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Corporate Communications Department  
Hong Kong Exchanges and Clearing Limited  
12th Floor, One International Finance Centre  
1 Harbour View Street, Central  
Hong Kong

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Our Ref : RCCC/RSSC/181

Dear Sir

**Combined Consultation Paper on Proposed Changes to the Listing Rules**

We refer to the Combined Consultation Paper on Proposed Changes to the Listing Rules issued in January 2008 (the "Consultation Paper") and would like to put forward below our comments for your consideration. Unless otherwise defined, terms used herein shall have the same meanings as those defined in the Consultation Paper.

**1. Review of the Exchange's approach to pre-vetting public documents of listed issuers**

It is proposed in the Consultation Paper to remove from the Rules the requirement for a separate circular to be distributed to shareholders in respect of discloseable transactions. Where a listed issuer prepares a profit forecast in respect of the discloseable transaction, the issuer will be required to include in the announcement the content of the expert reports as required under the current Rules.

Under the current Rules (Main Board Rule 14.62 / GEM Rule 19.62) and as amended in the Consultation Paper, where an announcement for a notifiable transaction contains a profit forecast in respect of a listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit, amongst others, a letter from the listed issuer's auditors or reporting accountants confirming that they have reviewed the accounting policies and calculations for the forecast by no later than the publication of the announcement.

In view of the fact that listed issuers must publish the announcements for notifiable transactions as soon as possible pursuant to the Rules, it is practicably impossible for the auditors or reporting accountants to complete their review of the profit forecast and issue their report thereon on or before the publication of the announcement.

In light of the above, we recommend the Exchange to consider amending the Rules so that the issuance of the letter from the listed issuer's auditors or reporting accountants on the profit forecast can be deferred and included in a further announcement to be published by the listed issuer (say within 21 days after publication of the first announcement) for discloseable transactions, or in the cases of other notifiable transactions, is only required upon the issuance of investment circulars.



## 2. Codification of waiver to property companies

It is proposed in the Consultation Paper to codify the waivers for Qualified Issuers from the shareholders' approval requirement of the Rules in respect of Qualified Property Projects.

Where a General Property Acquisition Mandate is proposed as a resolution in an annual general meeting of a Qualified Issuer, the circular to shareholders must contain, amongst others, a statement by the directors of the Qualified Issuer that in their opinion the working capital available to the group will be sufficient, or if not, how it is proposed to provide the additional working capital thought by the directors to be necessary in light of the expected Qualified Property Acquisition and the Annual Cap proposed.

The amended Rules, however, have not specified whether a letter is required from the listed issuer's financial advisers or auditors, as is currently required under Main Board Rule 14.66 and GEM Rule 19.66 for major transactions, very substantial acquisitions and very substantial disposals, confirming that:

- (i) the statement has been made by the directors after due and careful enquiry; and
- (ii) the persons or institutions providing finance have confirmed in writing that such facilities exist.

We suggest the Exchange to clarify the above matter in the amended Rules.

## 3. Disclosure of information in takeovers

It is proposed in the Consultation Paper to allow listed issuers acquiring a company through an acquisition constituting a very substantial acquisition or a major transaction to defer the compliance with the full disclosure requirements applicable to the circulars by publishing a supplemental circular at a later time than the initial circular where the listed issuers do not have access or only have limited access to the non-public information of the offeree company.

The supplemental circular must be despatched to shareholders within 45 days of the earlier of:

- (i) 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 Main Board Rules 14.66 and 14.67 or Main Board Rule 14.69 / GEM Rules 19.66 and 19.67 or GEM Rule 19.69; and
- (ii) the listed issuer being able to exercise control over the offeree company.



In respect of this proposal, we have the following comments:

(a) Purpose of the supplemental circular

Circulars in general serve to provide, amongst other things, information necessary for shareholders to make an informed investment decision.

It is understood that under the amended Rules if the listed issuer can defer the compliance with the full disclosure requirements by publishing a supplemental circular after the initial circular, approval from the listed issuers' shareholders would be obtained after the publication of the initial circular but before the publication of the supplemental circular. In view of the above, the supplemental circular may not be able to serve the purpose of providing shareholders with information for making an informed investment decision as mentioned in the previous paragraph. Moreover, a situation may arise where the information disclosed in the supplemental circular is substantially different or inconsistent with that disclosed in the initial circular where an investment decision has been made. Further measures may need to be put in place to address this situation.

We recommend the Exchange to take into consideration the above matters in finalising the amended Rules.

(b) Scope of the amended Rules

The amended Rules just apply to situations where the offeree company will become a subsidiary of the listed issuer. Given it is not uncommon that listed issuers may just acquire one or more business segment(s) of another listed company instead of the entire listed company, the listed issuers may also face similar difficulties in complying with the full disclosure requirements under the current Rules. We recommend the Exchange to consider extending the scope of the amended Rules to cover acquisitions of business segment(s) from another listed company.

We hope the above comments are helpful. If you want to discuss the matters further, please do not hesitate to contact Kennedy Liu on [REDACTED] or Rebecca Chan on [REDACTED].

Yours faithfully

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