CHARTERED SECRETARIES
特許秘書

Natalia Seng
President

21 April 2008

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

Dear Sirs,

Re: **Combined Consultation Paper on Proposed Changes to Listing Rules**

We refer to the above Consultation Paper and enclose herewith our submission in response thereto for your consideration.

Thank you for your attention.

Yours faithfully,

Natalia Seng
President

Encl.

SUBMISSION BY
THE HONG KONG INSTITUTE OF CHARTERED SECRETARIES

Combined Consultation Paper on
Proposed Changes to the Listing Rules

This submission is made in response to the Consultation Paper on Combined Consultation Paper on Proposed Changes to the Listing Rules ("Consultation Paper") published by the Hong Kong Exchanges and Clearing Limited in January 2008 and we set out below our views on the eighteen proposals contained in the Consultation Paper.

1. Use of websites for communication with shareholders

We are in support of the idea of fully utilising the issuers' websites for communication with their shareholders including the dissemination of all kinds of corporate communications. It is environmental friendly and is in line with the Electronic Disclosure Project which came into operation in June 2007. The proposed conditions for this communication channel i.e. obtaining consent from shareholders on an individual basis and deeming consent in case of non-response from the shareholders within 28 days are also acceptable to us.

However, regarding the proposal that no request shall be made by the issuer within 12 months of a shareholder's refusal to a corporate communication being made available to him solely on the issuer's website, we do not find such limitation necessary. This limitation will create practical difficulties for the issuer in the sense that it has to keep relevant records for each of the shareholders which can be highly burdensome. Unless there is evidence that the issuers tend to make excessive requests or that such kind of requests are generally perceived as annoying or oppressive by the shareholders, we take the view that issuers should be given the discretion to determine the need, schedule and frequency of making such requests.

2. Information gathering powers

As we are given to understand that the issuers are generally cooperative with the Exchange in its enquiries and investigations and the Exchange has in practice experienced few difficulties in collecting necessary information from the issuers pursuant to its rights under Main Board Rule 13.10 and the Director's Undertaking, we do not find an express provision for the Exchange's information gathering powers

necessary. Further, it appears that the wordings proposed to confer such express powers i.e. "...in accordance with time limits imposed by the Exchange: (1) any information that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market..." are too wide and subjective. This proposed right, once given, is tantamount to the grant of an absolute discretion to the Exchange which the issuers will surely find worrying.

3. Qualified accountants

It is proposed that the requirement for the appointment by every issuer of a qualified accountant be abolished on grounds that circumstances have greatly changed in the past few years such that the need for a qualified accountant is not as essential as it then was.

We agree that the substantial convergence between the Mainland accounting standards and IFRSs, the establishment of the Financial Reporting Council which has the statutory authority to investigate into the financial statements of listed companies, the mandatory requirement for every issuer to establish an audit committee, the introduction of the Code on Corporate Governance Practices and the requirement for every issuer to publish a Corporate Governance Report have all served to improve, though in different ways, the integrity of the financial reporting of the issuers as well as the general corporate governance of the issuers.

Most importantly, we concur that the primary responsibility to maintain sound and effective internal controls over financial reporting should always rests on the board instead of any particular post such as the qualified accountant.

In view of the above developments in the past few years, we agree with the proposal of removing the requirement for a qualified accountant.

4. Review of sponsor's independence

We agree that it should be clarified that the sponsor's independence is assessed throughout the entire listing process and not only at the time of making the declaration.

5. Public float

(a) Minimum public float

In principle, we have no objection to the proposed 3-tiers minimum public float requirement and agree that it is necessary to codify the entitlement to a lower public float upon reaching the relevant market capitalization thresholds which is now provided as a waiver to be granted by the Exchange at discretion. We note that the proposed 3-tiers minimum public float requirement will only be applicable to the new issuers. It is our suggestion that the existing issuers should also be able to benefit from this proposal.

While we have generally agreed with the above proposal, we do have some concern about the adequacy of the 25% minimum public float requirement for those companies with small market capitalization. It has come to our attention that the SFC is regularly disciplining brokers and prosecuting their clients for manipulation of the share prices of the small-cap companies where cornering of their shares is relatively easy. In order to find out the correlation between the public float requirement, the liquidity of the shares and the market capitalization, we have recently commissioned the Hong Kong University of Science and Technology to do a research with a view to finding out, among other things, whether 25% minimum public float requirement for companies with market capitalization not exceeding HK$10 billion allows sufficient liquidity in maintaining an orderly market. One of the preliminary key findings of the research is that there is a close relationship between public float and market illiquidity, especially for companies with market capitalization of less than HK$2 billion. As some further research will be done in order to refine the research findings, we are not able to share with you at this stage the details of the research findings. However, the full report will be available by the end of April and we shall then share it with you. We trust that it will be a timely and useful report which can definitely help Hong Kong find out the most appropriate minimum public float for the maintenance of an open and orderly market.

(b) Constituents of "the public"

It is proposed that any shareholder who is entitled to 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 shall not be included as a member of "the public". We are given to understand that the rationale behind this proposal is that it is common for "cornerstone investors"

usually holding more than 5% shareholding to exert considerable influence over the issuer through board representation or active implementation of cooperation plan and therefore they are effectually connected to the issuer.

We do not find the proposal of adopting a quantitative approach consistent with or well supported by the above rationale. Since the rationale is based on the influence which the shareholder can exert over the issuer, the proposal is misconceived in that it equates substantial shareholding with participation in the management of or connection with the issuer. This proposal, once adopted, will exclude from "the public" those investment funds which hold 5% or more of the shareholding but with no participation in the management. We take the view that such exclusion is not justified.

(c) Market float

As the availability of tradable shares indicates the level of liquidity of the shares in the market, we are in support of the need to maintain a market float which is determined by reference to the availability of tradable shares. We also agree that the market float should exclude those shares which are subject to a lock up period of more than 6 months.

6. Bonus issues of a class of securities new to listing

We agree with the proposal of disapplying the requirement for a minimum spread of securities holders at the time of listing in the event of a bonus issue of a new class of securities involving warrants, options or similar rights to subscribe shares.

7. Exchange's approach to pre-vetting

We agree that the Exchange should cease pre-vetting of announcements after a reasonable transitional period, after which only draft circulars in relation to certain types of transactions with higher risk of non-compliance (as more particularly described in paragraph 7.50 of the Combined Consultation Paper) will continue to be subject to pre-vetting.

Regarding the proposed amendments to an issuer's Memorandum or Articles of Association, we have no objection to the suggestion that the relevant circular should contain an explanation of the effect of the proposed amendments and the full terms of such amendments. However, we do have some concern about the proposal that the circular should contain a legal opinion confirming, inter alia, that there

is nothing unusual about the proposed amendments for a company listed in Hong Kong. We are concerned about the vagueness of the words "nothing unusual" which many lawyers might find it reluctant to confirm. Further, whether the proposed amendments are usual depends on a lot of factors including the unique circumstances of the company involved and thus it is difficult for a lawyer to make a sweeping statement that there is "nothing unusual about the proposed amendments for a company listed in Hong Kong". We take the view that confirmation by the legal adviser that the proposed amendments are in compliance with the Listing Rules and the laws of the issuer's place of incorporation would be sufficient.

We are in support of the proposed removal of the requirement for a separate circular to be distributed to shareholders in respect of discloseable transactions since such transactions are not subject to shareholders' approvals and the circulars are sent to the shareholders for their reference only. In the circumstances, we agree that such requirement should be abolished altogether.

With regard to the proposal that the Exchange's disclaimer statement should be included in all listing documents, circulars, announcements or notices issued pursuant to the Listing Rules, we consider it unnecessary and cumbersome. Further, for announcements and notices which are not subject to pre-vetting, the Exchange will have no liability in any event and thus has no need for any disclaimer whatsoever. To address the Exchange's concern about its potential liability for documents which are subject to its review, we suggest that a general disclaimer statement be posted on its website on which the issuers' notices, announcements and circulars etc are posted.

8. Disclosure of changes in issued share capital

We agree that the information on the change in issued share capital resulting from various kinds of corporate actions and transactions may be important for investors to enable them to appraise the value and developments of the listed companies. For this reason, we support the proposal that such information should be disclosed by the issuers which have no obligation to do so under the current requirements. Subject to the following qualifications, we find the two different disclosure regimes generally sensible frameworks i.e. next day disclosure and monthly return which are devised in accordance with the magnitude of the dilutive effect of the relevant transactions on the share capital of the issuer. First, we have concern about the proposal that the exercise of share options by directors should be subject to the next day disclosure regime. As disclosure of such exercise is already required under the Securities and Futures Ordinance ("SFO"), we

suggest the same reporting period of three days as provided under the SFO should also apply here. Further, the meaning of "next day" may need clarification in so far as international issuers with multiple listings are concerned.

As to the proposed *de minimis* threshold of 5% of the existing issued share capital as the triggering point for disclosure for certain kinds of transactions such as exercise of warrant and share redemption, we agree that it is a reasonable requirement. It is also in line with the 5% disclosure threshold under the SFO.

We are also in support of the proposed requirement that announcement of the relevant details should be made as soon as an issuer grants share options pursuant to a share option scheme. We believe that the shareholders do have an interest in this matter and agree that this can be effective in combating the improper practice of backdating of a share option grant. However, we suggest that the prompt or next day reporting requirement be also subject to the above *de minimis* threshold of 5%. If *de minimis,* the relevant details have to be included in the monthly return which we believe will be sufficient for the investors.

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

We agree that the issuer should be required to disclose in the relevant announcement, circular and listing document for a rights issue/open offer the basis of allocation of excess securities as this can enhance the transparency of the mechanism and enable the shareholders to make an informed decision on whether to make the subscription.

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

We agree that for consistency sake, the requirements for material dilution and deemed disposal should be aligned such that the requirement for shareholders' consent would be based on a size test threshold of 25%.

11. General mandates

We find it appropriate to reserve our views on the various proposals in relation to this issue at the present stage as we have not conducted any survey on our members on such proposals. We expect their views on the different options proposed by the Exchange regarding the size

restriction of the general mandate and the discount to the "benchmarked price" will be very diverse.

12. Voting by poll

We do not find it necessary to require the voting of all resolutions at either general meetings or annual general meetings to be by poll. Voting by poll will incur additional time and costs and this may not be justified for resolutions which are procedural or ordinary in nature. Further, the current requirements under Listing Rules have already set out the conditions for the chairman of the meeting to demand a poll and the issuers are under an obligation to disclose the procedure for demanding a poll in circulars to shareholders. Moreover, for important and contentious transactions for which the independent shareholders' approval is required or where interested shareholder is required to abstain, voting by poll is mandatory under the current rules. We therefore take the view that voting by poll should not be made mandatory for all kinds of resolutions and that the issuers should be given the choice as to whether to adopt this practice for transactions where it is not mandatory.

While we appreciate that a longer notice is always welcome by the shareholders who can plan ahead their activities, we do not find it necessary to lengthen the minimum notice period for convening all general meetings or annual general meetings to 28 clear calendar days for we are not aware of any serious complaints from shareholders in general that the existing prescribed notice period is insufficient. Most importantly, this will cause delay in the execution of the contemplated transactions which require the shareholders' approvals.

13. Disclosure of information about and by directors

Though prompt disclosure of particulars relating to directors and supervisors can enhance the transparency of the issuer, we do not find it necessary for each and every item as stipulated in Rule 13.51(2). Some of them e.g. information required under Rule 13.51 (h) to (v) are more important than the others in the sense that the occurrence of which may cast doubt on the integrity of the directors involved and their suitability for continuing to serve as directors of the issuers. On the other hand, there is no urgency for disclosure of the information required under Rule 13.51 (a) to (g). Continuous updating of information by way of announcement entails a lot of administrative works and time. Hence, we take the view that the proposed disclosure by the issuers up to and including the date of resignation of the director or supervisor should only apply to the information required under Rule 13.51 (h) to (v).

Likewise, the proposal of immediate disclosure should only be applicable to the information required under Rule 13.51 (h) to (v) while the other discloseable information should be disclosed in the annual and interim reports.

We further agree that there is a need to clarify that disclosure of (i) current and past (in the past three years) directorships in all listed companies in Hong Kong or overseas held by the directors and supervisors; (ii) their professional qualifications; and (iii) their previous convictions, if any, has to be made by the issuers. Such clarification serves to remove any misunderstanding in respect of the meanings of "listed public companies", "professional qualifications" and "previous convictions".

14. Codification of waiver of property companies

We do not have comment on the proposals in relation to this issue.

15. Self-constructed fixed assets

We agree that notifiable transactions rules should be amended to exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary course of its business on the grounds set out in paragraphs 15.8 and 15.9.

16. Disclosure of information in takeovers

We agree that it is necessary to codify the current practice of granting waivers to issuers to publish prescribed information of the target companies in situations such as hostile takeovers or where there are legal restrictions in providing non-public information to the issuers.

Regarding the proposal that the supplemental circular should be dispatched 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; and (ii) the listed issuer being able to exercise control over the offeree company, we suggest that the period should be lengthened to at least 60 days so as to enable the issuer to have a better understanding of the financial situation and operation of the offeree company. The proposed period of 45 days may be a bit tight especially if the offeree company is an overseas company which is subject to a different set of accounting standards.

17. Review of the director's and supervisor's declaration and undertaking

We are generally in support of the proposals made in relation to this issue with an exception. We do not agree that the Exchange should be granted the express general powers to gather information from directors. Please refer to paragraph 2 above for our reasoning.

18. Review of Model Code for securities transactions by directors of listed issuers

We support the proposed expansion of the list of exceptions to the definition of "dealing", the proposed clarification of the meaning of "price sensitive information" and the proposed restriction on the time to respond to the request for clearance to deal and the time for dealing once clearance has been received.

However, we do have concern about the proposed extension of the "black out" periods such that it shall commence from the issuers' year/ period end date and end on the date of the publication of the results announcements. We find this proposed extension unnecessary for several reasons. First, the directors are already prohibited from dealing whenever they are in possession of unpublished price-sensitive information. Second, any dealing by the directors is subject to disclosure under the SFO and the public will have knowledge of such dealing. Third, assuming an issuer publishes quarterly financial reports or the Exchange resolves to go ahead with the proposed mandatory quarterly reporting, there will be 4 "black out" periods in a year. That would mean that the days available for dealings by directors in any given year will be very limited. Hence, we take the view that the current "black out" period of one month is sufficient and should be maintained.

~End~