please provide reasons for your views.*

- The Group agrees that the Proposed Relief should apply only to listed issuers that are actively engaged in property development as a principal business activity. The Group supports the arguments raised by the Exchange that the Proposed Relief should be targeted only at companies which face hardship and practical difficulties in conducting property acquisitions.

(b) *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 above)? Please provide reasons for your views.*

- The Group agrees with the proposed criteria in determining whether property development is a principal activity of a listed issuer. The Group considers that the factors listed in paragraph 14.13 of the Consultation Paper are appropriate for determining whether an issuer is engaged in property development.

(c) *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? Please provide reasons for your views. 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 so, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.*

- The Group agrees that the scope of the Proposed Relief should be confined to the acquisition of property assets that fall within the definition of Qualified Property Projects. The Group notes the concerns that the Exchange has raised in

paragraph 14.18 of the Consultation Paper and agrees with the conclusions reached by the Exchange that there are no compelling reasons to extend the dispensation of shareholders' approval requirements to auctions of non-property assets, non-public auction processes or property auctions overseas.

(d) *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? If so, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.*

- The Group considers that relevant property developer issuers are best placed to respond on this question.

(e) *Question 14.5: Do you agree that the scope of the exemption from strict compliance with 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? Please provide reasons for your views.*

- The Group agrees with the Exchange's proposal as to the scope of the exemptions from strict compliance with Main Board Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons.

(f) *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)? If so, 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.*

- The Group agrees that the General Property Acquisition Mandate is useful to protect shareholders.

(g) *Question 14.7: Are the disclosure obligations described at paragraph 14.51 above appropriate? Please provide reasons for your views.*

- The Group considers the disclosure obligations described at paragraph 14.51 of the Consultation Paper are appropriate.

(h) *Question 14.8: Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rule amendments at Appendix 14 will implement the proposals set out in paragraph 14 of the Consultation Paper.

Issue 15: Self-constructed fixed assets

(Paragraphs 15.1 to 15.12 of the Consultation Paper)

(a) *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? Please provide reasons for your views.

- The Group supports the proposal to exclude construction of fixed assets by a listed issuer for its own use in the ordinary and usual course of its business from the notifiable transaction Rules. The Group agrees with the Exchanges' reasoning set out in paragraphs 15.6 to 15.9 of the Consultation Paper.

(b) *Question 15.2: Do you agree that the draft Rules at Appendix 15 will implement the proposal set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 15 will implement the proposals set out in paragraph 15 of the Consultation Paper.

Issue 17A: Streamlining disclosure of director's and supervisor's information through an issuer's announcement

(Paragraphs 17.1 to 17.21 of the Consultation Paper)

(a) *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? Please provide reasons for your views.*

- The Group understands the desire to streamline the DU Forms and supports the proposal. The Group is a little concerned that by deleting the questions relating to the directors' and supervisors' biographical details, directors and supervisors will no longer focus on all of the details previously required to be included in the DU Forms when preparing the relevant Appointment Announcement. However, the Group notes that the Listing Rule clearly set out the information required for the Appointment Announcement which should act as a sufficient checklist for directors when preparing the relevant announcement or circular.

(b) *Question 17.2: Do you agree that the DU Forms for directors should be amended by removing the statutory declaration requirement? Please provide reasons for your views.*

- The Group agrees that the DU Forms should be amended to remove the statutory declaration requirement. The Group agrees with the reasoning of the Exchange that the assurance of true, accurate and complete information relating to a director's personal details would be achieved through enforcement of the dual filing requirements and would provide sufficient liability for false statements pursuant to section 384 of the SFO. The Group shares the Exchanges' view that often the statutory declaration causes administrative inconvenience to directors, particularly where they are executed outside Hong Kong.

(c) *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? Please provide reasons for your views.*

- The Group considers 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 the DU Forms. The Group considers that it is preferable to align the practices under

GEM and the Main Board and is of the view that there is no substantive reason why GEM directors should be treated differently from Main Board directors.

(d) *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? Please provide reasons for your views.*

- The Group agrees that listing documents should include all information required under Main Board Rule 13.51(2) or GEM Rule 13.50(2).

(e) *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? Please provide reasons for your views.*

- The Group agrees that the application procedures should be amended as discussed in paragraph 17.20 of the Consultation Paper if the Exchange proceeds with its proposal to streamline the DU Forms.

(f) *Question 17.6: Do you agree that the draft Rules at Appendix 17 will implement the proposals set out above? Please provide reasons for your views.*

- The Group agrees that the draft Rules at Appendix 17 will implement the proposals set out in paragraph 17A of the Consultation Paper.

Issue 17C: Service of disciplinary proceedings on directors

(Paragraphs 17.32 to 17.38 of the Consultation Paper)

(a) *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?*

- The Group agrees that paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules should be amended as proposed by the Exchange.

(b) *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?*

- The Group agrees that the proposed amendments to paragraph (e) of the Director's Undertaking at Appendix 17 will implement the proposal set out in Question 17.9.

(c) *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?*

- The Group is concerned that the ability to change the terms of the Director's undertaking without the need for a director to re-execute his undertaking may be viewed as an attempt by the Exchange to unilaterally impose additional obligations on directors. A director may be reluctant to give an undertaking if he

believes that such undertaking is potentially open ended. The Group considers that it is more appropriate for the Exchange to include specific obligations in the Rules rather than to seek amendments in the Director's undertaking from time to time. The Group does not support the proposal to amend the Director's undertaking given that the Director is already required by the undertaking to comply with the Rules from time to time.

APPENDIX 1

Listing Manual – Rules of Catalist of Singapore

Appendix 2D – Sponsor Independence

Part II – Independence Requirements

3. The sponsor should have adequate procedures to avoid any conflict of interest that may arise from sponsor activities and other business activities (if undertaken by the sponsor or its parent, related or associated entity). At least the following is required:

   (a) Separation between the functions undertaking sponsor activities and other relevant business activities.

   (b) Separate reporting lines for the functions undertaking sponsor activities and other relevant business activities.

   (c) Restriction of communication and information flow between sponsor activities and other activities to avoid leakage of sensitive information, including procedures to ensure that its officers, registered professionals and employees do not divulge any confidential information to any person who is not entitled to receive the information, and to ensure that they exercise due care to prevent any leakage of confidential information.

   (d) Restriction of access into the function(s) undertaking sponsor activities to authorised officers, registered professionals and employees.

   (e) Satisfy the Exchange that proper safeguards are in place if a sponsor wishes to act as both the sponsor and reporting auditor and/or ongoing auditor of an issuer.

   (f) Where the sponsor is not a trading member of SGX-ST, notify the Exchange in writing at least 14 days before it establishes a business function which may create a conflict of interest with sponsor activities, including research, broking and market-making. The sponsor must supply the Exchange with information regarding the proposed function and the procedures in place to avoid any conflict of interest with sponsor activities.

5. A sponsor should have controls over trading in restricted securities:

   (a) A sponsor, or a partner or director of a sponsor, or associate of any such partner or director, may individually or collectively, have an interest either directly or indirectly of 5% or more in the securities of a sponsored issuer, provided that adequate safeguards are in place to prevent any conflict of interest. *With proper safeguards, an asset management business operated by the sponsor is not subject to this limit.*

   (b) A sponsor, or a partner or director of a sponsor, or associate of any such partner or director, may not either individually or collectively, have an interest either directly or indirectly of more than 10% in the securities of a sponsored issuer. If the limit

is breached, the sponsor must immediately inform the Exchange and use its best endeavours to sell down to within the guidelines as soon as practicable. *With proper safeguards, an asset management business operated by the sponsor is not subject to his limit.*

UKLA Listing Rules

LR8.3 Role of Sponsor: General

Principles for Sponsors: Independence

8.3.6 (1) A sponsor must be independent of the listed company or applicant where a sponsor provides any service, assurance, guidance or advice and in any event must not act if the sponsor or another company in the sponsor's group has:

(a) an interest in, or a holding that is referenced to, 30% or more of the equity shares of the listed company or applicant or any other company in that company's group; or

(b) a significant interest in the debt securities of a listed company or applicant or any other company in that company's group; or

(c) *a business relationship with, or financial interest in the listed company or applicant or any other company in the listed company's group that would give the sponsor or the sponsor's group a material interest in the outcome of the transaction.*

(2) Any interest that arises as a result of the sponsor's discretionary client holdings is not to be included in the determination of the threshold set out in LR 8.3.6R(1)(a).

(3) A sponsor will not be independent of a listed company or applicant if a director, partner or employee of the sponsor or another company in the sponsor's group:

(a) is involved in the provision of sponsor services; and

(b) has a material interest in the listed company or applicant or any other company in that company's group.

8.3.7 (1) A sponsor and the sponsor's group should have a sufficient degree of independence from the listed company or applicant and from the transaction so that the role of the sponsor can be discharged in a way that will not:

(a) affect the outcome of the transaction; or

(b) affect the nature of the advice given to the listed company or applicant; or

(c) be perceived to have affected either the outcome of the transaction or the nature of the advice given to the listed company or applicant.

(2) *In cases where a company in, or an employee of, the sponsor's group has an interest or a relationship that may be perceived to cause a conflict it may be possible to demonstrate to the FSA that adequate separation exists in respect of the transaction.*

AIM Rules for Nominated Advisers

Schedules

Schedule One – Independence in relation to rule 21

For the avoidance of doubt:

- A nominated adviser may not act as both reporting accountant and/or auditor on the one hand and nominated adviser to an AIM company on the other unless it has satisfied the Exchange that appropriate safeguards are in place;

- No partner, director, employee of a nominated adviser or associate of any such partner, director or employee may hold the position of a director of an AIM company for which the firm acts as nominated adviser;

- No nominated adviser or partner, director, employee of a nominated adviser or associate of any such partner, director or employee either individually or collectively may be a substantial shareholder (i.e. 10% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an AIM company for which the firm acts as nominated adviser;

- A nominated adviser or partner, director, employee of a nominated adviser or associate of any such partner, director or employee may be a significant shareholder (i.e. 3% or more, taking into account options, warrants or similar that it may hold as if they have been exercised) of an AIM company for which the firm acts as nominated adviser *provided adequate safeguards are in place to prevent any conflict or interest*;

- No nominated adviser or partner, director, employee or a nominated adviser or associate of any such partner, director or employee may deal in the securities of an AIM company or any related financial product for which the firm acts as nominated adviser during any close period of that company;

- When calculating an interest in a client company a nominated adviser is permitted to disregard any interest in shares pursuant to rules 5.1.3 to 5.1.5 inclusive of the DTR; and

- If a nominated adviser breaches any of the above limits as a result of its underwriting activities it must make best endeavours to sell down its holding to within the guidelines as soon as reasonably practicable.

Note: As guidance, bullet points 3-5 inclusive above will only apply to the corporate finance function of a nominated adviser firm and not to other areas adequately separated by Chinese walls or similar safeguards. In such situations the burden of proof required of the nominated adviser under rule 21 remains.

APPENDIX 2

January Joint Submission

FRESHFIELDS BRUCKHAUS DERINGER

HONG KONG
[redacted]
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OUR REF KIN/GW 000000-0005
YOUR REF

18 January 2008

Dear Sirs

Combined Consultation Paper on Proposed Changes to the Listing Rules

We refer to our letter of 17 January 2008 submitting a joint response on behalf of a number of investment banks to Issue 5A of the Combined Consultation Paper on the Proposed Changes to the Listing Rules issued by the Hong Kong Exchanges and Clearing Limited on 11 January 2008 (the ***Joint Submission***).

We have since been informed by Merrill Lynch Far East Limited that they wish to support and add its name to the Joint Submission. Accordingly, please see attached the Joint Submission (amended to include Merrill Lynch Far East Limited's name) for your reference.

If you have any questions regarding the above, please do not hesitate to contact Ng Kay Ian of this office at [redacted].

Thank you.

Yours faithfully

[redacted]

Freshfields Bruckhaus Deringer

18 JANUARY 2008

JOINT SUBMISSION

by

ABN AMRO BANK N.V., HONG KONG BRANCH

BOCI ASIA LIMITED

CHINA INTERNATIONAL CAPITAL CORPORATION LIMITED

CITIGROUP GLOBAL MARKETS ASIA LIMITED

CREDIT SUISSE (HONG KONG) LIMITED

DEUTSCHE BANK AG, HONG KONG BRANCH

J.P. MORGAN SECURITIES (ASIA PACIFIC) CO. LTD.

LEHMAN BROTHERS ASIA LIMITED

MERRILL LYNCH FAR EAST LIMITED

MORGAN STANLEY ASIA LIMITED

UBS AG

(in alphabetical order)

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in response to
Issue 5A of the Combined Consultation Paper on Proposed Changes to the Listing Rules dated 11 January 2008 issued by The Stock Exchange of Hong Kong Limited (the "Stock Exchange") in respect of the minimum level of public float under Rule 8.08 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules")

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1. Introduction

Reference is made to the consultation paper dated 11 January 2008 (the "Consultation Paper") issued by the Stock Exchange of Hong Kong Limited (the "Stock Exchange") seeking comments from the market regarding a number of substantive policy issues as well as amendments to the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules"). This submission seeks to provide specific comments to address the issues raised in the Consultation Paper regarding the minimum level of public float (under Issue 5A).

Issue 5A: Minimum level of public float. The Stock Exchange has proposed the following amendments to Rule 8.08(1)(d) in respect of the minimum public float requirements for Main Board issuers:

Market capitalisation	Proposed minimum public float
Not exceeding HK$10 billion	25%
Over HK$10 billion but not exceeding HK$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$2.5 billion (determined as at the time of listing); and (ii) 15%
Over HK$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands and equal to HK$6 billion (determined as at the time of listing); and10%

The above amendments of the minimum public float requirements is proposed to be applicable to all issuers so long as they meet the relevant thresholds and will no longer be available at the Stock Exchange's discretion.

As market participants who have had substantial experience in considering issues relating to the minimum public float requirements and the constituents of "the public", we, ABN Amro Bank N.V., Hong Kong Branch, BOCI Asia Limited, China International Capital Corporation Limited, Citigroup Global Markets Asia Limited, Credit Suisse (Hong Kong) Limited, Deutsche Bank AG, Hong Kong Branch, J.P. Morgan Securities (Asia Pacific) Co. Ltd., Lehman Brothers Asia Limited, Merrill Lynch Far East Limited, Morgan Stanley Asia Limited and UBS Investment Bank are making this joint submission on our own behalf to address the above issues raised and to respond to the questions asked in the Consultation Paper.

2. Minimum public float requirements under Rule 8.08

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

We agree that the existing Rule 8.08(1)(d) should be amended.

(b) *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? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.*

In respect of the proposed amendments to Rule 8.08(1)(d) at Appendix 5, we would like to express our strong support for the reduction of the minimum public float requirements from the current minimum of 15% to 10% for listing applicants with a sufficiently large market capitalisation. In addition, we respectfully request the Stock Exchange to consider our following observations.

Under the proposed amendments at Appendix 5, a company would need to have a market capitalisation at the time of listing in excess of HK$60 billion in order to be entitled to the 10% minimum public float percentage[1]. We have, in recent transactions, noticed a number of instances whereby the size of the H share offering has been limited to 10% of the listing applicant's market capitalisation. As you are aware, the calculation of the expected market capitalisation of a listing applicant would have to be determined at the low end of the price range before marketing and without taking into account the over-allotment option. Accordingly, we would like to raise our concern that in this respect, many companies which were considered sizeable deals when listed (for example, China Coal Energy Company Limited, and China Communications Construction Company Limited – being the two largest non-bank IPOs for the Hong Kong market in 2006 – and Ping An Insurance (Group) Company of China Limited), based on the low end of the price range, would not have been able to meet the market capitalisation for the 10% public float.

Further, we would like to make the observation that the current Hong Kong securities market had, in the second half of 2007, seen the Hang Seng index reached record high levels, which no doubt affected the valuation of companies. We submit that the market capitalisation value being used to determine an acceptable public float should take into account both the peaks and troughs of the valuation cycle, and this would suggest lowering the market capitalisation thresholds for Rule 8.08(1)(d).

Accordingly, in determining the appropriate market capitalisation thresholds for the minimum public float, we would like to suggest the following.

Suggestion

Market capitalisation	Proposed minimum public float
Not exceeding HK$8 billion	25%
Over HK$8 billion but not exceeding HK$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$2.0 billion (determined as at the time of listing); and (ii) 15%

[1] Under the proposed amendments to Rule 8.08(1)(d), as the minimum public float is proposed at a higher of HK$6 billion or 10%. Accordingly a listing applicant must have an expected market capitalisation of at least HK$60 billion to enjoy the lower public float percentage of 10%.

Over HK$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands and equal to HK$3 billion (determined as at the time of listing); and10%

Our suggested thresholds above would allow listing applicants with a market capitalisation of HK$30 billion or more to enjoy a 10% public float. Our proposal follows the structure of the proposal in the Consultation Paper and is also higher than the thresholds in the existing Listing Rules whereby a company with a market capitalisation of HK$10 billion could enjoy a 15% public float with securities of HK$1.5 billion constituting the value of the public float. We also hope that, going forward with this proposal, more PRC companies would have the ability to select the Hong Kong securities market as its listing venue.

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

We welcome and support the Stock Exchange's re-examination of its current minimum public float regime and its reduction, for large market capitalisation companies from 15% to 10%. It is a long-awaited change in light of the increasing number of very large market capitalisation companies seeking listings in Hong Kong.

In addition to our suggestions above in response to Question 5.2, we would like to make the following additional comments on the issue of public float.

2.1 Revisiting Rule 8.08(1)(b)

In addition to the amendments which the Consultation Paper propose, we would also like to invite the Stock Exchange to revisit Rule 8.08(1)(b). Under Rule 8.08(1)(b):

"*Where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Stock Exchange) at the time of listing must be at least 25% of the issuer's total issued share capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of not less than HK$50,000,000.*"

In light of the proposed amendments to the minimum public float requirements under Rule 8.08(1)(d) and that such amendments are proposed to be applicable to all issuers so long as they meet the relevant thresholds and will no longer be available at the Stock Exchange's discretion, corresponding changes will need to be made to Rule 8.08(1)(b), our suggestion for which is set out below.

2.2 Increasing difficulties for PRC companies to list in Hong Kong – the rise of the A + H company

The current trend for PRC companies seeking to list their H shares in Hong Kong is to have a corresponding listing of their A shares in the PRC. In recent years, we have seen an increase in the number of listed issuers which have listings on both the Hong Kong H-share market and the PRC A-share market.

Under PRC securities regulation, the minimum public float requirement in the A-share market for companies whose issued share capital is over RMB400 million is 10% of the issuer's total issued share capital. We understand that in the PRC regulators' calculation of the minimum public float, shares held by the public in the form of H shares would count towards the minimum 10% public float. However, in the Stock Exchange's calculation of the level of public float, shares held by the public on the A share market do not count towards the minimum public float on the basis that the shares are not fungible. Accordingly, there is a difference in the application, even though both regulators may accept the same minimum number of 10% and such difference would need to be considered further in connection with an "A+H" company.

Further, in recent years, there is an expectation that a PRC issuer who issues H shares in Hong Kong would also issue A shares in the PRC and with the size of the A share offer being at least equal to that of the H share offer. Accordingly, an "A+H" company will need to (a) ensure that at the time of listing, the company at least meet the minimum public float percentage with respect to its H shares; and (b) be expected to have the size of its A share offering at least equal to its H share offering and (c) ensure that the minimum public float requirements in Hong Kong and PRC are both satisfied. Coupled with the increase in importance of the PRC securities market, the frequency of PRC companies seeking to list their H shares in Hong Kong is increasingly being threatened.

The following table compares, at each market capitalisation threshold, the extrapolated minimum total offer size between non-PRC companies and "A+H" companies.

Market capitalisation at the time of listing	Minimum public float for non-PRC companies	Minimum public float for "A+H" companies[2]	Extrapolated minimum total offer size for non-PRC companies	Extrapolated minimum total offer size for "A+H" companies
Below HK$10 billion	25%	50%	HK$2.5 billion	HK$5 billion
HK$10 - HK$16.66 billion	25% - 15%	50% - 30%	HK$2.5 billion	HK$5 billion
HK$16.66 - HK$40 billion	15%	30%	HK$2.499 – HK$6 billion	HK$4.998 – HK$12 billion
HK$40 – HK$60 billion	15% - 10%	30% - 20%	HK$6 billion	HK$12 billion
Over HK$60 billion	10%	20%	Over HK$6 billion	Over HK$12 billion

[2] Assuming the issuer proposes to issue both A shares and H shares, PRC companies seeking to list in both Hong Kong and PRC will need to ensure that the size of its A share offering is at least equal to its H share offering and the minimum public float requirements in Hong Kong and PRC are both satisfied. Accordingly, the minimum public float percentage applicable to an "A+H" company would be 2 times the proposed new percentages under Rule 8.08(1)(d).

In our view and as illustrated above, the cumulative effect of these requirements and expectations are unnecessarily onerous for issuers, even following the proposed amendments to Rule 8.08(1)(d) taking effect, as they will need to increase their offer size simply to demonstrate sufficient liquidity in the trading of their securities. On this basis, we respectfully submit that the current operation and interpretation of Rule 8.08(1)(b) may potentially be seen as penalising PRC issuers who intend to list on both the A share and H share markets.

For example, based on their market capitalisation at the time of their listing, if Industrial and Commercial Bank of China Limited ("ICBC"), Bank of China Limited ("BOC"), China Construction Bank Corporation ("CCB"), China CITIC Bank Corporation Limited ("China CITIC"), PetroChina Company Limited ("PetroChina"), China Life Insurance Company Limited ("China Life") and Ping An Insurance (Group) Company of China, Ltd. ("Ping An") were to issue both A and H shares (in light of the current proposed amendments to Rule 8.08(1)(d)) and are required to (a) satisfy the A and H share minimum public float requirements and (b) ensure that the size of the A share offering is no less than its H share offering, each of them would have to have the following total offer sizes:

Company	Date of Listing	Market capitalisation as at the time of H-share listing (HK$ billion)	Applicable minimum public float percentage under proposed Rule 8.08(1)(d)	Extrapolated minimum total offer size[3] (HK$ billion)
ICBC	27-Oct-06	1,006	10.00%	201.3
BOC	1-Jun-06	718	10.00%	143.7
CCB	27-Oct-05	519	10.00%	103.7
CITIC Bank	27-Apr-07	224	10.00%	44.9
PetroChina	7-Apr-00	223	10.00%	44.7
China Life	18-Dec-03	93	10.00%	18.6
Ping An	24-Jun-04	64	10.00%	12.8

To put the numbers above into context, ICBC's IPO in 2006, raised approximately HK$170 billion from both the A and H share markets and was already the largest IPO globally. BOC and CCB raised approximately HK$87 billion and HK$72 billion, respectively in their Hong Kong IPOs. The above extrapolated numbers show that under the proposed new Rule 8.08(1)(d) and keeping in mind the expectations in the A share market, each of the above companies would still need to increase their minimum total offer size from their actual IPO offer sizes so as to meet the public float requirements. We are therefore concerned that without specifically addressing the needs of an issuer who lists its shares on both the A share and H share markets, the current requirements may pose too big a hurdle for some PRC companies and may result in deterring them from listing their H shares in Hong Kong.

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[3] Calculated as 2 times the minimum public float requirements times market capitalisation.

Suggestion

In light of the above, we respectfully request the Stock Exchange to consider, in respect of PRC issuers intending to list both H shares and A shares which has a sufficiently large market capitalisation and sufficiently broad shareholder base, to retain its discretion to grant further waivers to reduce the minimum public float for the H-share portion provided that there is a corresponding public float of A shares which is at least equal to the H-share portion.

We are aware that some parties may have concerns that if there is less than 10% of the public float in the form of H shares, there may be a risk that the compulsory acquisition provisions would be triggered easily and minority shareholders may be prejudiced. In this regard, we would like to submit that these concerns are not justified. This is because under the current provision of the Hong Kong Codes on Takeovers and Mergers, the rights of compulsory acquisition may only be exercised if acceptances of the offer made by the offeror and persons acting in concert with it total 90% of the **disinterested shares**. As a result, the reduction of the public float arguably increases the difficulty of the offeror being able to succeed. For example, an offer for a company with a 25% public float would require the offeror to have control over approximately 97.5% of that company's total issued share capital to trigger the compulsory acquisition right while an offeror would be required to have control over approximately 99.25% of a company's total issued share capital if such company has a public float of, for example, 7.5%.

2.3 Post-IPO flexibility required

(a) **Strong support for Stock Exchange's proposals for flexibility**

We note that under paragraph 5.14 of the Consultation Paper, the Stock Exchange has expressed its view that for enhanced regulatory clarity and certainty, the above proposals will be applicable to all issuers so long as they meet the relevant market capitalisation thresholds (hence removing the need for applying for waivers from the Stock Exchange). We further note the Stock Exchange's position that issuers will be allowed to go with the minimum public float as prescribed in the proposed Rule 8.08(1)(d) regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option, as the case may be. We understand that the Stock Exchange intends to give issuers with public float at the time of listing above the prescribed minimum more flexibility in their future fund-raising activities.

We agree with and support the Stock Exchange's proposal that issuers should be afforded the minimum public float as prescribed in the proposed Rule 8.08(1)(d) regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option. We support the Stock Exchange's proposal for the following reasons:

- this proposal allows controlling shareholders and directors of the listing applicant to acquire more shares without immediately breaching the minimum public float requirements;

- in a market environment whereby there is an increasing need to issue new classes of shares (for example A shares), the Stock Exchange's proposal affords greater flexibility for listed issuers to consider alternative fund raising activities without immediately breaching the minimum public float requirements; and

- the Stock Exchange's proposal greatly reduces the "place down" risks in merger and acquisitions activities. In takeover situations, the risk of breaching the public float requirements often means that offerors will need to take into account the often substantial "place down" risks in determining whether to go ahead with an offer and the consideration they will offer to disinterested shareholders. Further, for a listed issuer, following the completion of a takeover offer which results in the issuer's public float being reduced, it is never easy to request the offeror to voluntarily "place down" the shares they have acquired in the takeover process in order to maintain the public float. In such circumstances, it will be up to the issuer, at the expense of its minority shareholders, to issue new shares to maintain the public float. The forced issue of new shares by the listed issuer will inevitably causes (A) its share price to substantially reduce; and (B) dilute the shareholdings of each shareholder.

Drafting suggestion

As a matter of drafting, we would like to suggest that the proposed Rule 8.08(1)(d) as set out in Appendix 5 should be amended as follows:

"**The public float of a listing applicant shall be established by reference to the expected market capitalisation of such listing applicant** at the time of listing in accordance with the following table: -

[table]

on condition..... **The minimum public float percentage as prescribed in the table above shall apply to an issuer notwithstanding that the actual public float attained by such issuer immediately upon listing or upon exercise of the over-allotment option (as the case may be) is higher**."

(b) Further flexibility required

In addition, we would also like to draw the Stock Exchange's attention to our following observations.

In the current environment where there is a growing desire for PRC issuers with H shares already listed to venture into the A share market, a company which initially complies with the public float percentage may, following the issue of new A shares, not satisfy the public float requirements. In this scenario, the reduction in the public float is simply as a result of the "pie becoming larger" with the denominator (being the total number of issued shares on both the A and H share markets) being increased. There is no reduction in the number of shares being held in the hands of the public in Hong Kong as a result of an issuance of new A shares in the PRC. For example, an H share company may now have a 25% public float. If it issues A shares, then the percentage of H share public float compared with its enlarged issued share capital would then decrease to less than 25%. This situation could be addressed by either treating the A shares in public hands to be part of the public float for the Listing Rules or providing in the Listing Rules that the Stock Exchange has a discretion to lower the minimum public float not only at the time of the IPO but on an on-going basis post-IPO.

Suggestion

The Stock Exchange should, in our view, also be given the discretion to further grant waivers or reductions to the minimum public float of an existing issuer post-IPO in the appropriate circumstances.

2.4 Addressing specific industry needs

There are companies (for example, financial institutions) which are subject to capital adequacy requirements, return on equity ratios and other regulatory or policy requirements which may prevent them from issuing too many shares at the time of their listing. To prevent these companies from listing in Hong Kong solely because they fail to meet the minimum public float percentage would, in our view, be highly detrimental for the Hong Kong securities market as we may potentially be turning away desirable companies from listing in Hong Kong.

Suggestion

Accordingly, we further suggest that the Stock Exchange be allowed to, at its discretion and taking into account the specific circumstances of such issuers, grant a waiver to such issuers to further reduce the minimum public float requirements (whether or not subject to any conditions).

3. Constituents of "the public" and Market Float

In respect of the Consultation Paper's proposals in respect of the constituents of "the public" and the introduction of the concept of "Market Float", we intend to provide further comments to the Stock Exchange in due course.

4. Conclusion

In light of the changing market conditions of the securities market in Hong Kong, we welcome the Stock Exchange's re-examination of its current minimum public float regime. We have seen in recent years the increasing number of very large market capitalisation companies seeking listings in Hong Kong and as such, we strongly believe that a minimum public float percentage of 15% is no longer suitable in addressing the needs of the Hong Kong securities market. We therefore support the reduction of the minimum public float requirements to 10% and the application of the new requirements to those companies whose market capitalisation meets the required threshold. We, however, see the need to further reduce the market capitalisation thresholds to reflect (a) the increasing trend to limit the H share offering size to 10% of a listing applicant's market capitalisation and (b) the peaks and troughs of the valuation cycle which may mean the expected market capitalisation of some desirable listing applicants may not be sufficient to enjoy the reduced minimum public float requirements.

In addition, we are of the view that the Consultation Paper needs to further consider the rising trend of the "A+H" companies and their specific needs. Accordingly, we respectfully request that the Stock Exchange revisit Rule 8.08(1)(b) and to consider retaining its discretion to further reduce the minimum public float requirements for H shares in respect of "A+H" companies, on the basis that the size of the A share offering and the H share offering will be at least equivalent to each other.

The Stock Exchange should, in our view, also be given the discretion to grant waivers or reductions to the minimum public float for existing listed issuers post-IPO in the appropriate circumstances.