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.

On the basis that the Companies Ordinance in Hong Kong will not be amended in the near future, removing this requirement would be an important first step in allowing electronic dissemination of financial information, at least for non-Hong Kong incorporated companies in the interim.

We note that the Financial Services and Treasury Bureau ("FSTB") in their Consultation Paper dealing with proposed amendments to the Companies Ordinance published in March 2007 recommended the greater use of "summary financial reports" to be sent to shareholders in lieu of full annual reports. Both the use of summary financial reports and making information available on websites would in our view be an improvement over the current requirement to send full annual reports to all shareholders. However, in order to resolve long-term differences in these allowances between Hong Kong and non-Hong Kong incorporated companies, we recommend the Exchange liaise with the FSTB before either body finalises their requirements in this regard.

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.

There are sufficient mechanisms within the proposed Rules to allow shareholders who would like to continue receiving hard copies of corporate communications to advise the listed issuer of this fact.

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.

The provisions that shareholders can at any time request to receive hard-copies generally or for an individual communication in our view acts as sufficient protection for those shareholders that wish to continue receiving hard copies of corporate communications.

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.

These requirements and time limits appear to be practical and provide sufficient opportunity to shareholders to advise the listed issuer of their refusal to provide consent.

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.

We consider it more appropriate to retain consistency in the requirements for sending of communications in electronic form (i.e. on a CD or by e-mail). Distribution by e-mail is still subject to the "express, positive confirmation" requirement.

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.

However we suggest adding "indicating their objection" after "the listed issuer has not received a response" in (Main Board) Rule 2.07A(2A)(b)(ii) to make the wording more clear.

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 not agree with this proposal for the reasons set out below:

(1) The reasons originally provided for requiring a qualified accountant still exist and are becoming more rather than less persuasive due to the increasing complexity of accounting requirments. The "stable platform" of IFRS/HKFRS comes to an end in 2009 at which time there will be ongoing significant amendments to IFRS/HKFRS. It is therefore clearly in the interests of shareholders of listed issuers that at least one individual in the organisation involved in the preparation of financial information reported to shareholders is in a position to understand and respond to these changes.

(2) "Cost" is one argument advanced against requiring a qualified accountant. However in our view the marginal cost of employing a "qualified" accountant versus an "unqualified" accountant should be seen as an unavoidable expense of being a listed company with ongoing obligations to provide shareholders with high quality financial reporting. If this marginal cost for one individual is significant to a listed issuer it may be an indication that the company is not suitable to be a listed company.

(3) It is correct that HKFRS has been harmonised with IFRS and therefore it is logical to expect that the HKICPA will recognise additional foreign accounting bodies which will broaden the base of qualified accountants. However if the Exchange believes that this process is not sufficient, it is recommended that it revises its criteria for qualification or identify those qualifications that it deems appropriate for an accountant of a Hong Kong listed issuer (for instance for many Mainland companies this may be individuals with a CICPA qualification). In those rare situations where an individual proposed by a listed issuer as their "qualified accountant" does not hold an appropriate formal qualification, it would appear appropriate for the Exchange to assess the suitability of the individual on a case by case basis.

(4) One argument put forward is that the establishment of the FRC has heightened the awareness of the requirement to produce high quality financial statements. On the basis that the FRC is still effectively in the process of defining its scope of operations we recommend that the Exchange waits until it is fully operational and has had sufficient time to exert its influence on financial statement preparers before concluding on its effectiveness in improving the quality of financial information. From a corporate governance perspective, we believe in this situation shareholders would be better served by a preventative rather than a detective measure.

(5) Paragraph 3.12 makes the statement that "external auditors provide independent external advice and verification that financial reporting standards and compliance matters are properly dealt with" in the context of explaining why a suitably qualified accountant is not necessary. We point out that it is a requirement that auditors of listed issuers in Hong Kong are suitably qualified and accordingly it is reasonable to expect that preparers of financial information are similiarly qualified to act in this role. Indeed, the independence of external auditors is jeopardised in situations where the preparers of financial information are overly reliant on their external auditors. Similarly it would be difficult for sponsors of listing applicants to conclude that there are sufficient processes, systems and controls established within the applicant in the absence of a suitably qualified individual in a financial reporting role.

(6) Shareholder activism in Hong Kong is still in its infancy compared to other major markets and accordingly there is not the natural pressure on directors to "do the right thing". It is therefore in our

view appropriate for the Exchange to be taking a more prescriptive approach than would be necessary in other jurisdictions.

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 reasons set out above.

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.

The role of the sponsor is a very important one in ensuring that only suitable candidates are brought to listing. In this context we suggest the Exchange consider whether a more onerous independence requirement is imposed, such that the sponsor should be independent of the listing applicant for the entire track record period included in the prospectus (similar to independence principles that would be applied by the applicant's reporting accountant pursuant to their profession's ethical requirements). Similar to the reporting accountant we believe that it is important that a sponsor is independent in both fact and appearance. The fact that a sponsor was not independent of the applicant at some time during the trach record period being presented by the applicant may call into question the impartiality of the sponsor even though they may be able to assert their independence at the time they are engaged by the applicant.

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 our additional recommendation above.

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.

We agree with making a change on the basis that this change is simply a codification of the Exchange's current practice.

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

No further comments.

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.

No other suggestions.

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.

The use of a minimum percentage would probably be the easiest to understand, possibly constructed on a similar basis to the amended minimum percentages used for public 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.

We have no comments on this proposal.

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 have no comments on this proposal.

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.

We have no comments on this proposal.

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 with the principle that the responsibility for releasing high quality announcements rests with the issuer, and that the Exchange's resources could be better directed to other areas such as monitoring and enforcement. We also agree with the principle that if there is any doubt about the contents of an announcement, the issuer should consult the Exchange. Therefore for those announcements identified by the Exchange as being reasonably standardised, we agree that the Exchange could dispense with the practice of pre-vetting.

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?

In the transitional period, where the Exchange does identify any issues with an announcement after its release, it should be carefully considered whether these issues are significant enough to warrant a clarification to avoid confusing the market with numerous subsequent announcements of relatively minor issues. Where the Exchange identifies significant issues on a repeated basis for a particular issuer, to protect the market in the short-term it should consider requiring pre-vetting of all of that issuer's announcements until it is satisfied that the issuer has improved the quality of its reporting, while taking any additional action it deems necessary against the issuer's directors who approved the deficient announcements.

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.

On the basis that in the Exchange's experience such circulars or statements are relatively straightforward and with the condition that if there are any non-standard elements, this would trigger pre-vetting.

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.

These documents would appear to be non-standard by their nature and would benefit from pre-vetting.

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.

However we note that if expert reports are to be reproduced in full in the announcement, this may result in announcements of considerable length. We suggest that the Exchange consider whether it should possibly not allow profit forecasts to be published in respect of discloseable transactions which by their nature are not significant to the issuer and do not require a decision to be taken by the shareholders. This would help to standardise practices in respect of discloseable transactions.

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 issues.

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.

We have no comments on these issues.

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.

However, we note that the accounting associated with an issue of equity which is considered to be a financial instrument may result in significant changes in market values of the instrument which are accounted for through the income statement. The Exchange may wish to consider developing a specific disclosure obligation to alert shareholders to the fact that the issue may have a significant accounting impact on the issue of the equity instrument.

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.

Although we do not object to the use of 5% as a threshold, we note that even small percentage changes in an issuer's share capital may have a detrimental effect on shareholders' interests and the Exchange could consider a smaller threshold. However the practicality of administering this threshold both from the perspective of the issuer and the Exchange would need to be carefully assessed.

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

No further comments

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 comments

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.

9:00 a.m. would be appropriate except in exceptional cases where the Exchange waives this deadline, in which case lunch-time of the next business day would appear to be an appropriate deadline.

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

No comments

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 comments

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 comments

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.

No further comments

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?

While this may achieve the objective of avoiding the backdating problem noted by the Exchange in other markets, it is not clear that this would have any other benefits and would lead to additional reporting that may not be of much value to shareholders. If a record is needed of these issuances it may be better to require that the issuer notify the Exchange, and only where the issuance exceeds a de minimis threshold is the issuance required to be announced to shareholders.

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.

We have no comments on this proposal.

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.

We have no further comments on this proposal.

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.

We have no further comments.

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.

We have no further comments.

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.

The requirements in terms of chapter 14 appear to be sufficient.

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.

We have no further comments.

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.

We have no further comments.

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 with the view that there is the possibility of abuse of general mandates by listed issuers for the reasons given in the Consultation Paper. To limit the extent of this abuse we recommend reducing the size of the general mandate.

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.

Irrespective of the reason for the issue of shares, 10% would appear to be an appropriate threshold to use to restrict the ability of the listed issuer to materially dilute the shareholdings of individual shareholders without further approval, while allowing the listed issuer to raise capital if necessary or fulfil its obligations to issue shares for other purposes.

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.

This would appear appropriate as this was the basis on which the approval was first obtained.

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.

In respect of 11.4 (a) it is not clear how issues of shares not for cash, other than in respect of exercises of warrants, options or convertible securities, would be treated. We certainly believe that these other issues should be subject to the appropriate threshold relating to discounts to the benchmarked price.

We further believe that the 20% threshold in respect of discounts to a benchmark price is too large and the Exchange should consider reducing this to avoid repeated issues at a discount that would significantly dilute shareholder value. We note the UK guidance of 5% as a more appropriate level to protect individual shareholders.

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)?

The current notice periods appear to be both adequate and practical.

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)?

Set out in the rules.

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?

Voting by poll is significantly more sensible than a show of hands which disregards the principle of voting power. We believe any cost or administrative burden on listed issuers would be more than offset by the improved corporate governance benefits.

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.

However on the basis that issuers are required to maintain their own websites at least some of this information would appear to most useful to the market if required to be maintained on an updated basis on their own websites. This would avoid numerous submissions in respect of relatively minor matters such as a change in a director's professional qualifications. Major changes such as convictions should be notifiable immediately to the Exchange.

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.

Subject to distinguishing between more significant and less significant information (that would need to be updated on the issuer's website only).

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.

Appropriate sanctions should be developed where directors are found to be in breach of this requirement.

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.

However we note that the information required in respect of listing documents is not as explicit as is required under Rule 13.51. It would seem to be beneficial to harmonise the information required by Rule 13.51 with Appendix A. *We also refer to our comments above about distinguishing between more significant and less significant information. It would not appear to be beneficial to have numerous announcements regarding relatively routine matters such as the updating of professional qualifications of a director. This may dilute the impact of such announcements.*

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.

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.

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.

Subject to our comments above.

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.

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.

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.

However we note that issuers that intend to adopt property development as a new principal business activity, and have received the approval of their shareholders to do so, may need to approach the Exchange to seek a waiver from specific shareholder approval requirements when it is intended to aquire the property through a government auction.

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.

However we note that HKAS 14 "Segment Reporting" will be replaced by HKFRS 8 "Operating Segments" for financial periods beginning on or after 1 January 2009. While HKAS 14 was more focused on the identification of segments using various size thresholds, HKFRS 8 focuses more on the internal reporting of the company, the implication being that issuers may report a property development as a separate segment due to its internal reporting structure, although this activity may not be significant to the issuer as a whole. This may not meet the objective of the Exchange's identification criteria for "principal" activities.

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.

Generally for acquisitions of property from non-government auctions the issuer would have more flexibility in buidling shareholder approval requirements into the terms of the acquisition.

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.

For the reasons set out in the Consultation Paper, a 50% threshold would appear to be appropriate.

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.

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.

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.

The Consultation Paper states that it is the Exchange's intention that acquisitions of components of a fixed asset being constructed that themselves are defined as transactions are still to be treated as notifiable transactions. However the redrafted Rule 14.04 does not make this explicit and as such there is the potential for misunderstanding.

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.

In some instances there may be no practical alternatives the issuer could adopt to obtain the information. However we believe the Exchange would need to consider each case carefully to avoid any misapplication of the exemption.

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.

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.

In the case where the offerree is of such complexity and size, 45 days may not be sufficient for the directors and their advisers to make a proper assessment of the company to prepare the necessary information to be included in the circular to shareholders.

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.

We note that in some cases it may not be possible for the directors to make a proper assessment of the differences between the issuer's accounting framework and that of the acquiree required by Rule 14.67A(2)(a). Also it may not be possible to ascertain what specific accounting choices the acquiree has made that would lead to differences with the issuer's accounting policies. Accordingly the disclosures would need to be clearly stated that they are on a "best efforts" basis and may not be comprehensive.

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.

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.

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.

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.

This requirement would create more certainty about when price sensitive information is available and reduces the possibility of misunderstandings and insider trading.

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.

These changes would increase the clarity of director dealing requirements.

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.

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