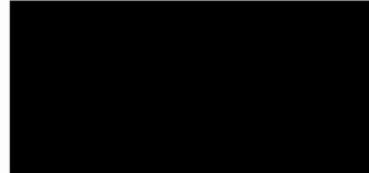




HONG KONG

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YOUR REF

18 January 2008

Dear Sirs

Combined Consultation Paper on Proposed Changes to the Listing Rules

We refer to our letter of 17 January 2008 submitting a joint response on behalf of a number of investment banks to Issue 5A of the Combined Consultation Paper on the Proposed Changes to the Listing Rules issued by the Hong Kong Exchanges and Clearing Limited on 11 January 2008 (the *Joint Submission*).

We have since been informed by Merrill Lynch Far East Limited that they wish to support and add its name to the Joint Submission. Accordingly, please see attached the Joint Submission (amended to include Merrill Lynch Far East Limited's name) for your reference.

If you have any questions regarding the above, please do not hesitate to contact Ng Kay Ian of this office at [REDACTED].

Thank you.

Yours faithfully



Freshfields Bruckhaus Deringer

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18 JANUARY 2008

JOINT SUBMISSION

by

ABN AMRO BANK N.V., HONG KONG BRANCH

BOCI ASIA LIMITED

CHINA INTERNATIONAL CAPITAL CORPORATION LIMITED

CITIGROUP GLOBAL MARKETS ASIA LIMITED

CREDIT SUISSE (HONG KONG) LIMITED

DEUTSCHE BANK AG, HONG KONG BRANCH

J.P. MORGAN SECURITIES (ASIA PACIFIC) CO. LTD.

LEHMAN BROTHERS ASIA LIMITED

MERRILL LYNCH FAR EAST LIMITED

MORGAN STANLEY ASIA LIMITED

UBS AG

(in alphabetical order)

in response to
Issue 5A of the Combined Consultation Paper on Proposed Changes to the Listing Rules dated 11 January 2008 issued by The Stock Exchange of Hong Kong Limited (the "Stock Exchange") in respect of the minimum level of public float under Rule 8.08 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules")

1. Introduction

Reference is made to the consultation paper dated 11 January 2008 (the "Consultation Paper") issued by the Stock Exchange of Hong Kong Limited (the "Stock Exchange") seeking comments from the market regarding a number of substantive policy issues as well as amendments to the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules"). This submission seeks to provide specific comments to address the issues raised in the Consultation Paper regarding the minimum level of public float (under Issue 5A).

Issue 5A: Minimum level of public float. The Stock Exchange has proposed the following amendments to Rule 8.08(1)(d) in respect of the minimum public float requirements for Main Board issuers:

Market capitalisation	Proposed minimum public float
Not exceeding HK\$10 billion	25%
Over HK\$10 billion but not exceeding HK\$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$2.5 billion (determined as at the time of listing); and (ii) 15%
Over HK\$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands and equal to HK\$6 billion (determined as at the time of listing); and 10%

The above amendments of the minimum public float requirements is proposed to be applicable to all issuers so long as they meet the relevant thresholds and will no longer be available at the Stock Exchange's discretion.

As market participants who have had substantial experience in considering issues relating to the minimum public float requirements and the constituents of "the public", we, ABN Amro Bank N.V., Hong Kong Branch, BOCI Asia Limited, China International Capital Corporation Limited, Citigroup Global Markets Asia Limited, Credit Suisse (Hong Kong) Limited, Deutsche Bank AG, Hong Kong Branch, J.P. Morgan Securities (Asia Pacific) Co. Ltd., Lehman Brothers Asia Limited, Merrill Lynch Far East Limited, Morgan Stanley Asia Limited and UBS Investment Bank are making this joint submission on our own behalf to address the above issues raised and to respond to the questions asked in the Consultation Paper.

2. Minimum public float requirements under Rule 8.08

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

We agree that the existing Rule 8.08(1)(d) should be amended.

- (b) **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? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.*

In respect of the proposed amendments to Rule 8.08(1)(d) at Appendix 5, we would like to express our strong support for the reduction of the minimum public float requirements from the current minimum of 15% to 10% for listing applicants with a sufficiently large market capitalisation. In addition, we respectfully request the Stock Exchange to consider our following observations.

Under the proposed amendments at Appendix 5, a company would need to have a market capitalisation at the time of listing in excess of HK\$60 billion in order to be entitled to the 10% minimum public float percentage¹. We have, in recent transactions, noticed a number of instances whereby the size of the H share offering has been limited to 10% of the listing applicant’s market capitalisation. As you are aware, the calculation of the expected market capitalisation of a listing applicant would have to be determined at the low end of the price range before marketing and without taking into account the over-allotment option. Accordingly, we would like to raise our concern that in this respect, many companies which were considered sizeable deals when listed (for example, China Coal Energy Company Limited, and China Communications Construction Company Limited – being the two largest non-bank IPOs for the Hong Kong market in 2006 – and Ping An Insurance (Group) Company of China Limited), based on the low end of the price range, would not have been able to meet the market capitalisation for the 10% public float.

Further, we would like to make the observation that the current Hong Kong securities market had, in the second half of 2007, seen the Hang Seng index reached record high levels, which no doubt affected the valuation of companies. We submit that the market capitalisation value being used to determine an acceptable public float should take into account both the peaks and troughs of the valuation cycle, and this would suggest lowering the market capitalisation thresholds for Rule 8.08(1)(d).

Accordingly, in determining the appropriate market capitalisation thresholds for the minimum public float, we would like to suggest the following.

Suggestion

Market capitalisation	Proposed minimum public float
Not exceeding HK\$8 billion	25%
Over HK\$8 billion but not exceeding HK\$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$2.0 billion (determined as at the time of listing); and (ii) 15%

¹ Under the proposed amendments to Rule 8.08(1)(d), as the minimum public float is proposed at a higher of HK\$6 billion or 10%. Accordingly a listing applicant must have an expected market capitalisation of at least HK\$60 billion to enjoy the lower public float percentage of 10%.

Over HK\$20 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands and equal to HK\$3 billion (determined as at the time of listing); and 10%
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Our suggested thresholds above would allow listing applicants with a market capitalisation of HK\$30 billion or more to enjoy a 10% public float. Our proposal follows the structure of the proposal in the Consultation Paper and is also higher than the thresholds in the existing Listing Rules whereby a company with a market capitalisation of HK\$10 billion could enjoy a 15% public float with securities of HK\$1.5 billion constituting the value of the public float. We also hope that, going forward with this proposal, more PRC companies would have the ability to select the Hong Kong securities market as its listing venue.

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

We welcome and support the Stock Exchange's re-examination of its current minimum public float regime and its reduction, for large market capitalisation companies from 15% to 10%. It is a long-awaited change in light of the increasing number of very large market capitalisation companies seeking listings in Hong Kong.

In addition to our suggestions above in response to Question 5.2, we would like to make the following additional comments on the issue of public float.

2.1 Revisiting Rule 8.08(1)(b)

In addition to the amendments which the Consultation Paper propose, we would also like to invite the Stock Exchange to revisit Rule 8.08(1)(b). Under Rule 8.08(1)(b):

"Where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Stock Exchange) at the time of listing must be at least 25% of the issuer's total issued share capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of not less than HK\$50,000,000."

In light of the proposed amendments to the minimum public float requirements under Rule 8.08(1)(d) and that such amendments are proposed to be applicable to all issuers so long as they meet the relevant thresholds and will no longer be available at the Stock Exchange's discretion, corresponding changes will need to be made to Rule 8.08(1)(b), our suggestion for which is set out below.

2.2 Increasing difficulties for PRC companies to list in Hong Kong – the rise of the A + H company

The current trend for PRC companies seeking to list their H shares in Hong Kong is to have a corresponding listing of their A shares in the PRC. In recent years, we have seen an increase in the number of listed issuers which have listings on both the Hong Kong H-share market and the PRC A-share market.

Under PRC securities regulation, the minimum public float requirement in the A-share market for companies whose issued share capital is over RMB400 million is 10% of the issuer's total issued share capital. We understand that in the PRC regulators' calculation of the minimum public float, shares held by the public in the form of H shares would count towards the minimum 10% public float. However, in the Stock Exchange's calculation of the level of public float, shares held by the public on the A share market do not count towards the minimum public float on the basis that the shares are not fungible. Accordingly, there is a difference in the application, even though both regulators may accept the same minimum number of 10% and such difference would need to be considered further in connection with an "A+H" company.

Further, in recent years, there is an expectation that a PRC issuer who issues H shares in Hong Kong would also issue A shares in the PRC and with the size of the A share offer being at least equal to that of the H share offer. Accordingly, an "A+H" company will need to (a) ensure that at the time of listing, the company at least meet the minimum public float percentage with respect to its H shares; and (b) be expected to have the size of its A share offering at least equal to its H share offering and (c) ensure that the minimum public float requirements in Hong Kong and PRC are both satisfied. Coupled with the increase in importance of the PRC securities market, the frequency of PRC companies seeking to list their H shares in Hong Kong is increasingly being threatened.

The following table compares, at each market capitalisation threshold, the extrapolated minimum total offer size between non-PRC companies and "A+H" companies.

Market capitalisation at the time of listing	Minimum public float for non-PRC companies	Minimum public float for "A+H" companies²	Extrapolated minimum total offer size for non-PRC companies	Extrapolated minimum total offer size for "A+H" companies
Below HK\$10 billion	25%	50%	HK\$2.5 billion	HK\$5 billion
HK\$10 - HK\$16.66 billion	25% - 15%	50% - 30%	HK\$2.5 billion	HK\$5 billion
HK\$16.66 - HK\$40 billion	15%	30%	HK\$2.499 – HK\$6 billion	HK\$4.998 – HK\$12 billion
HK\$40 – HK\$60 billion	15% - 10%	30% - 20%	HK\$6 billion	HK\$12 billion
Over HK\$60 billion	10%	20%	Over HK\$6 billion	Over HK\$12 billion

² Assuming the issuer proposes to issue both A shares and H shares, PRC companies seeking to list in both Hong Kong and PRC will need to ensure that the size of its A share offering is at least equal to its H share offering and the minimum public float requirements in Hong Kong and PRC are both satisfied. Accordingly, the minimum public float percentage applicable to an "A+H" company would be 2 times the proposed new percentages under Rule 8.08(1)(d).

In our view and as illustrated above, the cumulative effect of these requirements and expectations are unnecessarily onerous for issuers, even following the proposed amendments to Rule 8.08(1)(d) taking effect, as they will need to increase their offer size simply to demonstrate sufficient liquidity in the trading of their securities. On this basis, we respectfully submit that the current operation and interpretation of Rule 8.08(1)(b) may potentially be seen as penalising PRC issuers who intend to list on both the A share and H share markets.

For example, based on their market capitalisation at the time of their listing, if Industrial and Commercial Bank of China Limited ("ICBC"), Bank of China Limited ("BOC"), China Construction Bank Corporation ("CCB"), China CITIC Bank Corporation Limited ("China CITIC"), PetroChina Company Limited ("PetroChina"), China Life Insurance Company Limited ("China Life") and Ping An Insurance (Group) Company of China, Ltd. ("Ping An") were to issue both A and H shares (in light of the current proposed amendments to Rule 8.08(1)(d)) and are required to (a) satisfy the A and H share minimum public float requirements and (b) ensure that the size of the A share offering is no less than its H share offering, each of them would have to have the following total offer sizes:

Company	Date of Listing	Market capitalisation as at the time of H-share listing (HK\$ billion)	Applicable minimum public float percentage under proposed Rule 8.08(1)(d)	Extrapolated minimum total offer size ³ (HK\$ billion)
ICBC	27-Oct-06	1,006	10.00%	201.3
BOC	1-Jun-06	718	10.00%	143.7
CCB	27-Oct-05	519	10.00%	103.7
CITIC Bank	27-Apr-07	224	10.00%	44.9
PetroChina	7-Apr-00	223	10.00%	44.7
China Life	18-Dec-03	93	10.00%	18.6
Ping An	24-Jun-04	64	10.00%	12.8

To put the numbers above into context, ICBC's IPO in 2006, raised approximately HK\$170 billion from both the A and H share markets and was already the largest IPO globally. BOC and CCB raised approximately HK\$87 billion and HK\$72 billion, respectively in their Hong Kong IPOs. The above extrapolated numbers show that under the proposed new Rule 8.08(1)(d) and keeping in mind the expectations in the A share market, each of the above companies would still need to increase their minimum total offer size from their actual IPO offer sizes so as to meet the public float requirements. We are therefore concerned that without specifically addressing the needs of an issuer who lists its shares on both the A share and H share markets, the current requirements may pose too big a hurdle for some PRC companies and may result in deterring them from listing their H shares in Hong Kong.

³ Calculated as 2 times the minimum public float requirements times market capitalisation.

Suggestion

In light of the above, we respectfully request the Stock Exchange to consider, in respect of PRC issuers intending to list both H shares and A shares which has a sufficiently large market capitalisation and sufficiently broad shareholder base, to retain its discretion to grant further waivers to reduce the minimum public float for the H-share portion provided that there is a corresponding public float of A shares which is at least equal to the H-share portion.

We are aware that some parties may have concerns that if there is less than 10% of the public float in the form of H shares, there may be a risk that the compulsory acquisition provisions would be triggered easily and minority shareholders may be prejudiced. In this regard, we would like to submit that these concerns are not justified. This is because under the current provision of the Hong Kong Codes on Takeovers and Mergers, the rights of compulsory acquisition may only be exercised if acceptances of the offer made by the offeror and persons acting in concert with it total 90% of the **disinterested shares**. As a result, the reduction of the public float arguably increases the difficulty of the offeror being able to succeed. For example, an offer for a company with a 25% public float would require the offeror to have control over approximately 97.5% of that company's total issued share capital to trigger the compulsory acquisition right while an offeror would be required to have control over approximately 99.25% of a company's total issued share capital if such company has a public float of, for example, 7.5%.

2.3 Post-IPO flexibility required

(a) Strong support for Stock Exchange's proposals for flexibility

We note that under paragraph 5.14 of the Consultation Paper, the Stock Exchange has expressed its view that for enhanced regulatory clarity and certainty, the above proposals will be applicable to all issuers so long as they meet the relevant market capitalisation thresholds (hence removing the need for applying for waivers from the Stock Exchange). We further note the Stock Exchange's position that issuers will be allowed to go with the minimum public float as prescribed in the proposed Rule 8.08(1)(d) regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option, as the case may be. We understand that the Stock Exchange intends to give issuers with public float at the time of listing above the prescribed minimum more flexibility in their future fund-raising activities.

We agree with and support the Stock Exchange's proposal that issuers should be afforded the minimum public float as prescribed in the proposed Rule 8.08(1)(d) regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option. We support the Stock Exchange's proposal for the following reasons:

- this proposal allows controlling shareholders and directors of the listing applicant to acquire more shares without immediately breaching the minimum public float requirements;
- in a market environment whereby there is an increasing need to issue new classes of shares (for example A shares), the Stock Exchange's proposal affords greater flexibility for listed issuers to consider alternative fund raising activities without immediately breaching the minimum public float requirements; and

- the Stock Exchange’s proposal greatly reduces the “place down” risks in merger and acquisitions activities. In takeover situations, the risk of breaching the public float requirements often means that offerors will need to take into account the often substantial “place down” risks in determining whether to go ahead with an offer and the consideration they will offer to disinterested shareholders. Further, for a listed issuer, following the completion of a takeover offer which results in the issuer’s public float being reduced, it is never easy to request the offeror to voluntarily “place down” the shares they have acquired in the takeover process in order to maintain the public float. In such circumstances, it will be up to the issuer, at the expense of its minority shareholders, to issue new shares to maintain the public float. The forced issue of new shares by the listed issuer will inevitably cause (A) its share price to substantially reduce; and (B) dilute the shareholdings of each shareholder.

Drafting suggestion

As a matter of drafting, we would like to suggest that the proposed Rule 8.08(1)(d) as set out in Appendix 5 should be amended as follows:

“The public float of a listing applicant shall be established by reference to the expected market capitalisation of such listing applicant at the time of listing in accordance with the following table: -

[table]

on condition.....**The minimum public float percentage as prescribed in the table above shall apply to an issuer notwithstanding that the actual public float attained by such issuer immediately upon listing or upon exercise of the over-allotment option (as the case may be) is higher.**”

(b) Further flexibility required

In addition, we would also like to draw the Stock Exchange’s attention to our following observations.

In the current environment where there is a growing desire for PRC issuers with H shares already listed to venture into the A share market, a company which initially complies with the public float percentage may, following the issue of new A shares, not satisfy the public float requirements. In this scenario, the reduction in the public float is simply as a result of the “pie becoming larger” with the denominator (being the total number of issued shares on both the A and H share markets) being increased. There is no reduction in the number of shares being held in the hands of the public in Hong Kong as a result of an issuance of new A shares in the PRC. For example, an H share company may now have a 25% public float. If it issues A shares, then the percentage of H share public float compared with its enlarged issued share capital would then decrease to less than 25%. This situation could be addressed by either treating the A shares in public hands to be part of the public float for the Listing Rules or providing in the Listing Rules that the Stock Exchange has a discretion to lower the minimum public float not only at the time of the IPO but on an on-going basis post-IPO.

Suggestion

The Stock Exchange should, in our view, also be given the discretion to further grant waivers or reductions to the minimum public float of an existing issuer post-IPO in the appropriate circumstances.

2.4 Addressing specific industry needs

There are companies (for example, financial institutions) which are subject to capital adequacy requirements, return on equity ratios and other regulatory or policy requirements which may prevent them from issuing too many shares at the time of their listing. To prevent these companies from listing in Hong Kong solely because they fail to meet the minimum public float percentage would, in our view, be highly detrimental for the Hong Kong securities market as we may potentially be turning away desirable companies from listing in Hong Kong.

Suggestion

Accordingly, we further suggest that the Stock Exchange be allowed to, at its discretion and taking into account the specific circumstances of such issuers, grant a waiver to such issuers to further reduce the minimum public float requirements (whether or not subject to any conditions).

3. Constituents of “the public” and Market Float

In respect of the Consultation Paper’s proposals in respect of the constituents of “the public” and the introduction of the concept of “Market Float”, we intend to provide further comments to the Stock Exchange in due course.

4. Conclusion

In light of the changing market conditions of the securities market in Hong Kong, we welcome the Stock Exchange’s re-examination of its current minimum public float regime. We have seen in recent years the increasing number of very large market capitalisation companies seeking listings in Hong Kong and as such, we strongly believe that a minimum public float percentage of 15% is no longer suitable in addressing the needs of the Hong Kong securities market. We therefore support the reduction of the minimum public float requirements to 10% and the application of the new requirements to those companies whose market capitalisation meets the required threshold. We, however, see the need to further reduce the market capitalisation thresholds to reflect (a) the increasing trend to limit the H share offering size to 10% of a listing applicant’s market capitalisation and (b) the peaks and troughs of the valuation cycle which may mean the expected market capitalisation of some desirable listing applicants may not be sufficient to enjoy the reduced minimum public float requirements.

In addition, we are of the view that the Consultation Paper needs to further consider the rising trend of the “A+H” companies and their specific needs. Accordingly, we respectfully request that the Stock Exchange revisit Rule 8.08(1)(b) and to consider retaining its discretion to further reduce the minimum public float requirements for H shares in respect of “A+H” companies, on the basis that the size of the A share offering and the H share offering will be at least equivalent to each other.

The Stock Exchange should, in our view, also be given the discretion to grant waivers or reductions to the minimum public float for existing listed issuers post-IPO in the appropriate circumstances.