CHKLC 香港上市公司商會
THE CHAMBER OF HONG KONG LISTED COMPANIES

April 7, 2008

Corporate Communications Department
Re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Hong Kong Exchange ad Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

The Chamber of Hong Kong Listed Companies is pleased to submit our response to the Combined Consultation on Proposed Changes to the Listing Rules. Whilst we agree to many of the proposed changes concurring they would streamline the operation of the market, bringing about higher flexibility, in certain areas, we think the present arrangements work very well and no change would be necessary. In many instances, it would be more effective to have better communication with minority shareholders to educate them about their rights and to make sure channels exist for them to voice out their opinions, and mechanisms are there to provide enough check-and-balances. This is much more ideal than imposing more rules and regulations that are costly to comply.

Below are our responses by questions.

Issue 1: Use of Websites for communication with shareholders

Question 1.1 We agree to a more widespread use of communications through the web as a way to improve the ease and speed of communication. By reducing the use of paper this will also support environmental protection and save costs. On this premise, we agree to removing the requirement described in this question. This allows foreign incorporated companies to benefit from the Rules change and enjoy equal treatment with local registered companies in this regard.

Questions 1.2 - 1.4 Our view is that the shareholders should be asked if they consent to be communicated through website; consent is deemed if there is no reply in 28 days. However, if a shareholder does not consent, the issuer would be precluded from seeking his consent again for a period of 12 months. At any time, shareholders can opt for receiving a hard copy again.

Questions 1.5 and 1.6 We agree.

Issue 2: Information Gathering Powers

Questions 2.1 and 2.2 We agree.

[redacted]

Issue 3: Qualified accountants

Questions 3.1 and 3.2 We agree to abolish the requirement to appoint a qualified accountant on a mandatory basis. Each issuer will be left to decide, based on its own circumstances, whether to appoint one, but it does not have to be confined to members of HKICPA but can include qualified accountants from any recognized jurisdiction. But for a listed issuer to maintain a high level of financial reporting accuracy, we believe that it will be in the interest of the listed issuers to appoint a qualified accountant and hence we recommend that Exchange should make this as a recommended practice under the Code of Corporate Governance Practices.

Issue 4: Review of sponsor's independence

Questions 4.1 and 4.2 We agree.

Issue 5: Public Float

Question 5.1 We agree that the public float percentage of a listed issuer should be determined based on the market capitalization of the issuers as proposed.

Question 5.2 We agree.

Question 5.3 We have no other comments.

Issue 5B: Constituents of "the public"

Questions 5.4 and 5.5 We agree with Rule 8.24 that any person who is entitled to exercise, or controls the exercise of 5% or more of the voting power at any general meeting of the issuer, regardless of such person's involvement in the business of the issuer or relationship with the issuer and / or its connected persons, will not be recognised as being a member of "the public". The 5% threshold is also consistent with the Securities and Futures Ordinance, where shareholders with a shareholding of 5% or more are subject to making a disclosure of interests.

Issue 5C: Market float

Questions 5.6 and 5.7 Concerning the question of market float, we do not think it is necessary to create another criterion in addition to the public float. The concept of a market float can be embodied within the public float concept. Shareholders whose shares are subject to lock-up for over six months should not be counted as part of the public float.

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

Question 6.1 We agree.

Question 6.2 We agree but thought the five-year limit too long. Two years is more reasonable.

Question 6.3 We agree.

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

Question 7.1 We agree to the principle that the Exchange should move progressively from involving extensive pre-vetting towards minimal pre-vetting of announcements supplemented by post-publication scrutiny and enforcement. In implementing this change it is important that clear guidelines for required contents be provided and issuers be able to consult with the Exchange before publication of announcements to ascertain compliance.

Question 7.2 While we agree to the phased approach suggested by the Exchange in reducing pre-vetting, we believe that all connected and notifiable transactions under Chapter 14 should continue to be pre-vetted during such transitional period. Exempting some selectively could cause confusion. The transitional period should last for six months.

Question 7.3 We agree that the Exchange should remove specific pre-vetting requirements for routine circulars such as proposed amendments of Memorandum of Articles of Association and explanatory statements relating to share repurchase as they are standard and straightforward.

Question 7.4 We agree the Exchange should continue to pre-vet those documents referred to in this question as they relate to matters of importance to the company. Having the Exchange pre-vet them would help ensure their compliance and protection of shareholders' interests

Question 7.5 We agree to the proposed removal of the requirement for a separate circular in respect of discloseable transactions as long as all key information is contained in the relevant announcement.

Questions 7.6 and 7.7 We agree to the proposed amendments

Issue 8: Disclosure of changes in issued share capital

Questions 8.1 – 8.12 We agree to the proposals of this section and have no further comments.

Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue

Questions 9.1 – 9.3 We agreed to and support the proposals of this section.

Issue 10: Alignments of requirements for material dilution in major subsidiary and deemed disposal

Question 10.1 We believe no such requirement is required.

Questions 10.2 and 10.3 We agree.

On a separate issue whilst relating to deemed disposal, we suggest that the deemed disposal regime should not apply to a listed parent in the top up placing exercise of its subsidiary whereby after the placing, the listed subsidiary ceases to be a subsidiary of the listed parent. Under the current deemed disposal regime, once the listed subsidiary ceases to be consolidated, it will be a deemed disposal of the whole of the listed subsidiary for the purpose of calculating the relevant ratios and thresholds under Rules 14.07, 14.08 and 14.33. If the listed subsidiary constitutes a substantial asset of the listed parent, such deemed disposal (purely arising from the placing exercise of the listed subsidiary) may require the approval of the shareholders of the listed parent. As this is the placing exercise of the listed subsidiary (and not the listed parent whose business and operation remain unchanged), it will not be appropriate for the listed parent to incur cost, and for the shareholders thereof to approve, for a transaction that relates only to the listed subsidiary. On the other hand, it will be unfair to the listed subsidiary if the placing exercise is not approved by the shareholders of the listed parent. In addition, due to time constraint, it will not be possible to carry out a placing not by way of a top up placing involving the controlling shareholder (the listed parent) placing its shares first to the placees with the top up subscription from the listed subsidiary later. Alternatively, the deemed disposal regime may be retained in the current form but the listed parent is not required to obtain shareholders' approval if the listed parent is able to purchase additional shares from the market within certain period of time in such number that the listed subsidiary does not cease to be consolidated.

Issue 11: General Mandate

Question 11.1 Concerning the general mandate, we are of the view that the existing arrangements should be maintained, i.e. a listed issuer is allowed to issue securities representing up to 20% of their issued share capital under a general mandate. We believe this arrangement provides a flexible and efficient way for issuers to raise capital to finance company growth. Lowering the percentage would affect the effectiveness of this arrangement, especially for smaller companies.

Question 11.2 We disagree to amend the current rules as described in this question.

Question 11.3 We agree 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.

Question 11.4 We disagree to amend the current rules as described in this question.

Issue 12: Voting at general meetings

Question 12.1 The existing rules provide that matters involving potential conflicts of interest or with a major impact on the company, such as connected transactions, and transactions subject to independent shareholders' approval and transactions where controlling and interested shareholders would be required to abstain from voting to be voted by poll. At the same time, existing company laws and issuers' constitutional documents have provided for shareholders to demand a poll, if necessary. We therefore believe that it is not necessary to make voting by poll for all resolutions at general meetings. However, we suggest that this may be made as a recommended practice under the Code of Corporate Governance Practices.

Question 12.2 Yes, we agree that the Exchange rules can be amended to require voting on all resolutions at annual general meetings to be conducted by poll.

Question 12.3 We agree with the proposed rule amendments as described in this question.

Questions 12.4 and 12.5 We believe the present notice period is sufficient and see no change as necessary.

Issue 13: Disclosure of information about and by directors

Questions 13.1 – 13.11 We agree to the proposed changes related to this section.

Issue 14: Codification of waiver to property companies

Questions 14.1 – 14.2 We agree, but suggest that in case of property joint ventures, with or without connected persons, it is not necessary that all joint venture partners are actively engaged in property development as a principal business activity so long as more than 50% of such joint venture partners are so qualified. This is to facilitate non-property developers to team up with property developers by way of joint ventures and is the very common mode of joint ventures currently undertaken by our members.

Question 14.3 We agree.

Question 14.4 We agree that the relief should be available to Qualified Property Projects which contain a portion of a capital element. We believe however, the percentage threshold should be set at 30%.

Question 14.5 It is our view that Qualified Connected Person should not be limited to a connected person who is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property project and should extend to include any connected person as defined under the Listing Rules. Given that such exemption will have to be approved by independent shareholders by way of the General Property Acquisition Mandate on an annual basis in the Annual General Meeting, the independent shareholders will control and will exercise their votes whether to approve such General Property Acquisition Mandate and the terms of such approval. If so, we do not think that the Qualified Connected Person should be so limited as currently proposed.

Question 14.6 We believe the General Property Acquisition Mandate is necessary not only for property joint ventures described in this question but for all other joint ventures where prior shareholders' approval is required. We agree that the GPA Mandate could be refreshed before the next AGM and in circumstances of refreshment, the refreshed amount should not exceed the amount approved at the previous AGM.

Questions 14.7 and 14.8 We agree.

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Issue 15: Self-constructed fixed assets

Questions 15.1 For any construction of fixed assets, we agree that proposal to construct such assets need not be put forward for shareholders' approval, but disclosure through an announcement is necessary in order to keep shareholders informed of company's expansion plans.

Issue 16: Disclosure of information in takeovers

Questions 16.1 – 16.3 We agree.

Issue 17: Review of the Director's and Supervisor's Declaration and Undertaking

Questions 17.1 – 17.11 We agree.

Issue 18: Review of Model Code for Securities Transactions by Directors of Listed Issuers

Questions 18.1 – 18.3 We agree.

Question 18.4 Concerning the black-out period, we do not agree that it should be extended further from the current one-month rule.

Questions 18.5 – 18.6 Concerning the proposal to introduce a deadline for responding to the request for clearance to deal and for dealing once clearance has been received, we believe this is something best dealt with by the internal rules of individual companies but not in the Exchange Rules.

I hope the above is clear and if you need any clarification of our position, please feel free to contact me or the Secretariat of the Chamber on [redacted]

Yours sincerely,
For and on behalf of
The Chamber of Hong Kong Listed Companies

[redacted]

Patrick Sun
Chairman
Financial and Regulatory Affairs Committee