Hong Kong Institute of
Certified Public Accountants
香港會計師公會

7 May 2008

By email ([redacted]) and by post

Our Ref.: C/PAIBC, M56074

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

Dear Sirs,

Re: Combined Consultation Paper on Proposed Changes to the Listing Rules

Please find attached a submission on the above consultation paper from the Hong Kong Institute of Certified Public Accountants ("the Institute") in the form of a completed questionnaire.

We are in support of many of the proposals put forward by the Exchange in the consultation document, while having reservations about some of them.

In particular, we do not agree with the proposal to remove from the listing rules the requirement for listed companies to employ a qualified accountant at a senior level in the management of the company. The proposal was introduced only in 2004 and, in the Institute's view, has undoubtedly been a positive development for Hong Kong's corporate governance environment. Removing it at this time would send a negative message to the market and the wider community about the importance of good financial reporting and corporate governance. We believe that such a change would not be in public interest, in view of the increasing demands for timely and reliable financial information and better and more transparent risk management and internal control systems and processes, and given the importance of professional skill and expertise to support these. Please see our detailed comments and proposals set out in our answers to question 3 of the survey.

We provide comments on a number of the other proposals in the consultation paper, focusing primarily on the principles rather than the detailed proposed rule changes, although we do also express a view on the latter in certain specific instances.

Yours faithfully,

[redacted]

Winnie C.W. Cheung
Chief Executive & Registrar

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QUESTIONNAIRE ON PROPOSED CHANGES TO THE LISTING RULES

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

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

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

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

By mail or hand delivery to:	Corporate Communications Department Re: Combined Consultation Paper on Proposed Changes to the Listing Rules Hong Kong Exchanges and Clearing Limited 12th Floor, One International Finance Centre 1 Harbour View Street, Central Hong Kong
By fax to:	(852) 2524-0149
By email to:	cvw@hkex.com.hk

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

Please indicate your preference by ticking the appropriate boxes.

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

Issue 1: Use of websites for communication with shareholders

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

☒ Yes

☐ No

Please provide reasons for your views.

We share the concerns about costs and the impact on the environment for listed issuers to send corporate communications to shareholders in printed hardcopy format.

It is noted that paragraph 1.5 of the consultation document states, "... amendments to the Companies Ordinance are currently being considered to facilitate the greater use of electronic communications, including the use of websites for communication by companies with their shareholders, but that the proposals have yet to be finalised."

We consider that the Exchange's proposal is in line with the approach that is likely to be adopted in future in the Companies Ordinance, although amendments to the legislation resulting from the ongoing Companies Ordinance Rewrite project may not be introduced until 2012, according to the proposed timetable. We see no reason in principle why listed companies that are currently able to do so under the laws of their place of incorporation, should be prevented from making use of a simplified procedure to obtain shareholders' approval to communicate with them electronically. In view of this, we would agree with the Exchange's proposal to amend the rules to remove the requirement that all listed issuers must comply with a standard that is no less onerous that that imposed from time to time under Hong Kong law.

We would also suggest that the Exchange work closely with the government to expedite the introduction of relevant changes to the Companies Ordinance in order to promote the use of electronic communications and to facilitate the greater use of websites for making corporate communications available to shareholders.

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

☒ Yes

☐ No

Please provide reasons for your views.

See reasons indicated in our response to Question 1.1.

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

☒ Yes

☐ No

Please provide reasons for your views.

This enables shareholders to choose the most appropriate means for them for receipt of corporate communications from a listed company.

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

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

☒ Yes
☐ No

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

☒ Yes
☐ No

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

☒ Yes
☐ No

Please provide reasons for your views.

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

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

☒ Yes

☐ No

Please provide reasons for your views.

The requirement for express, positive confirmations from shareholders is considered to be too onerous.

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

☒ Yes

☐ No

Please provide reasons for your views.

While the proposed Rule changes may be workable, there is room for further refinement to be made to the flow of the provisions.

Issue 2: Information gathering powers

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

☒ Yes

☐ No

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

☐ Yes

☒ No

Issue 3: Qualified accountants

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

☐ Yes

☒ No

Please provide reasons for your views.

Requirement has led to better governance:

1. As set out in paragraph 3.3 of the consultation paper, the underlying purpose of the requirement for a qualified accountant, introduced in the Listing Rules in 2004, is to ensure that a listed issuer has at its disposal a competent individual to assist it in fulfilling its continuing financial reporting obligations and in developing and maintaining effective internal controls for proper financial reporting.

2. We commend the Exchange for introducing this requirement, which has seen, over the intervening period, the appointment of Hong Kong CPAs with expert knowledge and skill in financial reporting to key positions in Hong Kong-listed companies. This has undoubtedly been a positive development for Hong Kong's corporate governance environment.

Status quo should be maintained

3. We strongly believe that the current requirement should be retained for a number of good reasons. That is, a listed company should continue to be required to employ, on a full-time basis, an individual, whose responsibilities "must include oversight of the issuer and its subsidiaries in connection with its financial reporting procedures and internal controls and compliance with the requirements under the Exchange Listing Rules with regard to financial reporting and other accounting-related issues..... [who] must be a member of the senior management of the listed issuer (preferably an executive director) and must be a qualified accountant and a certified public accountant registered with the Hong Kong Institute of Certified Public Accountants or a similar body of accountants recognised by that Institute....". Key reasons for our view include the following:

(A) The integrity and quality of financial reports are heavily dependent on the competence of the people that prepare them. In our view, there must be a qualified person in a very senior position who takes responsibility for a listed company's financial reporting. In some jurisdictions there is a requirement for such a person to be named.

(B) This responsibility cannot be delegated to other participants in the financial reporting supply chain, e.g., the audit committee, the independent directors, or the external auditors. They each have a role to play in the overall framework, but their roles are fundamentally dependent upon the work of those who prepare and oversee the preparation of the financial statements.

(C) The system of checks and balances that is essential to good corporate governance practices would be undermined if these roles were not segregated. If, for example, a company's financial statements were poorly prepared or financial records were messy and systems weak, the external auditors could qualify their report, but they would not be able to rectify the damage. If they were invited, or felt compelled, to step in to try to rectify problems with the preparation of the financial statements, they would risk jeopardising their own independence.

(D) The complexity of financial reporting standards, which often reflects the complexity of the underlying business transactions, and the increasing demand for reliable and timely financial and business information, leads to an even greater need than ever for a qualified accountant to be appointed to a senior position of responsibility and accountability for this important function.

(E) Having in place effective risk assessment and management and internal control systems and processes, and the related reporting arrangements, is nowadays seen as an integral part of corporate accountability and good governance. Qualified accountants play an essential role in ensuring a sound system of risk assessment and management and internal control within listed companies, particularly in relation to financial reporting policies and practices, and financial risk assessment and controls. In fact, having a qualified accountant in a company should be regarded as a very important element in an efficient and effective system of risk management and internal control.

(F) Why membership of the Hong Kong Institute of Certified Public Accountants (HKICPA)?

(i) The HKICPA is the only body with statutory authority to register CPAs in Hong Kong. HKICPA membership is the right qualification for a qualified accountant, firstly, because of the quality and relevance of training. HKICPA members are required to go through an exacting qualification and practical experience programme and to undergo continuing professional development throughout their careers. Therefore, they are trained in, and are familiar with, the Hong Kong market, and have expert knowledge and experience in the application of Hong Kong and International Financial Reporting Standards ("HKFRS"/"IFRS") as well as the local listing and legal requirements for this market. They also understand the financial, corporate and professional and ethical environment in Hong Kong, which is important, given that this is where the companies concerned are listed and where they are seeking to raise capital from an investing public comprising, to a significant extent, small retail investors.

(ii) Members of the Institute are subject to the regulatory oversight of the HKICPA to ensure that they maintain high standards of professional and ethical conduct. With the establishment recently of the Financial Reporting Council ("FRC"), which is an independent body with statutory authority, the regulatory framework has been further strengthened. One of the main responsibilities of the FRC is to investigate into the financial statements of companies listed in Hong Kong and the conduct of, and the work carried out by, auditors and accountants of listed companies. Any misconduct or non-compliance with professional standards by HKICPA members engaged as auditors and accountants, which the FRC uncovers through its investigations, may be referred to the HKICPA for disciplinary action. Therefore, HKICPA members employed as qualified accountants will be keenly aware of the need to produce high quality financial statements, in compliance with the listing rules and relevant accounting standards.

(iii) Where the preparers of financial statements and reports are not members of the HKICPA, they will not be subject to the same rigorous regulation and oversight.

(iv) A listed company's financial statements represent the main form of communication between the company and its shareholders in relation to the company's financial position and performance. As a result of the supporting infrastructure referred to above, the involvement of a member of the HKICPA as a qualified accountant provides a greater degree of assurance in the quality of the information presented, thus enhancing investor protection and providing more comfort that the public interest is being served. On a practical level as well, an HKICPA member is more likely to be in tune with the concerns of Hong Kong investors and will be particularly concerned about his or her reputation in this market.

(v) As there are currently more than 27,000 HKICPA members, we believe that there should not be any problem for most listed companies to identify a suitable qualified accountant.

Removing the requirement would be a retrograde step:

4. While it is likely that well-run companies would continue to employ a suitably qualified and skilled professional accountant at a senior level in the company, some companies will take the removal of the requirement for a qualified accountant as a cue that they can dispense with employing such a person, and these are likely to be the companies which, from the angle of investor protection, have the greatest need for a qualified professional responsible for the finance function, at a senior level within the company.

5. In our view, therefore, in the absence of any viable alternative mechanism for ensuring that a specific, competent individual at the board level is held personally accountable for the company's financial reporting, and without a highly-developed, deeply-entrenched, and actively-enforced, corporate governance framework, to provide assurance as to the quality and reliability of financial reports, the requirement for a qualified accountant is the best way of protecting the integrity of financial reporting and controls and so the interests of investors and of the market generally.

6. In view of foregoing, removing this requirement would be a retrograde step that would send a negative signal to the market and the public about the importance of financial reporting and good corporate governance, and the professional expertise required to support these, which are cornerstones of the attraction of the Hong Kong market to international investors.

Waivers:

7. While, as mentioned above, the requirement for listed companies to employ a qualified accountant has been in place since 2004, we note that, in practice, the Exchange has granted certain companies a waiver from compliance with this requirement. For reasons explained above, we consider that exempting companies from having to comply with the requirement carries risks, particularly where no conditions are attached to the waiver.

8. We have reservations as to whether it is prudent or appropriate to grant waivers, particularly blanket waivers to certain categories of companies, and would suggest that, in future, if waivers are to be granted, it should be subject to conditions, the aim of which would be to provide a reasonable degree of assurance to investors in relation to the matters raised above.

9. We propose that, if it is considered necessary to grant a waiver from the requirement for a qualified accountant in some cases, the following minimum conditions should be stipulated:

(a) The listed companies concerned must be (i) incorporated outside of Hong Kong, (ii) operating principally outside of Hong Kong, and (iii) managed and controlled outside of Hong Kong.

(b) They should be required to appoint an accountant at a senior level, who is (i) a current, fully-qualified, member of good standing of a national accounting body in the jurisdiction of the company's principal base, and (ii) regulated by the relevant professional body or another competent authority in the relevant jurisdiction.

(c) The financial reporting standards of the relevant jurisdiction are converged with IFRS.

(d) The Exchange or the FRC must have agreements with the authorities in the relevant jurisdiction to ensure that, in principle, appropriate disciplinary action can be taken against the accountant concerned in the event of his or her misconduct or negligence.

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

☐ Yes

☒ No

Please provide reasons for your views.

For the same reasons as those indicated in our response to Question 3.1.

Issue 4: Review of sponsor's independence

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for the proposal and believe that this is consistent with the spirit of the relevant Rules. Nevertheless, we propose that, in the event that there are changes in circumstances during the course of the application/listing process, which may affect the sponsor's independence, a reasonable grace period should be allowed for a sponsor to appoint a joint sponsor.

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

☒ Yes

☐ No

Please provide reasons for your views.

Subject to the proviso in our response to Question 4.1.

Issue 5: Public float

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

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

The Exchange should provide clear guidance to assist listed issuers in applying the market capitalisation rules, not just in relation to requirements applicable at the time of listing but also (a) post-listing and (b) in the situation where, for example, there are substantial fluctuations in a company's share price which, in turn, lead to changes in the total market capitalisation and fluctuations in the amount of public float above and below the threshold level. This may be particularly important where, for example, there are minimum requirements for inclusion in an index.

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

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

☐ Yes

☒ No

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

We believe that the concept of "market float" could be helpful in the context of requiring appropriate and sufficient disclosure. As regards whether and, if so, how, the level of market float should be regulated, we would suggest that this issue warrants further study and discussion. The presence of strategic or "cornerstone" investors is quite common in Hong Kong and the involvement of such investors may be regarded as beneficial to a new listing applicant. However, we are also aware of concerns from ordinary retail shareholders that cornerstone investors are given preferential treatment and, when the market is buoyant, they are able to capitalise on this financially. Any measure that would tend to discourage the use of lock-up periods for cornerstone investors could result in them being less committed to retaining their investment in the company concerned for any given period, and more likely to take an opportunistic view on the timing for disposing of their investment. This would suggest the need for the possible implications of introducing the concept of a regulated market float to be considered carefully.

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

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for disapplying the requirement for a minimum spread of securities holders in the event of a bonus issue of a class of securities new to listing.

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

☒ Yes
☐ No

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

☐ Yes
☒ No

Please provide reasons for your views.

We consider that a five-year time limit on the applicability of the relevant share concentration information would not be appropriate. A concentration of shares occurring five years previously, for example, should already have been addressed in the intervening time. We consider that the focus should be on the concentration of shareholding at, or close to, the time when the bonus issue is proposed.

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

☐ Yes
☐ No

Please provide reasons for your views.

See our response to Question 6.2.

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

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

☒ Yes
☐ No

Please provide reasons for your views.

We consider that doing away with pre-vetting of announcements made by listed issuers is a reasonable and appropriate longer-term objective. However, we note that a similar proposal was made in the context of proposals for statutory backing for certain Listing Rules. Therefore, while we agree with initiating a phased approach to doing away with pre-vetting, in the absence of changes to the disciplinary/enforcement arrangements, we would have some

reservations about proceeding to the next stage, and broadening the scope of documentation that will not be pre-vetted. We would suggest that further consultation, with the benefit of the experience of the first phase, should be carried out before implementing subsequent phases.

In the absence of any strengthening of the disciplinary procedures, implementing a post-vetting mechanism to monitor compliance with the Rules could create enforcement problems. Post-publication scrutiny and enforcement of important/complicated transactions and price-sensitive information would be less effective and not sufficiently timely, as shareholders and investors may already have suffered loss, or other disadvantage, as a result of acting upon to unvetted announcements released by listed issuers that contain, errors, inaccurate or insufficient disclosures, etc.

In order to minimise/mitigate any non-compliance problems, it is suggested that consideration be given to requiring all listed companies, not only GEM-listed companies, to appoint a compliance officer/adviser with relevant qualifications or experience, to ensure compliance with the Listing Rules and other applicable laws, rules and regulations, codes and guidelines, etc.

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?

We would support a progressive, phased approach to reducing pre-vetting activities in order to facilitate an orderly and smooth transition to the new approach. The question is one of determining the appropiate rate and timing of progressive changes.

We would suggest that, during the transition period, there should be education programmes and additonal guidance provided on Rule interpretations, etc., to help listed company directors/officers and market practitioners better understand the requirements and their own responsibilities and liabilities.

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

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

☒ Yes

☐ No

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree that the categories of documents set out in paragraph 7.50 of the consultation document are important and that post-publication scrutiny and enforcement of such important/complicated documents and price-sensitive information, would be less effective and not sufficiently timely, for the reasons given in our response to Question 7.1.

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for the proposal.

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

See our response to Question 7.1.

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

☐ Yes

☐ No

Please provide reasons for your views.

See our response to Question 7.1.

Issue 8: Disclosure of changes in issued share capital

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

☒ Yes

☒ No

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

In order not to confuse the market by specifying a variety of different times for filing different forms/returns, we suggest that the same timing as for filing Disclosure of Interests forms under the Securities and Futures Ordinance (i.e., within three business days of the day of the event) could be adopted for listed companies to file a return for changes in their issued share capital, instead of requiring them to file a Next Day Disclosure Return. Given also, that, currently, the settlement period for a share transaction is T+2 days, we believe that it would help to promote consistency in the market, and would facilitate compliance, if the timing for filing a return on changes in issued share capital were the same as the settlement period for a share transaction.

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

☒ Yes

☐ No

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

☒ Yes

☐ No

Please provide reasons for your views.

See our response to Question 8.1.

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

No specific comment.

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

No specific comment.

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

☐ Yes

☒ No

Please provide reasons for your views.

As indicated in our response to Question 8.1, we suggest that the timing for listed companies to file a return for changes in their issued share capital should be the same as for filing Disclosure of Interests forms under the Securities and Futures Ordinance (i.e., within three business days of the date of the event). Some of our members are also of the view that the proposed deadline of 9 a.m. on the next business day would create practical difficulties.

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

No specific comment.

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

No specific comment.

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

No specific comment.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☒ Yes

☐ No

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

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

☐ Yes

☒ No

Please provide reasons for your views.

See our response to Question 8.1.

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

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☐ Yes

☐ No

Please provide reasons for your views.

No specific comment.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

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

☐ Yes

☒ No

Please provide reasons for your views.

As both the material dilution in major subsidiary and the deemed disposal requirements govern a reduction in the effective equity interest of a subsidiary held by a listed company, we believe that aligning the requirements for material dilution and deemed disposal would make the Rules more consistent and easier to follow.

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

☒ Yes

☐ No

Please provide reasons for your views.

See our response to Question 10.1.

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

☐ Yes

☐ No

Please provide reasons for your views.

No specific comment.

Issue 11: General mandates

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

☒ Yes

☐ No

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

We agree that the Listing Rules should aim to control possible abuses of the general mandate, on the one hand, and facilitate capital market fund raising by listed companies on the other. We consider that the current size limit on issues of securities under a general mandate provides an acceptable balance in this regard. In addition, we note from the Exchange's research on the use of mandates (paragraph 11.39 of the consultation paper refers) that, since the 2004 Rule amendments, there has been a substantial drop in the number of refreshments of general mandates by listed companies and an equally subsbtantial increase in the number of specific mandates obtained. One interpretation of this would be that companies are using specific mandates to avoid certain of the requirements imposed under the amended Rules on general mandates. If this is the case, then it would also suggest that further tightening of the Rules on general mandates may not be very effective.

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

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

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

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

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

Please provide your comments and suggestions.

N/A

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

☐ Yes

☐ No

If yes, please provide your comments and suggestions.

We find this question confusing. Paragraph 11.7 of the consultation document suggests that the existing Rule already uses the issued share capital as at the date of the general meeting approving the general mandate as the reference point for the size limit, so it is unclear why an amendment to the Rules would be required to achieve this end. However, in principle, we consider that the size limit should be applied to the issued share capital at the time the general mandate is used.

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

(a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmarked price" would apply only to placings of shares for cash;

(b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and

(c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information?

☐ Yes

☐ No

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

Notwithstanding our comments in response to Question 11.1, we consider that restricting the discount to the benchmarked price at which shares may be issued pursuant to a general mandate could provide a more effective protection for minority shareholders than, for example, further restricting the size of issues. In this regard, we would suggest that consideration be given to reducing the discount at which shares can be issued under a general mandate to not be more than, say, 10% of the "benchmarked price".

Issue 12: Voting at general meetings

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

☒ Yes

☐ No

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

☐ Yes

☒ No

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

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

☐ Yes

☒ No

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

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

No specific comment.

Issue 13: Disclosure of information about and by directors

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☐ Yes

☒ No

Please provide reasons for your views.

We consider that not all the information referred to needs to be disclosed immediately and that a distinction should be drawn between information that needs to be disclosed immediately and information that could be disclosed in an interim or annual report.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☐ Yes

☒ No

Please provide reasons for your views.

See our response to Question 13.2.

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

☒ Yes

☐ No

Please provide reasons for your views.

We consider that such information is relevant to shareholders/investors and would improve transparency.

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

☒ Yes

☐ No

Please provide reasons for your views.

We consider that such information is relevant to shareholders/investors and would improve transparency.

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

☒ Yes

☐ No

Please provide reasons for your views.

Question13.9: Do you agree that Main Board Rule 13.51(2)(m)(ii) should be amended to include reference to the Ordinances referred to in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii)?

☒ Yes

☐ No

Please provide reasons for your views.

This would provide greater clarity in the Main Board Rules.

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

☐ Yes

☒ No

Please provide reasons for your views.

We do not consider that the current wording of the Rules is unclear. As currently worded, the three limbs are cumulative and must all be satisfied. Therefore, the proposed amendment widens the scope of the disclosure obligation, rather than merely clarifying it. There is also an apparent difference between the revised wording in Appendix 13 and the interpretation given to it in paragraph 13.25 of the main body of the consultation paper.

While the revised wording in Appendix 13 would be an acceptable extension to the disclosure requirement, we are not convinced that extension should be as broad as the interpretation of the revised Rule given in paragraph 13.25. The former appears to require disclosure of offences involving fraud, dishonesty or corruption (limb (i)) under the various ordinances listed in limb (ii), or disclosure of offences involving a sentence of imprisonment of six months or more (including suspended sentences) (limb (iii)). The latter, on the other hand, suggests that the disclosure applies if any of the three limbs is satisfied. This would include offences, for example, involving technical breaches of the Companies Ordinance that involve no fraud, dishonesty, etc., which is a much wider extension of the requirement.

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

☐ Yes

☒ No

Please provide reasons for your views.

The draft revised Rule 13.51 would seem to differ from the intention expressed in Question 13.10 (see our response to Question 13.10) and, of the two, we would find the wording in Appendix 13 more acceptable.

Issue 14: Codification of waiver to property companies

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for introducing the relief in the first place, as explained in paragraph 14.2 of the consultation paper, which should still apply.

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

☒ Yes

☐ No

Please provide reasons for your views.

These would seem to be reasonable criteria for determining which companies are eligible for the proposed relief.

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for confining the scope of the proposed relief to acquisition of property assets that fall within the definition of Qualified Property Projects.

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

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

☒ Yes

☐ No

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

In order to avoid any potential abuse of the relief, we consider that it is appropriate to specify a percentage threshold for the capital element within a project.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☒ Yes

☐ No

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

In order to avoid any potential abuse of the General Property Acquisition Mandate and for better protection of minority shareholders' interests, we consider that it would be appropriate to include a limit on the size of the annual cap by reference to some quantifiable thresholds.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☐ Yes

☐ No

Please provide reasons for your views.

No specific comment.

Issue 15: Self-constructed fixed assets

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

☒ Yes

☐ No

Please provide reasons for your views.

We accept the rationale provided in paragraph 15.8 of the consultation document.

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

☒ Yes

☐ No

Please provide reasons for your views.

No specific comment.

Issue 16: Disclosure of information in takeovers

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

☒ Yes

☐ No

Please provide reasons for your views.

We believe that codifying the Exchange's current practice in the Listing Rules should enhance clarity, consistency and transparency.

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

☒ Yes

☐ No

Please provide reasons for your views.

We consider that it is reasonable and acceptable to extend the new Rules to situations when there are practical difficulties faced by a listed issuer in gaining access to non-public information.

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

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

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

☐ Yes

☐ No

Please provide reasons for your views.

No specific comment.

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

No specific comment.

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

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for streamlining the DU Forms by deleting the questions relating to the directors' and supervisors' biographical details.

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree to the rationale for removing the requirement for DU Forms to be executed by way of a statutory declaration.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☒ Yes

☐ No

Please provide reasons for your views.

We agree with the rationale for the proposed amendments.

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

☒ Yes

☐ No

Please provide reasons for your views.

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

☐ Yes

☐ No

Please provide reasons for your views.

No specific comment.

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

☒ Yes

☐ No

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

☐ Yes

☒ No

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

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

☒ Yes
☐ No

Please provide reasons for your views.

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

☒ Yes
☐ No

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

☒ Yes
☐ No

Please provide reasons for your views.

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

☐ Yes
☒ No

Please provide reasons for your views.

The fundamental principle with regard to securities transactions by directors of listed issuers is that directors should not trade in their company's securities whenever they possess any unpublished price-sensitive information, and there are other rules to deal with non-compliance with this requirement. While the current "black-out" period may be artificial, to some extent, we are not convinced that extending it further would be the best option. This could give a misleading signal to directors, that it would be safe to trade in their company's shares during the non-black-out periods and so make them less wary of the need to comply with the basic principle.

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

☒ Yes

☐ No

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

☒ Yes

☐ No

Please provide reasons for your views.

Minor Rule amendments

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

No specific comment.

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

No specific comment.

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