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.

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.

Given that the shareholders will always have the rights to say no to the consent and even after giving such (express or deemed) consent, shareholders will still be entitled to change their mind and request to receive hard copy of any corporate communications free of charge, we are of the view that such deemed consent would be useful for issuers.

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.

It would be fair to give shareholders an opportunity to discuss such major change at a general meeting and to express views and vote accordingly.

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.

The 12-months cool off period would appear to be appropriate as this would ensure that issuers would not abuse the system by repeatedly sending the consent forms to shareholders.

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

No.

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.

We do not see CD rom as an attractive alternative to hard copies in terms of cost saving or environmental protection. Further, those shareholders who have computer access to any communications would normally be expected to have access to the Internet and thus be able to download such communciations from the Exchange's or the Company's website.

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.

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.

We do share issuers' and listing applicants' concern as to the costs and practicality of finding a suitable candidate to be the QA with the very restricted qualifications requested by Listing Rule 3.24. As an alternative, the Exchange may consider including a more relaxed requirement for a QA as a recommended practice in the Code of Corporate Governance, and the qualification of a QA may be widened so as to allow more professional accountants with local or relevant overseas experience to be eligible as a QA.

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.

Please refer to our comments on Q 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.

Conflicts issue could arise during the course of preparation for the IPO and accordingly we do not object to the suggested amendment to the Rules, even though we believe, under the current regime, a responsible sponsor should be disclosing any potential conflicts to the Exchange at the time of A1 filing anyway. Further, a sponsor is under a general duty under Listing Rule 3A.06 to perform its duties with impartiality. In addition, we believe that the circumstances set out in Rule 3A.07 are too wide and onerous and that the Exchange may consider the practicality and necessity of having them all in place.

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.

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 may wish to consider introducing the practice / rule for reducing the public float requirement for listed issuers subsequent to listing (e.g. on the basis of company expansion), on the condition that the issuer could demonstrate that it has a proven track record for meeting the minimum capitalisation requirements as those proposed under new Rule 8.08(1)(d).

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.

We object to the proposal because of the following: 1. exclusion of any shareholder holding 5% or more from the public float may be too harsh for smaller cap companies, and compliance with the public float requirement will be very difficult and onerous. 2. the proposal is unattractive to professional / institutional investors and hence inconsistent with the policy of promoting and maintaining Hong Kong as an international financial centre. 3. the implementation of the proposal may result in increased volatility of share prices of issuers, especially those with a small market cap.

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.

Any lock up restrictions would have been disclosed in the listing documents and investors would be informed and aware of the actual "market float".

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.

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.

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.

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 agree that, in principle, the disclosure obligation should primarily remain with the issuers, and the removal of compulsory pre-vetting process would allow price sensitive information to be released to the market in a timely fashion and hence reduce the potential for trade suspension while pending clearance of the announcement with the Exchange. We support the Exchange striving from a regulatory regime towards a disclosure regime, which is in line with other reputable overseas stock exchanges. Whilst we welcome the step towards disclosure regime, we are concerned about the lack of a clear guidance from the Exchange in respect of the disclosure contents of announcements. To avoid any last minute surprise / hassle or substantial / fundamental amendments at the circular stage, we sincerely urge that, in preparation for the removal of the compulsory pre-vetting process, the Exchange increases the visibility of its policies and practices, and publish clear and consistent guidelines for issuers and its advisors to follow. We believe this will be mutually beneficial to both the Exchange and the issuers.

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?

Please see our comments on Q 7.1. Perhaps during the transition period, the Exchange may request issuers to continue submit draft announcements to the Exchange for comment and while the Exchange may provide comments it would not formally clear any announcement unless it is so specified (in cases of unacceptable sub-standard). This would give issuers some transition to get familiar with the new regime.

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.

While it would be possible and within the usual scope of an issuer's legal advisers to confirm that the constitutional documents of the issuer comply with the relevant law and the Listing Rules (and as this has been the practice), it would be difficult and unusual for an issuer's legal advisers to give any factual opinion and confirm that there is "nothing unusual" about the proposed amendments to the constitutional documents. As a start, it is not the practice of legal advisers in Hong Kong and other common law jurisdictions to give an opinion as to fact. Further, it would be difficult to draw a clear and unambiguous basis on which the legal advisers may rely on in order to be able to give an opinion as to whether the amendments are unusual or not. Such requirement is too vague and too uncertain. For example, the entrenchment of the rights of any preference shares in the articles of an issuer is usual but the detailed terms of the preference shares could vary from case to case and may be very case specific, thus this would make it very hard for anyone to give a view as to whether such terms are usual. Accordingly, we do not believe it would be practical to include a requirement for an issuers' legal advisers to give a confirmation suggested under paragraph 7.48(b) confirming that there is "nothing unusual" in the amendments to the constitutional documents of the issuer.

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.

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.

The current requirement for a circular to be issued in respect of a discloseable transaction is entirely redundant. The additional information required to be made in the circular compared to what is disclosed in the announcement is minimal and not entirely relevant for a discloseable transaction since no shareholders' approval is required.

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.

We have no comments on these paragraphs.

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.

The new Rule 13.52A provides that the Exchange has the right to request to review any documents prior to publication. In addition, the Exchange should provide necessary guidance to issuers on request by the issuers as to the contents and extent of disclosure. The requirement in Rule 13.54 under which issuers' legal advisers are required to confirm that "there is nothing unusual about the proposed amendments for a company listed in Hong Kong" should be deleted.

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.

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.

We take the view that 5% may be on the high side. A lower de minimis percentage (2 to 3%) level may be more appropriate.

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

Yes. *The heading for the fifth column should specify one reference date, and a logical reference date should be the closing market price per share for the immediately preceding trading day.* *The heading for the sixth column should read "% discount/ premium of issue price to closing market price".* *Note 6 should clarify that, in the event of share repurchase, references to "issue price" in column 4 should mean repurchase price.*

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?

Please refer to our comments on Q 8.4.

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.

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

Yes. *If there are no changes from the previous month, then there should be an option for the issuer to elect for no change from the previous month and the issuer should not be required to fill out the balance of the form.*

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.

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.

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.

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.

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.

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.

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.

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.

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.

The dilutive effect to the shareholders arising from the full exercise of a 20% general mandate is substantial, especially if the listed issuer concerned regularly issues shares using the mandate for a number of consecutive years. On the other hand, a 5% cap on the general mandate could be too restrictive for an issuer to attract strategic investor(s) who could bring value and long term benefits to the issuer. Very often, investors, for regulatory or other strategic reasons, need to be certain that the investment would be completed and completion would be achieved within a swift timetable.

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.

Exclusion of any repurchased shares from the general mandate would give greater certainty to both the issuer and the shareholders.

Further, as placing of shares under the general mandate tends to be limited to one or a handful of subscribers, whereas any shares repruchased are bought back from the market, the cumulative effect of including the number of repurchased shares in the general mandate may, following a full exercise of the enlarged general mandate, lead to higher concentration of a larger number of shares in the hands of a fewer number of shareholders.

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.

We believe the requirement for all issues of securities to satisfy exercise of warrants, options or convertibles to be approved by specific mandate as suggested under Q11.4(b) would considerably weaken an issuer's ability and flexibility to raise funds, particularly at times when the issuer faces any difficulty, financing or otherwise. Whilst there is the potential as identified in the Exchange's Consultation Paper that at the time the convertible securities are issued the "conversion price" is set within the discount permissible under the general mandate rules, the market price of the underlying shares into which such convertible securities are convertible may subsequently move up and hence bring the "conversion price" outside the permitted discount range. However, the converse is also possible as the market price of the underlying securities may go under, thus effectively rendering the conversion rights worthless. In that sense, investors in such convertible securities are not given any guaranteed profits.

Perhaps an alternative suggestion is that convertibles may still be issued under the general mandate provided that (i) the conversion price is within the permitted discount range and (ii) the conversion rights may only be exercised after the first anniversary (or a lock out period of some other length) of the issue of the convertible securities. By imposing a "lock out" period before the conversion rights may be exercised, this may avoid potential abuse by investors taking advantage of any short term volatility in the share 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)?

We believe that the proposed 28 clear calendar days' notice is too long. Very often, commercial deals are expected to be achieved within a swift timetable and the current notice requirements under the Hong Kong Companies Ordinance bear more business efficacy.

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.

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.

In principle, we agree that the information set out in the draft Main Board Rule 13.51B should be subject to on-going disclosure obligations, however, not all information warrants the same degree of disclosure in terms of timing. E.g. appointment of a director to another listed companies may be disclosed at the next annual report instead of an immediate announcement; whereas information regarding any investigation (if disclosure is permitted by law) and conviction should be disclosed as soon as practicable to keep shareholders informed Accordingly, we believe that each director / supervisor should be required to provide the relevant biographical information to the issuer continuously up to and including the time of his resignation, however, it should be in the issuer's reasonable discretion to decide on the timing of such disclosure to shareholders .

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.

Please refer to our comments on Q 13.1.

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.

This would clarify that the primary obligation falls on the directors and supervisors to make the necessary disclosure to the issuer so that the issuer would be able to make the relevant disclosure. Afterall, not each conviction or investigation in respect of the director / supervisor would neccesarily relate to the issuer.

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.

If premature disclosure (which is prohibited by law) of any investigation may prejudice the investigation, it would be in all relevant parties' interest to keep it confidential.

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.

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.

Such information would assist shareholders and investors in assessing the experience of the director / supervisor.

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.

This would ensure that the relevant information of the director / supervisor is disclosed.

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.

Again, this would allow shareholders to have a clearer picture in assessing whether to vote for or against the appointment of the director.

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 would think that was the intended position and it should be clarified.

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.

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.

From a micro perspective, we think the Proposed Relief should be extended to property company as defined in Rule 14.04(10) of the Lising Rules. The extension would also cover property companies which engage in property investment business as its principal business and which derive income from leasing the acquired properties. *From a macro perspective, we understand that the rationale for relaxing the strict compliance with the shareholders' approval requirement is one of business sensitivy and confidentiality. Accordingly we are of the view that such waiver should be of general application as opposed to confining it to one specific industry sector (i.e. property development).*

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.

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.

There are other government projects in Hong Kong and other jurisdictions which are similar in terms of process to the land auction in Hong Kong. An example would be the rights to develop and operate the cruise terminal project at the old Kai Tak Airport site.

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.

We are aware that many listed issuers also undertake acquisitions of land outside of Hong Kong (for examples, China) by way of public auctions or tenders or in other ways which are similar in terms of a public auction. *Listed issuers often encounter difficulties when they have to balance the need to maintain strict confidence about the bidding process (whether by way of confidentiality undertaking or as part of their bidding strategy) and the requirement to seek shareholders' approval prior to undertaking the bid. Commercially, public auctions or tenders require the bidders to submit binding bids. If listed issuers were to submit a binding bid through a joint venture established with other parties (which may or may not involve other listed issuers), and if certain thresholds are met, they would be required to seek shareholders' approval prior to submitting such bid. This would mean the listed issuers would need to disclose confidential information about the bid and thereby breaching the secretive nature of a public auction.*

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.

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.

We are aware that certain listed issuers may undertake property projects with connected persons (in addition to the Qualifed Connected Persons) and which are also property companies or engaged in the property development business. We think the exemption could also extend to cover other connected persons of a listed issuer by reason that the interest of the independent shareholders of the listed issuer would be protected by the requirements of the GPA general mandate and the GPA general mandate would be subject to the vote of the independent shareholders.

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.

We are not aware that many listed issuers have utilised the general property acquisition mandate since the issue of the waiver by the SFC and the Stock Exchange. This may indicate that the listed issuers are concerned about the practicablity of the requirements of the general mandate.

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.

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.

The Exchange should also consider exlcuding acquisition of fixed assets in the issuers' ordinary course of business as a notifable transaction under chapter 14. The exclusion of the construction of a fixed asset would only benefit one industry sector and it would be desirable for issuers undertaking different types of business to gain benefit from the wider exclusion (e.g. Cathay Pacific acquiring aircrafts from Boeing / Airbus for its own use in the ordinary and usual course of its business).

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.

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.

Since it has been recognised that issuers will have difficulties in obtaining non-public information on targets in an acquisition, we believe that the codification of the waivers that have been granted by the Exchange will provide the market with more clarity, which will become even more relevant with increased outbound acquisitions by listed companies of overseas assets.

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.

Yes, given that the target and its controlling shareholders, whether in a hostile deal or not, may face the same issues.

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.

From our experience, 45 days would not be sufficient for the preparation of pro forma financial statements of the enlarged group based on the same set of accounting principles. In particular, with the increased trend of outbound investments and the existence of different sets of accounting prinicples in different jurisdictions, it is very difficult for issuers to comply with such requirement.

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.

As an extension to the comment on Q 16.3 above, pro forma financial statements of the enlarged group should be allowed to be published in the subsequent circular, as should any information which may need to be prepared based on non-public information on the target company.

In addition, we think listed issuers may face difficulties in complying with the requirements of preparing an accountants' report covering historical financial information about the target. Firstly, by taking control over the target does not mean that the listed issuer will be in a position to prepare the accountants' report. Preparation of an accountants' report requires the issue of management representation letter to the auditors. The new management team of the target would find it difficult in giving such representation letter in view that they are not familiar with the financial information and financial reporting system of the target. Secondly, it is uncertain how much reliance the auditors could place on the management representation letter (even if the new management team considers appropriate to issue such letter) in view that the auditors aware that the new management team has just become the management of the target. Thirdly, if the target is also listed on another exchange, the preparation of the accountants' report by the HKEx listed issuer would present two different sets of published accountants' reports of the target. The information contained in the two reports could be very different and the markets may find it confusing when considering and analysing two sets of information.

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.

Please refer to our comments on Q 17.2 below.

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.

Statutory declarations are appropriate, as the information contained in DU Forms may not verifiable based on public searches. A higher standard imposed on the declaring party should therefore be maintained.

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.

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.

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.

The definition of dealing in the Model Code is very wide and could be further narrowed down in addition to adopting the new exceptions. For example, under the current definition, an involunatry act of release by a bank of the share charged would fall under the meaning of "dealing" in the Model Code.

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 proposed black out period is too long and would result in the period during which a director is able to deal in the securities of the issuers being too limited. The general prohibition on directors to deal whilst in possession of material non-public information should be sufficient.

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.

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.

A. Financial Assistance The exemption for financial assistance provided under Rule 14A.65(3)(b)(i) of the Listing Rules should extend to cover financial assistance provided by a listed issuer for the benefit of a connected person. Such an extension would cover the situation where a listed issuer provides financial assistance to a company in which it holds interest but which is also its connected person (for example, an associate of a substantial shareholder of the listed issuer). We think such extension is reasonable in view that it would only exempt those financial assistance provided by the listed issue on normal commercial terms and pro-rata basis. On this basis, the interests of the independent shareholders are adequately protected. The current scope of Rule 14A.65(3)(b)(i) only covers those companies (i.e. JVCs) in which a listed issuer and a connected person are shareholders and where any connected person (other than at the subsidiary level) entitled to exercise, or control the exercise of, 10% to 29% of the voting power of the JVC. If a connected person controls 30% of the voting power of a JVC, such JVC will become a connected person of the listed issuer and therefore would not be able to benefit from the exemption. The distinction between a JVC which is controlled by a connected person as to 29% and a JVC which is controlled by a connected person as to 30% seems to be arbitrary, given that the main requirement for qualifying for the exemption is that the financial assistance is provided by the listed company on a fair and pro-rata basis. B. Director nominations The Exchange may also consider amending Para. 4(4) of App. 3 to align with the 14 days' adjournment requirement under Rule 13.70.

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