Response to
Combined Consultation Paper
On Proposed Changes to the Listing Rules

Hong Kong Stockbrokers Association

7 April 2008

Issue 1 - Use of websites for communication with shareholders

1.1 Agree. All listed issuers should comply with a standard which is no less onerous than locally incorporated issuers.
1.2 We concur with the proposal so long as the prescribed procedure is approval by shareholders of issuers in a general meeting.
1.3 We concur with the proposal.
1.4 (a) Agree.
(b) Yes.
(c) Agree.
1.5 If shareholders consent to receive corporate communication by electronic means we agree that sending corporate communication on CD should not be made mandatory.
1.6 We will leave the drafting issues to other interested group.

Issue 2 – Information gathering powers

2.1 No. We do not agree the Exchange, being an commercial organization, be granted rights to conduct investigation (howsoever worded/packaged). Investigation should be a job of a statutory regulators or other law enforcement agency.
2.2 See 2.1.

Issue 3 - Qualified accountants

3.1 Agree. The decision as to what is the most appropriate qualification for finance personnel should be made by listed issuer themselves.
3.2 Agree. The decision as to what is the most appropriate qualification for finance personnel should be made by listed issuer themselves.

Issue 4 – Review of sponsor's independence

4.1 No. We consider the existing requirement for a qualified accountant should be kept.
4.2 No. See 4.1.

Issue 5 – Public float

5.1 We agree the Listing Rules should be amended to enhance clarity and certainty.
5.2 We will leave the drafting issues to other interested group.
5.3 n.a

Issue 5B – Constituents of "the public"

5.4 We do not see the need to amend the existing Rules 8.24.
5.5 n.a

Issue 5C: Market float

5.6 We do not see the need to introduce yet another subset of public float. We consider this will confuse the market and will not yield the intended benefit.
5.7 n.a.

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

6.1 We welcome the proposal to dis-apply the minimum spread of securities holders in event of a bonus issue of a class of securities new to listing. The existing requirement is too stringent and impractical to enforce.
6.2 We consider exemption should be available to all listed issuers to ensure clarity and certainty of their application.
6.3 We will leave the drafting issues to other interested group.

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

7.1 We agree that the Exchange should no longer review all announcements of listed issuers as a routine matter on the basis of paragraphs 7.8(b) and 73.9 to 7.10.
7.2 We agree the proposed arrangements.
7.3 We agree the proposal to discontinue to pre-vet routine circulars as they are quite standard and straightforward.
7.4 We do not see issuers' proposals to explore for nature resources as an extension to or change from the listed issuer's existing activities is any higher risk than other industries (e.g pharmaceutical, biotechnologies) hence should be subject to a more stringent scrutiny. We consider the Exchange should pre-vet documents relating to any material change from listed issuer's existing activities.
7.5 Yes. We support the proposal to remove the requirement to publish a circular. This is because the existing threshold of 5% is far too low to require any substantial disclosures by issuers.
7.6 We agreed with the proposed minor Rule amendments.
7.7 We will leave the drafting issues to other interested group.

Issue 8 – Disclosure if changes in issued share capital

8.1. No. We do not see the need to have a next day return disclosure. All material changes in issued capital are already subject to various disclosure requirements under the existing Listing Rules. The more practical solution is to publish the Monthly Return on Exchange's website by issuers.
8.2 See our response in 8.1 above.
8.3 See our response in 8.1 above.
8.4 See our response in 8.1 above.
8.5 See our response in 8.1 above.
8.6 See our response in 8.1 above.
8.7 See our response in 8.1 above.
8.8 See our response in 8.1 above.
8.9 See our response in 8.1 above.
8.10 Yes.
8.11 See our response in 8.1 above.
8.12 We will leave the drafting issues to other interested group.

Issue 9 – Disclosure requirements for announcements regarding issues of securities for cash and allocation basis

9.1 We have no objection to the proposal.
9.2 We will leave the drafting issues to other interested group.
9.3 We have no objection to the proposal.

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

10.1 No. The existing notifiable transaction requirements already provide shareholders adequately protection in connection with material dilution.
10.2 Yes. The Listing Rules regulating deemed disposals already provide shareholders adequately protection in connection with material dilution.
10.3 We will leave the drafting issues to other interested group.

Issue 11 – General mandates

11.1 No. Listing Rules should be amended to restrict the size of general mandate for issue with a substantial market capitalization. (e,g HK$40 billion) These issuers are normally are more mature companies with more financing alternatives.
11.2 No. There is no need to set arbitrary limits for different application in general mandate.

11.3 No. The existing Listing Rules already impose a six months moratorium to issue new share following repurchase of shares.
11.4 No.
11.5 No.

Issue 12 – Voting at general meetings

12.1 No.
12.2 No.
12.3 No.
12.4 No.
12.5 No.
12.6 No.

Issue 13 – Disclosure of information about and by directors

13.1 No. The proposal is too onerous and adds little value to the market.
13.2 No. See 13.1.
13.3 No. See 13.1.
13.4 Yes. The existing Rules are not reasonable.
13.5 No. See 13.1.
13.6 Yes. The existing Rules are confusing.
13.7 No. Such disclosure needs not be mandatory. This is because if any such qualifications are of any merit the relevant directors/supervisor would disclose it voluntarily. Where directors/supervisors have more than a few professional qualifications it will overlook some of them.
13.8 No. See 13.6.
13.9 Yes. Disclosure obligations should be consistent between the two markets.
13.10 Yes. The existing wording is confusing.
13.11 We will leave the drafting issues to other interested group.

Issue 14 – Codification of waiver to property companies

14.1 No. The Proposed Relief discriminates issuers whose principal activities are outside of Hong Kong.
14.2 Yes.
14.3 No. The Proposal Relief should extent to acquisition of all assets classes should such asset acquisitions are conducted under a listed company’s ordinary and usual course of business.
14.4 See 14.3.
14.5 See 14.1 and 14.3.

14.6 See 14.1 and 14.3.
14.7 Yes. Annual Cap is arbitrary and offer little protection to shareholders and should be scrapped.
14.8 We will leave the drafting issues to other interested group.

Issue 15 – Self- constructed fixed assets

15.1 Yes we welcome the proposal to amend notifiable transaction Rules 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 so that Exchange's rationale of the notifiable transaction Rules can be accurately reflected. It appears that individual executive of the Listing Division all have their own interpretation and our members are very confused as to what the Exchange's official position is.

15.2 We consider the draft amendments are unable clarified the stated rationale of the Exchange but serve to confuse its readers. For illustration, assume the listed issuer is a car manufacturer and as part of its expansion plan it will increase its production capacity by building a further production facilities and need to be housed by a new factory building. The whole project ("Project") encompasses the following:

- Purchase a plot of land
- Build a factory on the land to house the new production line
- Purchase machineries and other accessories for building the production line
- Separate external professional engineers and contractors will be hired to construct and design the factory building and production facilities
- The sum for each contracted party is less than the threshold for disclosable transaction but if aggregated the Project will be classified as a very substantial acquisition.
- The whole Project will take about12 months to complete.

It is not clear whether the Project can be excluded from the notifiable transaction rules under the proposed amendments for the following reasons:

- Main Board Rule 14.22 provides that Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are ***all completed within a 12 month period*** or ***are otherwise related***. Will the all of the contracts related to the Project be aggregated for the purpose of the size test since the draft Rules do not exclude the application of MBR 14.22
- The proposed exclusion is only applicable if a transaction is of a ***revenue nature***. When assessing whether the Project is of a ***revenue nature***, note (4) to the MBR 14.04 (1)(g) provides issuer should take into account whether the transaction is a revenue or capital transaction for tax purposes. It is obvious that purchasing land and construction of factory building or production facilities are not of a revenue nature for tax purpose.

- "ordinary and usual course of business" of an entity means ***the existing principal activities of the entity*** or ***an activity wholly necessary for the principal activities*** of the entity. As a car manufacture, it is obvious that purchasing land and construction of factory building or production facilities are not its existing principal activities and there is no published guidance or listing decisions from the Exchange as what constitute an activity wholly necessary for the principal activities.
- The proposed Rules only regards a fixed asset is constructed by the listed issuer for its own use if the listed issuer …has the expertise to undertake the construction of the fixed asset…is most relevant and responsible for bringing the fixed asset to the location and condition.. It is obvious that as a car manufacturer it will need to depend on external professionals and contractors to design and build the factory and production facilities. Again there is guidance as to the interpretation of proposed Rules.

Para 15.11 attempts to clarify that a acquisition of component of the self-constructed fixed asset is still subject to the notifiable transaction Rules. We consider such clarification contradicts the Exchange's stated rationale of the notifiable transaction Rules which is to prevent a listed issuer from ***making a material change to its business and/or move to other businesses*** without informing shareholders or affording them an opportunity to vote on such change. This is because if a fixed asset is considered as self-constructed fixed asset under the proposed Rules then accordingly the acquisition of any of the components of such self constructed fixed asset cannot be regard as a material change to its business for the purpose of the proposed amendments.

We consider any acquisitions of component of the self-constructed fixed asset should also be excluded from the notifiable transaction Rules providing that the plan of the self-constructed fixed asset has been previously disclosed in announcements, circular or reports to shareholders with a quantifiable sum. Excess expenditures should be subject to separate announcements under Main Board Rules 13.09(1)(a).

Issue 16 – Disclosure of information in takeovers

16.1 Yes.

16.2 Yes. We consider that new Rule should extend to all acquisitions be it hostile takeovers or otherwise. This is because prescribed information of target companies sometimes is not accessible until control of the target is obtained.

16.3 No. We consider 45-day time frame may be too short as to transition of management control often take months. We suggest a three months time frame.

16.4 We will leave the drafting issues to other interested group.

Issue 17A – Streamlining disclosure of director's and supervisor's information through an issuer's announcement

17.1 Yes.

17.2 Yes. As the directors already assumed liabilities under SFO upon publication of the biographical details in the prospectus or announcement there is no need to reply on remedies on Crime Ordinance which is lower than SFO.

17.3 Yes. The practices for the two boards should be aligned.

17.4 Yes. Disclosures of directors/supervisors should be same at time of IPO and subsequent appointments.

17.5 Yes.

17.6 We will leave the drafting issues to other interested group.

Issue 17B – Information gathering powers of the Exchange

17.7 No. See 2.1

17.8 No. See 2.1

Issue 17C- Service of disciplinary proceedings on directors

17.9 Yes

17.10 We will leave the drafting issues to other interested group.

17.11 Yes.

Issue 18 – review of Model Code for Securities Transactions by Directors of Listed Issuers

18.1 Yes. The additional exceptions do not give substantive advantage to directors over other shareholders.

18.2 Yes.

18.3 No. See 18.4

18.4 The Proposal is too restrictive. Issuer is to publish quarterly results (mandatory for all GEM issuers) the dealing period for their directors will be reduced at least by 4.5 months. This will be even longer if one also accounted for dealing restrictions due to other price sensitive events. This will also discourage Main Board issuers to issue quarterly reports voluntarily as this will extend the black out period.

18.5 Yes

18.6 Yes.