From: Calvin Ho [redacted]
Sent: Monday, April 07, 2008 4:32:32 PM
To: CVW
Cc: [redacted]
Subject: re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Auto forwarded by a Rule

In relation to the Combined Consultation Paper on Proposed Changes to the Listing Rules published by The Stock Exchange of Hong Kong Limited in January 2008, we are pleased to submit the attached completed questionnaire on behalf of the following companies:

- Anglo Chinese Corporate Finance, Limited
- CIMB-GK Securities (HK) Ltd.
- Quam Limited
- Somerley Limited
- SW Kingsway Capital Holdings Limited
- Taifook Capital Limited

(collectively, the "Group".)

Please let us have your written confirmation of receipt of the said questionnaire by email.

Please do not hesitate to contact us on [redacted] or [redacted] if necessary.

Kind regards,

Julia Charlton / Kim Larkin / Calvin Ho

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Charltons
[redacted]
Best Boutique Firm 2006 - Asian Legal Business Awards
A list of the Firm's Principals will be provided upon request.
[redacted]

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.

The requirement should be removed since its effect will be to prevent overseas issuers from taking advantage of the proposed Rule amendments until the Companies Ordinance is amended to remove the Table A requirement for shareholders to expressly consent to receiving communications electronically.

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.

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 Group notes that their positive response should be qualified with observation that direct communication with each shareholder is subject to resolving practical CCASS complexities.

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

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

☒ Yes
☐ No

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

☒ Yes
☐ No

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

☒ Yes
☐ No

Please provide reasons for your views.

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

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.

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.

Rather than remove the requirement, the Group suggests broadening the definition of qualified accountant in Rule 3.24 (GEM Rule 5.15) to recognise accountants qualified in a wider range of jurisdictions (and not only those registered with accounting bodies recognised by the Hong Kong ICPCA for the purpose of granting exam exemptions). In particular, accountants qualified in the PRC should be considered suitably qualified. Employment of a qualified accountant should assist issuers in complying with the Rules' financial disclosure requirements and notifiable and connected transaction provisions.

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 see the response to Question 3.1 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 Group agrees with the rationale behind the proposal - namely, that the declaration of independence should not relate solely to the date on which the sponsor's declaration is given.

The Group was split on the period for which the sponsor is required to warrant its independence:

- the majority of Group suggests that the period should end on the date of issue of the listing document, being the date on which its role as sponsor effectively ends. Further, in the interest of greater certainty, they would prefer the period's start date to be specific, and would suggest the date of submission of the application to list (i.e. the date of submission of Form AI);
- some members of the Group believes that the sponsor should be independent and maintain their impartiality throughout the whole process (i.e. from the date of their appointment up and until the listing date or the end of the price stabilisation period, whichever is later).

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.

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.

The Group strongly disagrees with the proposal to exclude holders of 5% or more of an issuer's shares from the definition of the "public" (i.e. the proposed Rule 8.24(1)). The public float requirement is a continuing obligation under the Listing Rules. It is not practicable to require listed issuers to issue new shares in order to dilute the shareholdings of 5% shareholders in order to meet the public float requirements. As listed issuers have no control over the acquisition of stakes exceeding 5% by third parties, it is unreasonable to require them to raise new capital (which they may not need and, in adverse market conditions, may not be able to obtain), purely to satisfy the public float requirement. This is particularly so given the greater role played by funds, many of which have minimum investment thresholds.

It is suggested in the Consultation Paper that these proposals are aimed primarily at strategic and/or cornerstone investors (paragraph 5.24). In the case of existing shareholders in an issuer, Rule 10.04 of the Listing Rules already provides that existing shareholders can only subscribe for shares on an IPO if they are not given preferential treatment in the allocation of securities. The general principles in Rule 2.03(2) and 2.03(4) further provide that issues must be conducted in a fair and orderly manner and that all holders of listed securities must be treated fairly and equally. The above rules have formed the basis of a number of listing decisions in relation to whether shares held by pre-IPO strategic investors may be counted towards the public float on listing. In Listing Decision HKEx-LD36-1 published in October 2003, the general principle was laid down that placings of shares shortly before a listing application should be permitted subject to disclosure in the prospectus, but that a placee may be subject to a lock-up of his shares. It was stated in that decision that the question of whether a lock-up should be imposed is to be determined on a case-by-case basis. In Listing Decision 36-1, shares acquired by the pre-IPO placee were required to be subject to a lock-up and were not allowed to count as part of the public float primarily because the placee had acquired the shares shortly before the listing and at a substantial discount to the IPO price (i.e. contrary to the principle of even treatment of shareholders). There have been a number of listing decisions in the LD55 Series (mainly in relation to pre-IPO placings) and the LD59 Series (mainly in relation to pre-IPO convertible bonds) which required certain rights granted to strategic investors to be given up on listing as they were deemed to be contrary to the principle of even treatment of shareholders. This was so notwithstanding that the pre-IPO investments met the requirements regarding prospectus disclosure, lock-up and exclusion from the public float set out in LD36-1.

The Group recognises that ideally it would be preferable to have certainty as to when a strategic

investor will be excluded from the public float which is probably most easily achieved by setting a numerical threshold. It is not however appropriate to bar all strategic investors with a holding of 5% or more from counting towards the public float. As noted above, the Exchange already requires shares held by strategic investors to be subject to a lock-up and excluded from the public float where it considers this to be warranted (for example if the strategic investor acquired shares shortly before the listing at a deep discount to the IPO price as was the case in LD36-1). In other cases, for example where a genuine strategic investor invests long before the application to list when there is no certainty that the IPO will go ahead, there is little justification for excluding that investor from the public float. In particular, it would seem unfair to impose a lock-up on shares held by such a strategic investor, thus depriving the party who has arguably done the most to facilitate the listing, from exiting its investment. Conversely, institutional investors participating in the IPO, who have not assumed anything like the risks assumed by the strategic investor, are free to sell their shares at any time. In the case of strategic investors with holdings of less than 10%, the Group considers it better to decide whether such investors should be excluded from the public float on a case-by-case basis rather than impose a one-size-fits-all approach.

As regards cornerstone investors, according to the prospectuses for the Alibaba.com ("Alibaba") IPO and the China Railway Construction Corporation Limited ("China Railway") IPO, none of the cornerstone investors individually held more than 5% of the issuer's issued shares after completion of the IPO and would not therefore have been caught by the proposed Rule amendment. The Group also considers that cornerstone investors generally play a positive role as longer term investors, particularly in times of difficult market conditions. In the interests of certainty, it would be helpful if the Exchange could clarify whether the lock-up on cornerstone investors' shares is a requirement imposed by the Exchange, or whether this is a requirement of the issuer or underwriters.

In addition, the public float requirement, together with the requirements for the IPO shares to be held by a minimum of 300 shareholders and for not more than 50% of the publicly held IPO shares to be owned by the 3 largest public shareholders, should ensure that a listed issuer's shares are held sufficiently widely.

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 Group agrees that the level of market float should be regulated at the time of listing. For the reasons set out in the reply to Question 5.5 however, the market float should only be required to be satisfied on initial listing and should not be a continuing requirement. On the Alibaba and China Railway IPOs, while no single cornerstone investor held more than 5% of the issuer's issued share capital, the cornerstone investors together held approximately 21.2% and 19.9% of the IPO offer shares of Alibaba and China Railway, respectively. Shares held by the cornerstone investors were subject to a lock up of 2 years (in the case of Alibaba) and one year

(for China Railway). According to the Alibaba prospectus, the shares issued to the cornerstone investors were counted towards the public float. Given that quite a considerable proportion of the "public float shares" is subject to a lock-up in such cases, the Group agrees that satisfaction of the public float will not reflect the actual liquidity of shares in the market post listing in these circumstances. It therefore agrees that the level of market float should be regulated and that shares that are subject to a lock-up of more than 6 months should not count towards the market float. The market float should be regulated in terms of percentage rather than value.

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.

It should be the circumstances prevailing at the time of the proposed issue that are relevant. The exemption should therefore be available as long as the public float requirement is satisfied at that time.

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.

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?

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.

The Group does not however agree with the proposal at paragraph 7.48(b) of the Consultation Paper that the issuer's legal advisers should be required to provide a letter confirming that there is "nothing unusual" about the proposed amendments for a Hong Kong listed company. The confirmation from the issuer's legal advisers that the proposed amendments comply with the requirements of the Rules and the laws of the issuer's jurisdiction of incorporation (proposed at paragraph 7.48(a)) should be sufficient. The legal advisers cannot be expected to confirm that there is "nothing unusual" about the proposed amendments which is a question of fact rather than a matter of law. One member of the Group further noted that pre-vetting for all circulars, other than pre-vetting in respect of initial offering documents/ prospectuses, should be dropped.

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.

Where however an announcement is required of a listed issuer's proposal to explore for natural resources as an extension to or change from its existing activities and the proposal amounts to a discloseable transaction (under Rule 18.07(1)), the issuer should be allowed to make the technical adviser's report available on its website provided that the announcement states where the report is available. These documents are often lengthy and it may not be practicable to include the entire contents in an announcement.

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.

No.

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.

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.

The Group believes that all changes to share capital should be disclosed the next day and not be subject to a de minimis threshold. The rationale for this being that the information in relation to the relevant changes should not be difficult for the company to identify or disclose in time.

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

No

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

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?

Where there has been no change since the previous Monthly Return, the Group considers that it should not be necessary to make a Monthly Return. Alternatively, it should be possible for a listed issuer to make a filing that there has been no change since the previous Monthly Return.

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?

Same comment as for Question 8.7.

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?

Same comment as for Question 8.7.

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?

The requirement should however be for the announcement to be made as soon as is "reasonably practicable" which is in line with the requirement under the "general disclosure obligation" at Rule 13.11(2)(d).

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.

There is a clear over-lap between the 2 sets of Rules. Removing the material dilution requirements will make for greater clarity and certainty.

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.

The Group's view is that the current general mandate provisions generally work well and provide an efficient and cost-effective means for issuers to raise capital. To the extent that there are concerns that the general mandate provisions are being abused, it is open to the issuer's shareholders to vote against general mandate resolutions and resolutions to refresh the general mandate. It should not therefore be necessary for the Exchange to cut back on the existing provisions. There is some evidence that shareholders, particularly institutional shareholders, are more likely now to subject issuers' general mandate requests to scrutiny than was perhaps the case in the past. ISS Governance Services ("ISS"), a division of Riskmetrics Group, recommended in its Hong Kong Corporate Governance Policy for 2008 that clients should vote against resolutions of companies whose combined share issuance and reissuance requests exceed 10%, unless the company can persuade shareholders that there are good reasons for doing so.

ISS also opposes discounts of more than 10% to the market share price.

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.

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.

The Group would agree that once the 20% general mandate has been used up, an issuer should be obliged to seek independent shareholders' approval of a refreshment of the general mandate.

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.

Certain members of the Group however support the amendment to the Rules that issues of securities to cover the exercise of warrants, convertibles or options should be the subject of specific approvals to avoid the situation of an option being granted with an exercise price which is 20% below the market. The value of the option results in the option holding acquiring the shares at a discount of more than 20% and effectively the issuer is giving away more than 20%.

Issue 12: Voting at general meetings

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

☐ Yes
☒ No

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

☐ Yes
☒ No

Question 12.3: If your answer to *Question 12.1* is "no", should the Exchange amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to make an announcement on the total number of proxy votes in respect of which proxy

appointments have been validly made together with: (i) the number of votes exercisable by proxies appointed to vote for the resolution; (ii) the number of votes exercisable by proxies appointed to vote against the resolution; (iii) the number of votes exercisable by proxies appointed to abstain on the resolution; and (iv) the number of votes exercisable by proxies appointed to vote at the proxy's discretion?

☒ Yes

☐ No

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

☐ Yes

☒ No

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

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

☐ Yes

☒ No

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

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

No.

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.

The Group considers that much of the information which is required to be disclosed under Rule 13.51 is not of particular interest to shareholders (for example other positions held by a director within the issuer's group which are often subject to change). Matters which are of obvious interest to shareholders, such as a director's conviction for fraud or his identification as an insider dealer are already required to be disclosed under the general disclosure obligation in Rule 13.09. If the Exchange wishes to require disclosure of information throughout the period of a person's directorship, the information required to be disclosed should be limited to that which relates directly to the person's competence to act as a director of a listed company (for example fraud).

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.

Only information which is directly relevant to a person's competence to act as a director of a listed company should be required to be disclosed immediately. If the Exchange wishes other information to be disclosed throughout the period of a person's directorship, other less material information should be required to be disclosed only in the issuer's annual report. This will prevent an issuer from being in breach of the Listing Rules for failure to provide information which is not particularly material in relation to its directors.

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.

The distinction between significant information (such as that which would already require disclosure under Rule 13.09) and less material information discussed above should be reflected in any new obligations imposed on directors. Neither the issuer nor its directors should be in breach of the Listing Rules for a failure to provide information which is not material in relation to the person's suitability to serve as a director of a listed 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

The Group queries whether it is really necessary for directors to have to submit two undertakings to the Exchange in respect of the accuracy of their personal particulars as proposed at paragraphs 17.20(a)(i) and (iii). If the intention is to simplify the requirements, it seems unncessary for directors to undertake at the time of the submission of the Form A1 that their personal particulars set out in the draft prospectus accompanying the submission are correct. The Group's preference would be for there to be just one directors' undertaking, submitted at the time of issue of the listing document and for that undertaking to be a condition for the grant of listing approval as suggested at paragraph 17.20(a)(iii).

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.

Under the proposal, directors will be prohibited from dealing from the period end date until publication of results. If issuers make full use of the periods allowed for submission of results, directors will be prohibited from dealing for 4 months from each year end date and 3 months

from each half year end. For companies that issue quarterly results (which is already a recommended best practice under the Code on Corporate Governance Practices for Main Board issuers and likely to become mandatory under the Exchange's proposals for amendments to the financial reporting requirements), dealing would be additionally prohibited for 45 days following the end of each quarter. Directors of Main Board companies which publish quarterly reports could thus be prohibited from dealing for 10 months out of each year. The periods during which directors would be able to deal under these proposals, even for issuers which publish their results earlier than the permitted deadlines, will be excessively short.

The rationale for the extension of the black out periods (as stated at paragraph 18.12 of the Consultation Paper) is to (a) buttress the statutory provisions of the Securities and Futures Ordinance ("SFO") and (b) promote investor confidence by reducing any suspicion of abuse of price sensitive information in the period leading up to the announcement of results. Directors are however already prohibited from dealing while in possession of unpublished price-sensitive information (both by Rule A.1 of the Model Code and by the insider dealing provisions in the SFO). The existing Rule A.1 of the Model Code and insider dealing legislation should continue to be relied on to prevent insider dealing. It is not necessary to impose the proposed restrictive dealing black outs for either of the reasons stated at paragraph 18.12.

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.

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