HKEX GUIDANCE LETTER
HKEX-GL104-19 (October 2019)

Subject	**Guidance on application of the reverse takeover Rules**
Listing Rules	**Main Board Rules 14.06B, 14.06C and 14.06E** **GEM Rules 19.06B, 19.06C and 19.06E**

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 Department on a confidential basis for an interpretation of the Listing Rules, or this letter.*

I. BACKGROUND AND PURPOSE

1. This guidance letter provides guidance on the application of the reverse takeover (**RTO**) Rules and related requirements. It supersedes the previous Guidance Letter GL78-14 published in May 2014.

2. Under the Rules (**RTO Rules**), a reverse takeover is defined as an acquisition or series or acquisitions which, in the opinion of the Exchange, constitutes an attempt to achieve a listing of the assets acquired and a means to circumvent the new listing requirements (**principle based test**)[1]. In May 2014, the Exchange published Guidance Letter GL78-14 to provide guidance on the RTO Rules, particularly, the six assessment factors the Exchange would apply in deciding whether an acquisition (or series of acquisitions) would be a RTO under the principle based test.

3. The RTO Rules also contain two specific forms of RTOs involving a change in control of the listed issuer (as defined under the Takeovers Code) and an acquisition or a series of acquisitions of assets from the new controlling shareholder and/or its associates at the time of, or within 36 months of the change in control (**bright line tests**)[2].

1 See Rule 14.06B.
2 See Note 2 to Rule 14.06B.

4. In recent years, the prevalence of backdoor listings has resulted in a substantial increase in the value of a listing status, leading to extensive activities related to investors acquiring controls of listed issuers for their listing platforms (rather than the underlying business) with a view to eventual backdoor listings, and listed issuers undertaking corporate actions (such as disposals of businesses) to facilitate the sale of their listing platforms. Such activities also led to opportunities for market manipulation and undermine investors' confidence in our market. Where these "shell" companies subsequently enter into significant acquisitions, the Exchange would apply the RTO Rules to discourage "shell" activities.

5. In July 2019, the Exchange published its consultation conclusions on *Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments*. The Rule amendments are intended to apply the RTO Rules to:

- arrangements that circumvented the then RTO Rules, for example, structuring a RTO transaction as a series of smaller acquisitions, or re-sequencing transactions to acquire a new business before disposing of the original business, or through a series of acquisitions and disposals; and

- arrangements involving an investor acquiring control of a listed issuer and using the listed issuer as a listing platform to achieve a listing of new businesses that may have no connection with the issuer's original business. These new businesses may be acquired by the listed issuer, or developed as greenfield operations and, following the disposal, cessation and/or curtailment of the original business operation, become the major operation of the listed issuer[3].

6. In applying the RTO Rules, the Exchange has regard to the following:

- The RTO Rules are principle based, anti-avoidance provisions designed to prevent the circumvention of new listing requirements for the assets acquired and/or to be acquired. As such, the Exchange would apply the RTO Rules purposively and the six assessment factors described in the Rules provide guidance to the market on factors that the Exchange would normally consider in a RTO assessment. The applications of these assessment factors would vary from case to case, depending on the specific circumstances of the issuer.

- As the RTO Rules are principle based, they should provide a framework for addressing backdoor listings and sufficient flexibility to address changing RTO structures, without imposing undue restrictions on legitimate business activities of issuers**.**

[3] Acquisition of new business(es) may be subject to the RTO Rules. Rule 14.06D (see paragraph 38) may apply to greenfield operations and large scale issue of securities, and Rule 14.06E (see paragraphs 39 to 42) may impose restrictions on disposals.

- The RTO Rules are not intended to restrict legitimate business activities of listed issuers, including business expansion or diversification that is part of the issuer's business strategies related to its existing business, or is consistent with the issuer's size and resources.

- When applying the RTO Rules, the Exchange's approach is targeted towards transactions that represent an attempt to circumvent the new listing requirements, particularly those involving companies engaging in "shell" activities, as indicated by the factors (a) change in control or de facto control of the listed issuer and (b) fundamental change in the issuer's principal business.

7. All Rule references in this letter are to the Main Board Listing Rules. As GEM RTO Rules are the same as Main Board RTO Rules, the guidance in this letter also applies to GEM issuers.

II. FURTHER GUIDANCE ON THE ASSESSMENT FACTORS UNDER THE PRINCIPLE BASED TEST

A. Rule 14.06B (principle based test)

8. Rule 14.06B defines a RTO to be *an acquisition or a series of acquisitions of assets by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction and/or arrangement or series of transactions and/or arrangements which constitute, an attempt to achieve a listing of the acquisition targets and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Listing Rules.* Note 1 to this Rule sets out factors the Exchange will normally consider in assessing whether the acquisition or series of acquisitions is a RTO transaction:

i) the size of the acquisition or series of acquisitions relative to the size of the issuer;

ii) a fundamental change in the issuer's principal business;

iii) the nature and scale of the issuer's business before the acquisition or series of acquisitions;

iv) the quality of the acquisition targets;

v) a change in control (as defined in the Takeovers Code) or de facto control of the listed issuer (other than at the level of its subsidiaries); and/or

vi) other transactions or arrangements which, together with the acquisition or series of acquisitions, form a series of transactions or arrangements to list the acquisition targets.

9. Rule 14.04(2A) defines acquisition targets to be the assets to be acquired, or in the context of a series of transactions and/or arrangements, the assets acquired and/or to be acquired. In other words, a series of transactions and/or arrangements may include completed acquisition(s).

10. In assessing the principle based test, the Exchange will consider the six assessment factors and whether, taken together, the proposed acquisition (or series of acquisitions) would be considered an attempt to circumvent the new listing requirements and a means to achieve the listing of the acquisition targets.

B. The six assessment factors

i) Size of acquisition relative to the issuer

11. Where an issuer undertakes an acquisition of significant size, its existing principal business may become immaterial after the transaction, supporting a concern that the transaction may represent a means to achieve a listing of the target business.

12. The Exchange does not prescribe an absolute threshold in determining whether the size of an acquisition is significant[4]. In assessing the impact of the acquisition on the issuer, the Exchange will take into account other assessment factors such as the nature and scale of the issuer's existing business after the acquisition, and whether the acquisition would result in a fundamental change in the issuer's business.

ii) Acquisition(s) resulting in a fundamental change in the issuer's principal business

13. Where an issuer acquires a target business that is completely different from its existing business and that target business is substantially larger than its existing business, it may be viewed as a fundamental change in the issuer's principal business. This is more likely the case where the issuer's existing business is so immaterial that after the acquisition, the issuer would be substantially carrying on the target business.

[4] It should be noted that under the Rules, an acquisition below the size of a very substantial acquisition may be a RTO. This would normally be the case if there are other factors resulting in specific concerns about circumvention of the RTO Rules.

14. For the avoidance of doubt, a "fundamental change in the issuer's principal business" does not refer to acquisitions that are part of the issuer's business strategies related to its existing business, including business expansion or diversification, or are consistent with the issuers' size and resources. This may involve an issuer expanding upstream or downstream into new business segments, or an issuer acquiring businesses as part of the issuer's expansion strategy as illustrated in the following examples:

- technology companies in the new economy sector making acquisitions of businesses in mature industries as part of their business strategies, where the acquisitions formed part of their expansion strategies.

- a listed issuer engaging in financial advisory and other financial services proposing to acquire an app-based retail banking services business, where the acquisition is part of the issuer's strategy to expand its business into the fintech sector.

15. Further, where an issuer operating a mature business seeks opportunities to diversify its operations (and income stream) and acquires a target business that is completely different from its existing business, absent other factors (for example, a change in control or de facto control in the issuer and/or an acquisition that is substantial in size), the RTO Rules would not normally apply to restrict an issuer from such business diversification.

iii) Nature and scale of the issuer's business before the acquisition

16. A significant acquisition is more likely to be considered a RTO if the scale of the issuer's existing business is small, as the existing business would likely be immaterial after the acquisition and the issuer would be in substance operating the target business.

17. The Exchange will consider the nature of the issuer's existing business and its financial position. The RTO Rules address concerns about shell activities; accordingly, significant acquisitions by listed issuers with "shell" like characteristics are more likely to be RTO transactions. For example, an issuer that has wound down/disposed of its original business and moved into new businesses that can be easily discontinued (e.g. trading business or money lending business[5]) may suggest that the issuer is engaged in shell activities to facilitate backdoor listing. A newly listed issuer that conducted a series of arrangements (such as change in controlling shareholder, acquisitions and/or disposals) shortly after the lock-up period may also suggest shell activities.

[5] See paragraph 10 of Guidance Letter GL96-18 on suitability.

iv) Quality of the acquisition targets

18. The Exchange would consider whether the target business can meet the eligibility and suitability criteria for new listing. In general, a substantial acquisition of a target business that is not suitable for listing will likely be considered circumvention of the new listing requirements, as that target business could not otherwise obtain a new listing. Examples include early exploration companies or a business that operates illegally. Similarly, acquisitions of new businesses or assets that have no track record or have yet to commence operations are more likely to raise questions. This is more so the case where the target business is completely different from that of the issuer. Examples include an acquisition of a patent for new technology or new business proposals where the infrastructure (e.g. production facilities) is under construction. See also LD96-2016 and LD95-2016 as examples[6].

v) Change in control (as defined in the Takeovers Code) or de facto control of the listed issuer

19. Where a proposal does not fall under the bright line test, it may nevertheless be treated as a RTO under the principle based test. In assessing whether there has been any change in control or de facto control, the Exchange would consider:

    i) a change in the controlling shareholder of the issuer; or

    ii) a change in the single largest substantial shareholder who is able to exercise effective control over the issuer as indicated by factors such as a substantial change to its board of directors and/or senior management. For the avoidance of doubt, these are non-exhaustive factors. There could be other factors that the Exchange may consider as indication of exercise of effective control by the single largest substantial shareholder.

20. The Exchange will consider changes to the personnel and changes to the executive functions of the existing directors when making an assessment. Examples of substantial change of board and/or senior management include change in a majority of the issuer's executive directors and/or senior management carrying executive functions; change in a majority of the directors and/or their executive functions; or change of the chief executive officer.

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[6] See Listing Decisions LD96-2016 and LD95-2016 for examples of acquisition targets that were considered not suitable for listing. In LD96-2016, the acquisition target's products relied on the vendor's supply of the major raw material. The target's plan to manufacture the material itself was preliminary and the impact of such change in the business model on its financial results was uncertain. In LD95-2016, the newly set up acquisition target was not licensed to manufacture the products but relied heavily on another licensed company for both the production and sale of its products.

21. The "change in control or de facto control" factor would not normally apply if (a) the new substantial (and not controlling) shareholder is a passive investor in the issuer; or (b) there are changes in the issuer's board of directors and/or senior management but not its controlling or single largest substantial shareholder. However, where the issuer does not have a controlling or single largest substantial shareholder, a substantial change in its board of directors and/or senior management may raise questions about whether there is a change in de facto control in the issuer.

22. The Exchange normally applies this factor in conjunction with the "series of transactions and/or arrangements" factor. For example, an investor may acquire material shareholding interests in an issuer, appoints new directors to the board which oversees the operations and direction of the listed issuer, and subsequently acquires new businesses. The new directors have no experience in the issuer's original business but have expertise in the new business acquired by the issuer. The Exchange may apply the RTO Rules if, taking into account other factors, it considers that such actions are a means to achieve a listing of the new business and to circumvent the new listing requirements.

23. As described in paragraph 5 above, in the Exchange's experience a change of control together with a series of corporate actions (such as disposals of the issuer's existing business and acquisitions of different lines of businesses)[7] are commonly associated with new investors attempting to achieve a listing of new businesses and circumventing the new listing requirements. In those circumstances the Exchange would more likely apply the RTO Rules.

24. We also clarify that this assessment factor is applied only in the RTO context to identify the circumstances where there may be a backdoor listing concern. It is not a determinant of whether an issuer has "changed control" under the Takeovers Code or for other Rules purposes.

25. ***Change in de facto control arising from issue of restricted convertible securities***[8] - in circumstances involving the issue of restricted convertible securities, the Exchange would consider whether in substance, the issuance serves to allow the vendor (who will hold the issuer's convertible securities) to effectively "control" the issuer. For example, the vendor would become a controlling shareholder of the issuer assuming the convertible securities were fully converted and where i) the issuer has no controlling shareholder when it proposes the acquisition; or ii) the existing controlling shareholder would cease to be a controlling shareholder after the conversion.

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[7] An example involves an issuer engaged in garment business conducting a very substantial acquisition to acquire a property development business from a third party vendor, and shortly after that the issuer's original controlling shareholder proposed to sell its entire interests in the issuer to the vendor, which would result in a change in control of the issuer. The close nexus between the change in control and the completed acquisition may raise concern about circumvention of the new listing requirement. The Exchange may consider these events as a series of arrangements in assessing whether the RTO Rules would apply to the completed acquisition.

[8] Restricted convertible securities are convertible securities with a conversion restriction mechanism to avoid triggering a change in control under the Takeovers Code.

vi) Events and transactions which together with the acquisition form a series of transactions and/or arrangements to circumvent the RTO Rules

26. As set out in paragraph 5 above, the amended RTO Rules address arrangements that are conducted as a series of transactions and/or arrangements over time to achieve a listing of new businesses and circumvention of the new listing requirements. Examples of such arrangements include a series of smaller acquisitions that result in the listing of a new business, or re-sequencing transactions to acquire a new business before disposing of the original business of the issuer, or a series of acquisitions and disposals. This is achieved by assessing a series of transactions and/or arrangements in totality when considering the application of the RTO Rules.

27. The "series of transactions and/or arrangements" factor is normally applied in conjunction with other assessment factors such as the relative size of the transactions to the issuer, and whether the series of transactions and/or arrangements would lead to a fundamental change in the issuer's principal business.

a) A series of transactions or arrangements within 36 months or are otherwise related

28. The Exchange may regard transactions and arrangements as a part of a series if they take place in reasonable proximity to each other (normally within a 36-month period) or are otherwise related. Transactions or arrangements may include change in control or de facto control, acquisitions or disposals of businesses.

29. The RTO Rules are not intended to unduly restrict business expansion or diversification by issuers that take place over a reasonable period where there would be more disclosure for shareholders and the public to assess the issuers' business operations and developments. The Exchange would not normally consider a transaction or arrangement outside the 36-month period as part of the series, unless there is clear nexus between the transactions and/or arrangements, or where there are specific concerns about circumvention of the RTO Rules. For example:

- a transaction proposed shortly outside the 36-month period and which was likely under contemplation during the 36-month period;

- where an issuer terminated a proposed acquisition of a target business (or downsized the acquisition) in response to the Exchange's RTO ruling, the Exchange may treat any further acquisition(s) of the target business made outside the 36-month period as part of a series;

- where an issuer acquired a new business together with an option to acquire another target business and this option is exercised more than 3 years from the original acquisition, the Exchange may consider these acquisitions as a series.

30. Where an issuer acquires new business(es) over a period of time, the Exchange may aggregate the acquisitions when considering whether the acquired businesses together are substantial to the issuer and a means to achieve a listing of the acquired businesses. Acquisitions that are considered as part of a series would normally bear some relationship to each other, for example: (a) acquisitions that are part of a similar line of business[9], or (b) acquisitions of interests in the same company or group of companies in stages; or (c) acquisitions of businesses from the same or related party.

31. Absent indication of an attempt to achieve a listing of assets and a means to circumvent the new listing requirements, acquisitions of multiple businesses from different parties would not normally be aggregated in a RTO assessment. Circumstances indicating circumvention of the new listing requirements may include a change in control in the issuer followed by a disposal of its original business and acquisitions of multiple lines of new businesses from various parties.

32. When considering whether the size of the acquisitions in a series is substantial, the Exchange would normally aggregate the financial figures/consideration of the acquisition targets (at the time of the respective acquisitions), compared to the size of the issuer, being the lower of (i) the issuer's latest published financial figure (i.e. revenue/profits/assets) or market capitalization before the first transaction in the series; and (ii) its latest published financial figure or market capitalization at the time of the last transaction in the series.

33. When considering whether there is a fundamental change in business over the 36-month period, the Exchange will have regard to the size of the acquisition targets (at the time of their respective acquisitions), compared to the size of the original business (at the time of the last transaction in the series).

34. In addition, where an issuer disposes the business it operated at the commencement of the series of transactions (the original business), it has the effect of reducing the size of the issuer and consequently, may have a bearing on the Exchange's assessment of other assessment factors, including whether there is a fundamental change of business of the issuer, whether the size of the acquisitions are substantial, and whether the issuer is a "shell"[10].

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9 In Listing Decision LD109-2017, the Exchange aggregated a proposed acquisition with an acquisition announced over a 20-month period which together, would lead to the issuer's substantial involvement in a new business.

10 See footnote 5.

35. Where an issuer conducts shell activities through a series of transactions and/or arrangements involving greenfield operations, equity fundraisings, and/or termination of all or some of its original businesses and such activities are not within the scope of the RTO Rules, the Exchange may exercise its rights under Rule 2.04 to impose additional conditions, for example, requiring the issuer to comply with the RTO requirements[11]. The Exchange may also address shell maintenance concerns (e.g. an issuer operates multiple lines of new businesses or terminates its businesses) by applying Rule 6.01(4) (suitability for listing)[12] or Rule 13.24 (sufficiency of operations)[13].

b) Treating a series of transactions as one transaction

36. When applying the RTO Rules, a series of transactions would be treated as if they were one transaction. Consequently, while an acquisition of the new business may have been completed at an earlier time within the period, by viewing the series of arrangements as one transaction, the RTO Rules would also apply to that completed acquisition.

37. Where the proposed series of transactions and/or arrangements involve a disposal that is preceded by an acquisition (or acquisitions) of a target business, both the RTO Rules and the continuing listing requirements (Rule 13.24) may apply. The target business (i.e. the issuer's remaining business after the proposed disposal) must meet the continuing listing requirement under Rule 13.24[14], failing which the issuer may be subject to the delisting procedures under Rule 6.01(3). Additionally, the RTO Rules may apply to the target business (i.e. the acquisition(s)) that is part of the series of transactions and/or arrangements.

III. LARGE SCALE ISSUE OF SECURITIES

38. Rule 14.06D describes circumstances involving an investor acquiring control or de facto control of a listed issuer through a large scale subscription of the issuer's securities, and the listed issuer using the proceeds to acquire or develop a new business unrelated to the original business of the listed issuer, achieving a listing of that new business and circumventing the new listing requirements. These arrangements involve a change in control or de facto control and acquisition of new business and/or greenfield operations as discussed in paragraph 5 above. Its application is set out in Guidance Letter GL105-19.

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11 See Listing Decisions LD122-2019 and LD123-2019.

12 See Guidance Letter GL96-18.

13 See Listing Decision LD105-2017.

14 Specifically, Rule 13.24 requires an issuer to carry on a sufficient level of operation and have sufficient asset to support its operations to warrant its continued listing.

IV. RESTRICTION ON DISPOSALS

39. Rule 14.06E[15] imposes restriction on a disposal or distribution in specie (or a series of disposals or distributions) that involves all or a material part of the issuer's existing business at the time of, or within 36 months from a change in control (as defined in the Takeovers Code) of the issuer, unless the remaining business or the assets acquired by the issuer can meet the requirements under Rule 8.05 (or Rule 8.05A or 8.05B).

40. This Rule complements the RTO bright line tests in Note 2 to Rule 14.06B to discourage investors from re-sequencing a RTO transaction by acquiring a new business before disposing its original business, thereby circumventing the bright line test (which involves acquisitions that are classified as very substantial acquisitions). The Rule may also apply where an issuer develops a new business through greenfield operation after a change in control, with a view to operating the new business through the listed issuers and circumventing the new listing requirements. As these arrangements do not involve acquisitions, they are not caught by Rule 14.06B.

41. The Note to Rule 14.06E provides the Exchange discretion to apply the same restriction to disposal(s) or distribution(s) by a listed issuer of all or a material part of its existing business at the time of, or within 36 months from a change in de facto control of the listed issuer (by reference to the "change in control or de facto control" factor in the principle based test), where the Exchange considers that the disposal(s) and/or distribution(s) form part of a series of transactions/arrangements to circumvent the new listing requirements. In making this assessment the Exchange would make reference to the six assessment factors under the principle based test. The Exchange would apply this Rule to a series of arrangements that involve an issuer developing a new business through greenfield operation after a change in control or de facto control[16], with a view to operating the new business through the listed issuer and circumventing the new listing requirements (see paragraph 5).

42. Rule 14.06E is not intended to restrict issuers from disposing part of their businesses or assets for commercial reasons. For example, an investor may acquire control in the listed issuer and thereafter, conduct a series of business reorganizations to streamline the underlying business, including the disposal of certain non-performing segments of the issuer's business, provided that is not all or a material part of the issuer's business.

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15 This Rule incorporates former Rule 14.92.

16 See paragraphs 19 to 25 for the factors set out in the "change in control or de facto control" factor.

V. EXTREME TRANSACTION

43. The RTO Rules apply to acquisitions that constitute an attempt to achieve a listing of the assets to be acquired and a means to circumvent the new listing requirements under Chapter 8 of the Listing Rules. Where an acquisition or a series of acquisitions of assets, which individually or together with other transactions or arrangements, may, by reference to the factors under the principle based test have the effect of achieving a listing of the acquisition targets, but the issuer can demonstrate that it is not an attempt to circumvent the new listing requirements, the proposed acquisition (or series of acquisitions) may be classified as an "extreme transaction" under Rule 14.06C.

44. The extreme transaction classification would not be available where the listed issuer demonstrates "shell" like characteristics. This is because the RTO Rules discourage activities related to the trading of, or acquisitions of "listed shells" for backdoor listings. The Exchange will assess the application of the "extreme transaction" category case by case. For an acquisition (or series of acquisitions) to be qualified as an extreme transaction, the issuer has to satisfy the following additional requirements in addition to demonstrating that it is not an attempt to circumvent the new listing requirements:

i) the issuer has been under the control or de facto control of the same person or group of persons for a long period (normally not less than 36 months) prior to the proposed transaction, and the transaction would not result in a change in control or de facto control of the issuer. The Exchange would make reference to the "change in control or de facto control" factor under the principle based test (see paragraphs 19 to 25) in making this assessment; or

ii) the issuer has been operating a principal business of substantial size, which will continue after the transaction.

As general guidance, this may include an issuer with annual revenue or total asset value of HK$1 billion or more based on the latest published financial statements. When assessing the size of the issuer, the Exchange will also take into account the issuer's financial position, the nature and operating model of the business and the issuer's future business plans. For example, an issuer that meets the HK$1 billion in revenue but has very small net asset value (or is in a net liability position) and operates an indent trading business may not meet this test.

Procedural and compliance requirements for extreme transactions

45. Rule 14.06C(2) requires that (i) the acquisition targets must meet the suitability for listing requirement (Rule 8.04) and the new listing track record requirements (Rule 8.05 or 8.05A or 8.05B); and (ii) the enlarged group must meet all the new listing requirements set out in Chapter 8 of the Rules (except Rule 8.05).

46. The issuer would be required to provide sufficient information to the Exchange to demonstrate that the acquisition target meets Rule 8.04 and Rule 8.05 (or Rule 8.05A or 8.05B). This may be in the form of a draft circular with material information, including, for example, draft accountants' report of the acquisition target for the track record period, detailed description of its business and its management, risk factors, legal compliance and any other information as requested by the Exchange. Failure to provide sufficient information for the Exchange to make a determination may result in a RTO ruling.

47. Rule 14.53A requires the issuer to appoint a financial adviser to perform due diligence on the acquisition targets and to provide the declaration in the form set out in Appendix 29. The Listing Committee may, in principle, allow the issuer to classify its proposed acquisition as an extreme transaction based on the information provided in its written submission and/or draft circular and any additional information requested by the Department. However, this classification is subject to the completion of the financial adviser's due diligence work on the target business and its submission of a declaration to support that the acquisition target can meet Rule 8.04 and Rule 8.05 (or Rule 8.05A or 8.05B).

48. The Exchange will require the issuer to reclassify the acquisition as a RTO if the financial adviser cannot provide the declaration, or where there is additional information indicating that the acquisition target cannot meet Rule 8.04 and Rule 8.05 (or Rule 8.05A or 8.05B), or where there are any other concerns about circumvention of the new listing requirements.

VI. COMPLIANCE REQUIREMENTS APPLICABLE TO RTO

Compliance with new listing requirements

49. Where a transaction is ruled as a RTO, the issuer will be treated as if it were a new listing applicant. Rule 14.54(1) requires that (i) the acquisition targets must meet the suitability for listing requirement (Rule 8.04) and the new listing track record requirements (Rule 8.05 or Rule 8.05A or 8.05B); and (ii) the enlarged group must meet all the new listing requirements under Chapter 8 of the Rules (except Rule 8.05).

50. Under Rule 14.54(2), where the issuer has failed to comply with Rule 13.24(1), the acquisition targets must also meet Rule 8.07. The issuer and its sponsor must demonstrate that there is sufficient public interest in the business of the acquisition target and the enlarged group. This may be demonstrated by, for example, conducting a public offer or other analysis with evidence to demonstrate a sufficient level of public interest in the acquisition targets. For this purpose, it would not be sufficient to simply rely on the issuer's existing shareholder base to satisfy the requirements.

51. Note 1 to Rule 14.54 states that if the Exchange is aware of information suggesting that the RTO is to avoid any new listing requirements, the issuer will be required to demonstrate that the acquisition targets meet all the new listing requirements set out in Chapter 8 of the Rules.

52. Where the RTO transaction involves a series of acquisitions (including completed acquisitions), all the acquisition targets in the series of acquisitions must as a whole comply with the requirements in Rule 14.54.

VII. COMPLIANCE REQUIREMENTS RELATING TO RTOS OR EXTREME TRANSACTIONS THAT INVOLVE A SERIES OF TRANSACTIONS

Track record and due diligence requirements

53. Where the Exchange considers a series of transactions and/or arrangements to constitute a RTO or an extreme transaction, the entire series of acquisitions should, as a whole, meet the new listing requirements of Rule 8.05.

54. The issuer is required to provide sufficient information to the Exchange to demonstrate that the acquisition targets can meet Rule 8.05, including financial information of the targets based on accountant's report or audited financial information[17]. For this purpose the track record period for the completed acquisition(s) and the proposed acquisition(s) in the series shall be referenced to the latest proposed transaction and covers the three financial years[18] immediately prior to the issue of circular for that transaction.

55. The due diligence requirements for RTOs or extreme transactions apply to the acquisition targets that form part of the series as mentioned above[19].

56. As the RTO or extreme transaction Rules apply to i) acquisitions from various independent parties and ii) a series of acquisitions, including completed acquisitions, it is possible that the issuer may not meet the management and/or ownership continuity requirements in the eligibility criteria. The Exchange would consider granting waivers on a case by case basis.

Shareholders' approval requirement

57. Rules 14.53A and 14.55 require shareholders to approve a RTO or an extreme transaction. Where a RTO or extreme transaction involves a series of transactions, this approval requirement applies to the proposed transaction only. In other words, a listed issuer is not required to seek shareholders' approval for the completed transaction(s) that form part of the series.

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17 Such approach is in line with our practice in requiring an issuer to provide to the Exchange financial results of its remaining group to demonstrate that the remaining group can meet Rule 8.05 in a spin-off under Practice Note 15.

18 For GEM issuers, the track record period covers the two financial years immediately prior to the issue of circular for that transaction (see GEM Rule 19.57A).

19 Where during the course of due diligence review the financial adviser identifies issues (e.g. legal non-compliance), the issuer is expected to take measures to resolve these issues.