

Frequently Asked Questions Series 5 (Released on 2 May 2008/ Last Updated ~~on 15 February 2018~~in February 2020)

Rule Amendments relating to GEM Review

Status of “Frequently Asked Questions” Table

The following frequently asked questions (FAQs) are designed to help issuers ~~to~~ understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Please ~~C~~contact the Listing Division at the earliest opportunity with any queries.

Part 1: GEM Rules

No	GEM Rule	Query	Response
1	3.09	Withdrawn in February 2020 Will cancellations of listings continue to be handled by the GEM Listing Committee?	Yes, the GEM Listing Committee will approve all delistings from GEM except for transfers of listings from GEM to the Main Board, as these are not regarded as withdrawals of listing from the Exchange.
2	3.10	Where a GEM-listed company has successfully transferred its listing to the Main Board, <u>how will it still be held accountable for previous breaches of GEM Listing Rules (committed at the time when the company it was still listed on GEM) be handled?</u>	Any company that has breached relevant GEM Listing Rules will be held accountable under such Rules even if subsequently it has transferred its listing to the Main Board. Yes. The issuer will still be subject to the disciplinary actions that can be taken by full range of remedies available to the GEM Listing Committee under the Rules will continue to be available. Where appropriate, the Exchange may impose additional requirements on the company under relevant Main Board Listing Rules to address any remaining issues arising from the breach. <u>[Updated in February 2020]</u>
3	Chapter 11 general	Withdrawn in February 2020 Will the new GEM listing requirements apply to listing applicants whose applications are submitted before the commencement date?	The transitional arrangement is set out on the last page of the Consultation Conclusions. For applicants who have submitted their formal application form on or before 2 May 2008, the old Rules continue to apply. For applicants submitting their formal application form after the 2 May 2008, the applicable listing qualifications and admission requirements will be those that are in effect on the date of listing.
4	11.04	Withdrawn in February 2020 Can the management/controlling shareholder have a business that competes with that of the GEM listing applicant?	The existing Rule 11.04 has been revised. "Management shareholder" has been replaced by "controlling shareholder". Where the interest of the controlling shareholder may have an impact on the ability of the listing applicant to carry out its business independently, the newly inserted paragraph 27A in Appendix 1 states that the applicant must be able to demonstrate its independence and make the prescribed disclosure in the listing document. This requirement will be the same as for the Main Board after the new Rules become effective.

No	GEM Rule	Query	Response
5	11.05	Withdrawn in February 2020 Will companies incorporated in jurisdictions outside Hong Kong, the PRC, Bermuda and the Cayman Islands be able to list on GEM?	Yes. Please refer to our revised Joint Policy Statement with the Securities and Futures Commission dated 27 September 2013.
6	11.12A(1)	Withdrawn in February 2020 If a company has achieved the requisite level of positive operating cash flow in less than 2 years, will it be eligible for listing?	<p>Subject to Rule 11.14, which covers infrastructure and mineral companies and exceptional circumstances under which the Exchange considers it desirable to accept a shorter trading period, all other companies which have less than two full financial years track record will not be eligible for listing on GEM.</p> <p>Applicants must have an accountants' report with audited financial statements for at least two full financial years and the required operating cash flow must have been attained during this period.</p>
7	11.12A(1)	Withdrawn in February 2020 Please elaborate on the calculation of "positive operating cash flow".	<p>For the purpose of satisfying Rule 11.10A, a new applicant must submit to the Exchange a statement of cash flows from operating activities using the indirect method as described under International Accounting Standard 7 (IAS7) or Hong Kong Accounting Standard 7 (HKAS 7) for the two immediate preceding financial years.</p> <p>For the purpose of Rule 11.12A(1), under the indirect method described in HKAS7, positive cash flow from operating activities is determined by adjusting profit or loss for the effects of:</p> <p>(a) non-cash items including depreciation, provisions, deferred taxes, unrealised foreign currency gains and losses, undistributed profits of associates, and minority interests; and</p> <p>(b) all other items for which the cash effects are investing or financing cash flows.</p> <p>The figure we normally use to assess compliance can be illustrated by reference to the figure "3,740" under the example of indirect method</p>

No	GEM Rule	Query	Response
			<p>statement of cash flows in Appendix A of HK Accounting Standard 7 (Update in October 2014).</p> <p>However, there is certain modification to that, and for the avoidance of doubt, changes during the period in inventories and operating receivables and payables must not be added back when arriving at the net operating cash flow, notwithstanding the requirement of paragraph 20 (a) of HKAS7.</p> <p>Applicants are reminded that only cash flow generated from operating activities in the ordinary and usual course of business will be counted towards the \$20 million.</p>
8	11.12A(1)	Withdrawn in February 2020 How will the positive cash flow test be applied to the cash flow generated by associated companies and jointly controlled entities?	Cash flow from associated companies and jointly controlled entities will be excluded for the purpose of measuring the HK\$20 million threshold.
9	11.12A(1)	Withdrawn in February 2020 What preparation method and form of disclosure is required for the cash flow statement?	See Note to Rule 11.12A(1). The cash flow statement should be prepared under the indirect method and be contained within the prospectus, if not already forming part of the accountant's report.
10	11.12A(2) - (3)	Withdrawn in February 2020 What is the time requirement for ownership and management continuity for a GEM IPO applicant under the new Rules?	The Exchange will look for management continuity for at least 2 completed financial years and ownership continuity for at least 1 completed financial year immediately before the issue of listing document. In both cases continuity must continue to the date of listing.
11	11.14	Where the Exchange accepts a shorter operating period for infrastructure project companies, Mineral Companies and other circumstances stated under Rule 11.14, will there be a corresponding relaxation of the minimal operating cash flow requirement?	No. The relaxation will be granted only in relation to the length of the trading record (i.e. 2 financial years) stated in Rule 11.12A(1). The listing applicant must still meet the minimum operating cash flow and other <u>entry eligibility</u> requirements. This GEM requirement is different from the requirement of the Main Board Rule 8.05B because the Exchange wish to standardize treatment for all industries.

No	GEM Rule	Query	Response
			<p>Note: Amended in July 2010 after a new Chapter 18A for Mineral Companies was introduced in the GEM Rules on 3 June 2010.</p> <p>[Updated in February 2020]</p>
12	11.23	<p>Withdrawn in February 2020For the purpose of satisfying the market capitalization requirement of HK\$100 million and the public float requirements, should GEM applicants be required to meet these requirements at the time of application, or at the time of listing?</p>	<p>As in current listings on GEM or the Main Board, the requirements refer to the time of listing. In practice, however, at the time when a listing is applied for, the issuer must be able to satisfy the Exchange that there is a reasonable likelihood of the requirements being met at the expected time of listing.</p>
13	11.23(6), 11.23(9)	<p>For purpose of calculating market capitalization, areCan “non-share debt securities <u>be</u>” included when calculating an applicant’s market capitalisation within “all issued share capital”?</p>	<p>No. Only equity securities <u>can be</u> are included in the calculation. Different classes of equity securities, such as “H” and “A” shares are all included, but not debt securities.</p> <p>[Updated in February 2020]</p>

Part 2: Main Board Rules

No	MB Rule	Query	Response
14	Chapter 9A general	Withdrawn in February 2020 Does the new streamlined transfer process replace the previous de-listing/ re-listing regime?	Although the de-listing/re-listing regime will not be formally abolished, the Exchange will encourage issuers to use the new streamlined regime. As there will be substantial savings in time and cost, instances of using the previous mode of transfer are expected to be rare.
15	Chapter 9A general	Can a <u>GEM transfer applicant choose/ buy its</u> new Main Board stock code be chosen/ bought ?	Yes, <u>all GEM transfer applicants must change its stock code when it transfers to the Main Board, and they can choose/ buy their preferred stock code under the process</u> Exchange will apply the same principles as <u>that applicable to in a new Main Board standard-IPO applicants-process, with special and normal pool numbers.</u> <u>[Updated in February 2020]</u>
16	9A.02 <u>(GEM 9.24)</u>	Is shareholders' approval required for transfer of listing <u>under the Listing Rules</u> ?	No. The Listing Rules do not impose a shareholders' approval requirement for transfer of listing However, but there it may be such a requirement under the <u>transfer applicant issuer's</u> constitutive documents, or under applicable company law in the jurisdiction of incorporation of the transfer applicant. <u>[Updated in February 2020]</u>
17	9A.02(2)	<u>Can a GEM issuer submit a transfer application before it publishes the annual report of the first full financial year which commenced after the date of its GEM listing, if such annual report will be published before its</u> When measuring for the duration of listing on GEM, will the Exchange measure from the first date of listing on GEM to (1) the date of the application for a transfer, or (2) intended date of listing on the Main Board? Please provide an example to illustrate when a GEM issuer can submit its transfer application.	No. A GEM issuer applying for transfer must have been listed on GEM for a minimum period of one year and has also published such annual report its first full-year audited financial statements subsequent to its first date of listing, when it submits its transfer application files the formal application (i.e. Form J in Appendix 5 of the Main Board Listing Rules) to transfer to the Main Board. For example, if a GEM issuer has a <u>December financial year end and is listed on GEM in 2008, under Rule 9A.02(2), it could submit a transfer application after the annual report for the financial year 2009 has been published and distributed to its shareholders, which is required to be within the first three months of 2010 under GEM Rule 18.03.</u> <u>[Updated in February 2020]</u>

No	MB Rule	Query	Response
18	9A.02, Appendix 1 Para 27A	Withdrawn in February 2020 Will a transfer applicant have to be released from all financial assistance provided by core connected persons before transferring to the Main Board?	<p>Normally the Main Board requirement for financial independence will be strictly applied as in a Main Board IPO application.</p> <p>However, the Exchange is aware that release of financial assistance from core connected persons may be disruptive to the GEM company's normal business and may not be in the interest of shareholders as a whole.</p> <p>Transfer applicants should note that the revised GEM Listing Rules require GEM IPO listing applicants to comply with the same independence requirement as Main Board IPO listing applicants. (Updated in July 2014).</p>
19	9A.02(2)	Withdrawn in February 2020 Please use an example to illustrate the earliest possible transfer application date.	<p>If a GEM issuer has a December financial year end and it is listed on GEM during 2008, it will have fulfilled the requirement of rule 9A.02(2) when the annual report for the financial year 2009 has been published and distributed to its shareholders, which is expected to be within the first three months of 2010.</p>
20	9A.02(3)	<p>What <u>factors would the Exchange take into consideration in assessing whether a breach by a GEM transfer applicant is will constitute a "serious-breach" that may hinder a transfer-application?</u></p>	<p>What constitutes a serious breach depends on the facts and circumstances. The Exchange will normally have regard to (among others) the following factors:</p> <ul style="list-style-type: none"> • the nature <u>and extent</u> of the breach, including the impact on the orderliness and reputation of the market and (for example, whether it involves any prejudice or risk of prejudice to investors (for example, cases involving asuch as failure to obtain prior shareholder approval for connected transactions, or a failure to make disclosure under Rule 13.09, <u>and the duration and frequency of the breach)(1) or 13.09(2)(a)1); and</u> • the duration and frequency of the breach; • whether <u>there are evidences that the breach involves fraud, deceit or dishonesty, is deliberate or due to recklessness, or revealed materialserious</u> or systemic weaknesses in the listed company's

No	MB Rule	Query	Response
			<p><u>internal control</u> procedures;</p> <ul style="list-style-type: none"> • the extent to which the breach departs from current market practice; and • evidence that the breach was deliberate or reckless. <p><i>Note:</i></p> <p>1. Amendment made in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information, which became effective on 1 January 2013 (Added in January 2013). [Updated in February 2020]</p>
21	<p>9A.02(1), 8.09(2)A, <u>paragraph 7(1)(a) of Appendix 28 to Main Board Rules (GEM Rule 9.24)</u></p>	<p>How is market capitalisation calculated for an issuer transferring to the Main Board, for the purpose of satisfying the Rule 8.09A market capitalisation requirement</p> <p><u>How should a transfer applicant demonstrate compliance with the minimum market capitalisation requirement under Rule 8.09(2) or paragraph 7(1)(a) of Appendix 28 to Main Board Rules ("MB Mkt Cap Requirement")?</u></p>	<p>Strictly speaking, mMarket capitalisation will<u>should</u> be calculated using the share price on the date of listing on the Main Board.</p> <p>In practice, the Exchange will <u>assess whether the applicant will be able to meet the MB Mkt Cap Requirement based on the closing share price on the trading day immediately before the first day of the proposed transfer (i.e. Main Board listing).</u>require the issuer to submit a market cap computation based on share price on the latest practicable date which is usually a few days before the Main Board listing date. <u>The Exchange will also examine the applicant's share price movement during the trading record period and if the applicant had not been able to meet the MB Mkt Cap Requirement for a prolonged period of time, the Exchange will closely monitor the applicant's share price movement and critically examine any unusual increase, especially when close to the day of transfer. The Exchange may not approve the transfer application until the applicant and its sponsor provide reasonable and satisfactory explanation on the unusual share price movement. Further, if the applicant's share price and/ or trading volume had been volatile, the Exchange will require the applicant to make relevant prominent disclosure in the transfer announcement/ listing document.</u></p>

No	MB Rule	Query	Response
			<u>[Updated in February 2020]</u>
22	9A.02(3)	How can an <u>a GEM</u> issuer find out <u>ascertain</u> if it can <u>fulfills</u> the “good behavior” requirement <u>under Rule 9A.02(3)</u> before it submits <u>files</u> a transfer application from the Division, i.e. that it has not been the subject of any disciplinary investigation in relation to a serious breach or potential serious breach in the past 12 months before the transfer application?	<p>Prior to making a formal transfer application, a GEM <u>The GEM issuer, who otherwise meets the transfer requirements, may contact the Listing Division to obtain request for a their written confirmation from the Listing Department on whether the GEM issuer</u> <u>it can fulfil the requirement under Rule 9A.02(3)</u> has been the subject of any disciplinary investigation by the Exchange in relation to a serious breach or potential serious breach of any GEM Listing Rules or Exchange Listing Rules in the past 12 months.</p> <p><u>The Listing Department will</u> Based on the information available to the Exchange up to the date of the confirmation letter, the Listing Division will confirm whether the <u>GEM issuer</u> transfer applicant has been the subject of any disciplinary investigation by the Exchange in relation to a serious breach or potential serious breach of any GEM Listing Rules or Exchange Listing Rules in the past 12 months <u>from the date of the confirmation letter.</u> If The Exchange may alter its view set out in the confirmation letter should additional information that alters such confirmation arise subsequent to the issuance of the confirmation letter. Where such information comes to light within two months of the confirmation letter, the Exchange will, normally, write to notify the GEM issuer of the change in circumstances <u>in writing.</u> Please note that the Exchange is not obliged to provide further notification. <u>[Updated in February 2020]</u></p> <p>The transfer applicant should note that in order to qualify for the transfer of listing of its securities from GEM to the Main Board, it must not be the subject of any disciplinary investigation by the Exchange in relation to a serious breach or potential serious breach of any GEM Listing Rules or Exchange Listing Rules during the 12 months preceding the transfer application and until the commencement of dealings in its securities.</p>
23	9A.03	<u>Withdrawn in February 2020</u> Can fund-	The Exchange does not intend to impose any general prohibition on

No	MB Rule	Query	Response
		raising be conducted during the transfer process from GEM to the Main Board?	<p>fund raising at or close to the time of transfer provided all relevant provisions of the Listing Rules are fulfilled for both corporate actions.</p> <p>We note that, in practice, there may be additional execution complexities and/ or potential conflicts with the time tables for running multiple corporate actions concurrently, and issuers should plan carefully in this regard.</p>
24	9A.04	Withdrawn in February 2020 What about transfer of infrastructure, investment and Mineral Companies from GEM to Main Board? What are the additional requirements?	<p>The general principle is that the GEM transferee will have to satisfy all the disclosure requirements applicable to such companies as if in a fresh IPO application for the Main Board, because such information may not have been provided whilst listed on GEM.</p> <p>For relevant Listing Rules requirements, please see chapters 18, 21 and Rule 8.05B as applicable. The additional information must be circulated to the shareholders in writing.</p> <p><i>Note: Amended in July 2010 after a new Chapter 18A for Mineral Companies was introduced in the GEM Rules on 3 June 2010.</i></p>
25	9A.06(3)	Withdrawn in February 2020 Will a transfer applicant be required to comply only with the listing requirements set out in the checklist?	<p>A transfer applicant is required to comply with all applicable Main Board listing requirements. The checklist is provided as an aid only and does not form part of the Listing Rules. It is the transfer applicant's responsibility to satisfy the Exchange as to fulfillment of all applicable requirements.</p>
26	GEM Rule 9.26 Paragraph 11 to Appendix 28 of MB Rule 9A.08	Will the <u>Listing Department pre-vet the initial transfer announcements</u> as required by (i) GEM Rule 9.26 and (ii) <u>the main transfer announcement as required by paragraph 11 to Appendix 28 of Main Board Rules</u> Main Board Rule 9A.08 be pre-vetted by the Division?	<p>The Listing Department will not pre-vet <u>the initial announcement required under GEM Rule 9.26.</u> will be relatively simple and informing the market of the transfer application only. There is no requirement in the Listing Rules that this announcement will have to be pre-vetted by the Exchange.</p> <p>The <u>second announcement under paragraph 11 to Appendix 28 of Main Board Rules</u> is expected to contain substantive details about the transfer and a draft of this must be submitted to the Exchange <u>at the time of submission of together with</u> the transfer application <u>and will be vetted and approved.</u> This announcement should be cleared by the Exchange before it <u>can be published.</u> <u>[Updated in February 2020]</u></p>

No	MB Rule	Query	Response
27	9A.08 <u>Paragraph 11 to Appendix 28 and 11.04</u>	Will trading halt or suspension be required pending the announcement/ <u>listing document</u> or at any time during the transfer process?	<p>GEM transfer applicants are required to observe the trading halt or suspension policy and the general disclosure obligations under the GEM Rules as long as they are still listed on the GEM-Board.</p> <p>A GEM transfer applicant must assess whether the information relating to the transfer process would require disclosure under <u>GEM</u> Rule 17.10, having considered its particular circumstances. A trading halt or suspension would be necessary in any of the circumstances described in <u>GEM</u> Rules 17.11A(1) to (3) where an announcement cannot be made. <u>[Updated in February 2020]</u></p> <p><i>Note: Amendment made in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information, which became effective on 1 January 2013 (Added in January 2013).</i></p>
28	9A.10-11	<u>If a GEM issuer transfers the listing of its equity securities to the Main Board, What are would the related the procedures for migration to the Main Board of GEM-listed warrants, options or convertible instruments be transferred to Main Board?</u>	<p><u>Yes</u>Where GEM-listed equity securities are migrated to the Main Board, any <u>related</u> GEM-listed warrants, options or convertible instruments <u>will normally be transferred are expected to transfer simultaneously</u> to the Main Board <u>simultaneously with the equity securities, which is in line with</u> . The Exchange will apply the spirit of Main Board Listing Rules 15.05 and 16.02. <u>under which, barring exceptional circumstances, these instruments can be listed on the Main Board only if the underlying securities are listed there or on another recognized market. Where this will cause practical problems, the Exchange may exercise its discretion to allow the warrants or convertible instrument to remain listed on GEM until expiry.</u> <u>[Updated in February 2020]</u></p>
29	9A.11	If there is an issue of new shares at the time of or shortly before the transfer of listing, will there be any parallel trading arrangements (i.e. with existing shares traded on GEM and newly issued shares traded on the Main Board)?	<p><u>No. Parallel trading of securities of the same issuer on both boards is not allowed. The company should seek guidance from the Listing Division in such circumstances. In general, where listed either on GEM or the Main Board, its securities will not be traded on both platforms at the same time.</u> There should be a clear-cut date for cessation of trading on GEM and commencement of trading on the Main Board <u>and there will not be parallel trading on both boards.</u> <u>[Updated in February 2020]</u></p>

No	MB Rule	Query	Response
			<p>Separately, issuers should note that the Exchange has issued a press release dated 22 April 2008 that parallel trading will be abolished from 2 November 2008.</p>
30	9A.12(2)	<p>If <u>a GEM issuer obtained</u> shareholders' approvals have been obtained for continuing connected transactions <u>which will take place</u> within a certain period, and the transfers <u>its listing</u> from GEM to Main Board occur during <u>the</u> period, would <u>it be necessary for the GEM issuer to obtain</u> shareholders' approval be needed again <u>after the transfer to</u> for the Main Board?</p>	<p>The GEM issuer should seek guidance from the Listing Division in such circumstances. In generally <u>No, if</u> where there has not been any change of facts or circumstances since the original shareholders' approval was granted, <u>a GEM issuer does</u> there is not need to refresh or obtain again the same shareholders' approval at a meeting merely because of <u>its</u> the transfer to the Main Board. <u>The effect of the shareholders' approval shall continue for the purpose of continuing obligations</u> until its original expiry date since grant. <u>[Updated in February 2020]</u></p>
31	MB-10.07 & 10.08	<p>Will there be restrictions on disposal/ or issuance of shares <u>or fund-raising activities for a GEM issuer</u> during the <u>its</u> transfer <u>application</u> process?</p>	<p>No, The Exchange has not imposed any general prohibition on these activities except where these <u>unless such activities</u> would lead to market disruption or unfairness.</p> <p>Issuers should note that the <u>requirements moratoria on disposal of existing shares (under Main Board Rules 10.07(1)(a)-(b) and issue of new shares (10.08) are not applicable to GEM transfer</u> will be disapplied <u>as provided</u> under Rule 10.07(4) and 10.08(5). <u>[Updated in February 2020]</u></p>
32	10.08(5)	<p>Withdrawn in February 2020 Please elaborate on the moratorium on new share issues by a listing transfer applicant.</p>	<p>A GEM-listed company is restricted under GEM Listing Rule 17.29 from issuing new securities within 6 months of listing. As there is a one full financial year waiting period before a GEM company can apply for transfer, this 6-month moratorium will invariably have expired by the time it qualifies for a Main Board listing. After being successfully transferred, Rule 10.08(5) disapplies the equivalent moratorium. This means that after transferring to the Main Board, the company is free to issue new securities immediately, provided that the plan to raise funds has been prominently disclosed in the listing document. (Updated in February 2018)</p>
33	Practice	Withdrawn in February 2020 In a case	Practice Note 15 has been amended so that the 3-year cooling period

No	MB Rule	Query	Response
	e-Note-15	of transfer of listing from GEM to the Main Board, will the 3-year cooling period for spin-offs run from the listing on GEM or the listing on the Main Board?	runs from the original date of listing on GEM, instead of from the date of listing on Main Board pursuant to the transfer. See Note to Paragraph 3 of PN 15.
34	General	Will there be a listing ceremony for transferring to the Main Board from GEM?	Yes, A listing ceremony can be arranged on <u>at</u> the issuer's request as cases of a new Main Board IPO.