Guidance to issuers contemplating (i) a spin-off and separate listing of businesses or assets on the Exchange; or (ii) a reverse takeover where the issuer is deemed a new listing applicant

A. Purpose

1. This letter provides guidance to issuers contemplating (i) a spin-off to effect a separate listing of businesses or assets on the Exchange; or (ii) a reverse takeover where the issuer is deemed a new listing applicant. In these circumstances, the issuer group (or the enlarged group) may have to fulfil both requirements applicable to listed issuers and to new applicants under the Listing Rules.

B. Background

2. Practice Note 15 of the Main Board Rules (Practice 3 to the GEM Rules) sets out the principles that an issuer should comply when proposing a spin-off of its businesses or assets. Where the company to be spun-off (**Newco**) is to be listed on the Exchange, it must satisfy all the new listing requirements under the Listing Rules.

3. Under Chapter 14 of the Main Board Rules (Chapter 19 of the GEM Rules), an issuer proposing a reverse takeover will be treated as if it were a new listing applicant (**Deemed New Applicant**).

4. Under Chapter 9 of the Main Board Rules (Chapter 12 of the GEM Rules), the Application Proof submitted by a new listing applicant must be substantially complete. ~~The Application Proof must be posted on the Exchange's website at the same time the new listing applicant files its listing application with the Exchange.~~

C. Guidance

Spin-off

5. In a spin-off, the issuer must comply with Practice Note 15 and the continuing listing obligations under the Listing Rules, and Newco must also meet new listing requirements. Where there are ongoing relationships/transactions between the two entities, issues may arise relating to potential conflicts between interests of the two groups of shareholders. The issuer should give due consideration to these conflict issues, and resolve the matters before it submits the Application Proof.

6. The following are examples of conflicts issues commonly found in new listing application of Newco:

   - competition, including the degree of overlapping business with its parent company and clear business delineation with its parent company;
   - reasons for exclusion of overlapping business of its parent company;
   - extent of future potential/actual competition with its parent company;
   - corporate governance measures to manage future potential/actual conflicts with its parent company; and
   - how the listing applicant can function independently of its parent company including management, operational and financial independences.

7. Under Practice Note 15, an issuer must submit its spin-off proposal to the Exchange for approval. After receipt of the spin-off proposal, the Exchange will comment on the issuer's compliance with the Listing Rules. Where necessary, Newco should make a pre-IPO enquiry to address its position on compliance with the new listing requirements.

8. The Exchange will approve the spin-off proposal after these compliance issues have been addressed. However, Newco's new listing application will be subject to review by the Exchange and approval by the Listing Committee and this approval may or may not be granted.

Reverse takeovers

9. In the case of reverse takeovers, the issuer must ensure that the assets to be acquired must meet the suitability requirement and the track record requirements for a new listing and the enlarged group must meet all the new listing requirements (except the track record requirements) under the Listing Rules (see Main Board Rule 14.54(1)/GEM Rule 19.54(1)). Under Main Board Rule 14.54(2) (GEM Rule 19.54(2)), where the issuer has failed to comply with Main Board Rule 13.24(1) (GEM Rule 17.26(1)), the acquisition targets must also meet the sufficient public interest requirement for a new listing. Since the Application Proof must be substantially complete, the Deemed New Applicant should make pre-IPO enquiries on any issues relating to its compliance with the new listing requirement before submission of the Application Proof (see paragraph 6 above for examples of potential issues).

Important note:
This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.