

CONSULTATION PAPER
ON PROPOSED CHANGE TO MINIMUM
NUMBER OF SHAREHOLDERS FOR THE
MARKET CAPITALISATION/REVENUE TEST

September 2010



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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HOW TO RESPOND TO THIS CONSULTATION PAPER

The Stock Exchange of Hong Kong Limited (the “**Exchange**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEx**”), invites written comments on this paper no later than **12 November 2010**. Responses should, if possible, be made by one of the following methods:

By mail or hand delivery to Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on
Proposed Change to Minimum Number of
Shareholders for Market Capitalisation/Revenue Test**

By fax to (852) 2524-0149

By e-mail to response@hkex.com.hk

Please mark in the subject line:

Re: CP on Minimum Number of Shareholders

The Exchange’s submission enquiry number is (852) 2840-3844.

The Exchange invites views on the proposed change, and where appropriate support the answers with reasons. Respondents are reminded that the Exchange will publish responses on a named basis in the intended consultation conclusions, unless you request otherwise.

The Exchange’s policy on handling personal data is set out in **Appendix III** of this paper.

Next Steps

The Exchange will carefully consider all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual the Exchange will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

CHAPTER 1 EXECUTIVE SUMMARY

1. The Exchange proposes the following change to the Main Board Listing Rules (“**MB Listing Rules**”).
2. MB Listing Rule 8.05(3)(f) requires an applicant that lists using the Market Capitalisation/Revenue Test to have a minimum of 1,000 shareholders.
3. This requirement is more onerous than the Profit Test and the Market Capitalisation/Revenue/Cash Flow Test. Market practitioners consider that it prevents applicants with a large market capitalisation and revenues from listing if they cannot secure sufficient retail investor interest.
4. Also, it may not be appropriate to require a large retail investor interest in applicants that list under the Market Capitalisation/Test as they may be riskier investments. These applicants do not have to be profitable or have a minimum cash flow and can have a track record of less than three years.
5. The large public float requirement of the Market Capitalisation/Revenue Test (at least HK\$1 billion) and a minimum requirement for 300 rather than 1,000 shareholders may be enough to ensure an open market and sufficient retail investor participation.
6. We therefore propose changing the minimum shareholder requirement of the Market Capitalisation/Revenue Test, to 300.

CHAPTER 2 INTRODUCTION

BACKGROUND

7. In 2008, HKEx engaged a consultant to strategically review the Listing Rules and their application. The aim was to identify ways to enhance the Exchange's competitiveness as an international listing venue whilst maintaining the quality of its securities market.
8. The consultant's view was that the Profit Test fails to meet its purpose to ensure that an issuer's profitability is sustainable.
9. On 5 June 2009, the Exchange published a press release stating that it would consider granting waivers from the Profit Test requirements under MB Listing Rule 8.05(1)(a) ("**Waiver Announcement**"). This waiver is available to applicants with profits that have been temporarily and adversely affected by the global financial crisis.
10. The Waiver Announcement also stated that the Exchange would review the existing Profit Test and other components of the eligibility requirements.

Review of Profit Test

11. The Exchange published the results of its review of the Profit Test in the "Exchange Newsletter – July 2010". The Exchange decided to retain the current Profit Test as the review concluded that it is generally a good indicator that an applicant will continue to be profitable after listing.

Guidance Published on Listing Eligibility Requirements

12. The Exchange also reviewed all other listing eligibility requirements. Following this review, the Exchange decided that these non-financial requirements should be retained. However, the Exchange decided better guidance could be given to the market on certain subjects.
13. On 27 July 2010 the Exchange published a Guidance Letter on "Land use titles for properties situated in Mainland China (GL19-10)". This can be found on the "IPO process and requirements" page of the "Guidance Materials" section of the HKEx website.

Other Projects

14. The Exchange will consider other listing eligibility requirements as part of our review of the Joint Policy Statement Regarding the Listing of Overseas Companies. The review of the Joint Policy Statement Regarding the Listing of Overseas Companies was announced as a 2010 policy agenda item in the Listing Committee's Report 2009.

PURPOSE OF THIS CONSULTATION PAPER

15. Following its review of listing eligibility requirements, the Exchange decided to consult on a change to the minimum shareholder requirement for the Market Capitalisation/Revenue Test. This consultation paper invites your comments on this proposal.

CHAPTER 3 MINIMUM NUMBER OF SHAREHOLDERS FOR MARKET CAPITALISATION/REVENUE TEST

CURRENT REQUIREMENTS

16. An applicant has a choice of three listing eligibility tests under MB Listing Rule 8.05. These are: the Profits Test (MB Listing Rule 8.05(1)), the Market Capitalisation/Revenue/Cash Flow Test (MB Listing Rule 8.05(2)), or the Market Capitalisation/Revenue Test (MB Listing Rule 8.05(3)).
17. The MB Listing Rules require the distribution of shares to a minimum of 300 shareholders¹ if the applicant is listed under the Profit Test or the Market Capitalisation/Revenue/Cash Flow Test.
18. However, if an applicant lists under the Market Capitalisation/Revenue Test, its shares must be distributed to a minimum of 1,000 shareholders.
19. Also, if the Market Capitalisation/Revenue Test is used, an applicant can use the waiver offered by MB Listing Rule 8.05A and list with a shorter trading record period than three years, if directors and management have sufficient experience. This waiver is not available under the other two listing eligibility tests.

Comparison with Other Jurisdictions

20. The Exchange compared the minimum shareholder distribution requirements of other jurisdictions² with Hong Kong. See Appendix I.
21. U.S. exchanges have the highest minimum shareholder distribution requirement. They require 400-450 “round lot” shareholders³ or 2,200 total shareholders with other alternatives for non-U.S. companies (NYSE Euronext) or seasoned companies with established trading volumes. The Australian and Singapore Stock Exchanges both require 500 shareholders with other distribution requirements.

HISTORY OF MARKET CAPITALISATION/REVENUE TEST

22. The Exchange stated its reasons for introducing the Market Capitalisation/Revenue Test in a consultation paper⁴ published in July 2002. The Exchange noted that other markets have alternative tests to a profit test and recognised that there was a market need in Hong Kong for alternative tests. These would offer greater opportunities to list companies that are large in size but take a long time to become profitable.

¹ MB Listing Rule 8.08(2).

² NYSE Euronext, Nasdaq OMX (Global Select Market), U.K. Financial Services Authority, Australian Stock Exchange, Singapore Stock Exchange, Shanghai Stock Exchange and Shenzhen Stock Exchange.

³ Holders of 100 shares or more or of a unit of trading if less than 100 shares (NYSE Listing Manual 102.01A)

⁴ Consultation Paper on Proposed Amendments to the Listing Rules Relating to Initial Listing and Continuing Listing Eligibility and Cancellation of Listing Procedures, July 2002.

23. The Exchange stated that large market capitalisation applicants that are able to generate substantial revenues for the most recent financial year should be able to attract greater market support to justify their listing. So, a higher minimum shareholder requirement for the Market Capitalisation/Revenue Test was introduced.

REASON FOR CHANGE

24. The Exchange has recently received feedback from market practitioners that the minimum shareholder requirement for this test is too demanding and should be revised. This is because, in order to meet the test, an applicant has to generate significant interest from both retail and institutional investors. Market practitioners commented that retail investor interest could not be guaranteed, and it is very difficult to predict.
25. Between 2004 and 2009, only ten companies out of 352 (3%) listed under the Market Capitalisation/Revenue Test.
26. Table 1 shows that a significant proportion of companies listed under the Profit Test would also have met the financial thresholds of the Market Capitalisation/Revenue Test.

Year of Listing	Number of Companies that listed under Profit Test	Number that would have met Market Capitalisation/Revenue Test Financial Thresholds	%
2004	40	7	17.5
2005	54	10	18.5
2006	54	21	38.9
2007	78	36	46.2
2008	45	13	28.9
2009	66	39	59.1
TOTAL	337	126	37.4

Table 1: Profit Test Applicants that would have met Market Capitalisation/Revenue Test Financial Thresholds

27. The greater minimum shareholder requirement may discourage some applicants with large market capitalisation and revenues from using the Market Capitalisation/Revenue Test as an alternative to the Profit Test.

Requiring widespread market interest in applicants using the Market Capitalisation/Revenue Test may not be appropriate

28. An issuer that lists using the Market Capitalisation/Revenue Test is not required to be profitable or meet a minimum cash flow requirement and may have a track record of less than three years (see paragraph 19).
29. So, an applicant that lists under the Market Capitalisation/Revenue Test may be a

riskier investment than one that lists using the other tests. It may not be appropriate, therefore, to require an applicant to generate a large retail investor interest to meet the 1,000 shareholder requirement of this test.

“Public Float” requirement may be enough to ensure an open market and retail investor participation

30. Table 2 compares the market capitalisation and shareholder distribution requirements of the three listing eligibility tests.

Eligibility Test (MB LR 8.05)	Market Capitalisation Required (HK\$ million)	“Public Float” Market Capitalisation (HK\$ million)
Profit Test	200	50
Market Capitalisation/Revenue/ Cash Flow Test	2,000	500
Market Capitalisation/Revenue Test	4,000	1,000

Table 2 – Comparison of Market Capitalisation for Listing Eligibility Tests

31. Normally at least 25% of an issuer’s total issued share capital must at all times be held by the public (MB Listing Rule 8.08(1)(a)). So, as shown in Table 2, applicants that use the Market Capitalisation/Revenue Test must have a market capitalisation of at least HK\$4 billion and a “public float” market capitalisation of at least HK\$1 billion⁵.
32. The two alternative tests to the Market Capitalisation/Revenue Test require an applicant to have a minimum of 300 shareholders. The Exchange considers that the large public float requirement of the Market Capitalisation/Revenue Test and a requirement for a minimum of 300 rather than 1,000 shareholders should be enough to ensure an open market and sufficient retail investor participation.

⁵ The Exchange may, at its discretion, grant a waiver from the requirement for a public float of 25% and accept a lower percentage of between 15% and 25% in the case of issuers with an expected market capitalisation at the time of listing of over HK\$10 billion.

PROPOSAL

33. The Exchange proposes to remove MB Listing Rule 8.05(3)(f), make a consequential amendment to MB Listing Rule 8.08(2) (see Appendix II) and simplify the wording of both rules. The minimum shareholder requirement for the Market Capitalisation/Revenue Test would be 300, rather than 1,000.

Consultation Questions

34. *Question 1:* Should the Exchange remove MB Listing Rule 8.05(3)(f) and make a consequential amendment to MB Listing Rule 8.08(2) to require a minimum number of 300 shareholders for the Market Capitalisation/Revenue Test? Please give reasons for your answer.
35. *Question 2:* If your answer to Question 1 is “Yes”, do you agree that the MB Listing Rule amendments in Appendix II will implement the proposal. If your answer is “No”, please provide reasons and alternate views.

APPENDIX I COMPARISON OF MINIMUM SHAREHOLDER REQUIREMENTS IN OTHER JURISDICTIONS

Hong Kong (Main Board)	U.K – Financial Services Authority	U.S.A – New York Stock Exchange		U.S.A – NASDAQ (Global Select Market)	Australian Stock Exchange	Singapore Stock Exchange (Main Board)	China – Shanghai & Shenzhen (Main Board)
Minimum of 300 shareholders or 1,000 shareholders for Market Capitalisation/ Revenue Test.	The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.	U.S Domestic 400 “round lot” ⁶ shareholders; or 2,200 total shareholders and 100,000 shares monthly trading volume in most recent 6 months; or 500 total shareholders and 1 million shares monthly trading volume in most recent 12 months.	International 5,000 total shareholders / “round lot” shareholders	Initial Public Offerings 450 “round lot” shareholders or 2,200 total shareholders Seasoned companies Companies currently trading common stock or equivalents have additional option of meeting requirement by having only 550 total shareholders and 1.1 million average monthly trading volume over past 12 months.	500 shareholders each with a parcel of securities with a value of at least A\$2000 (HK\$14,094 ⁷); or 400 shareholders each with a parcel of securities with a value of at least A\$2000 (HK\$14,094) but with a requirement for at least 25% to be held in public hands.	500 shareholders < S\$75m (HK\$429m) Offer Size At least 40% of the invitation shares or S\$15m (HK\$86m) whichever is lower, distributed to investors each allotted not more than 0.8% of the invitation shares or S\$300,000 (HK\$1.7m) worth of shares, whichever is lower. Offer Size ≥ S\$75m (HK\$429m) and < S\$120m (HK\$687m) At least 20% of the invitation shares must be distributed, each allotted not more than 0.4% of the invitation shares. ≥ S\$120m (HK\$687m) Offer Size No distribution requirement.	No requirement. (We understand the previous requirement for 1,000 persons with shares of a value greater than RMB 1,000 (HK\$5,726) was abolished in the 2005 Securities and Company Law Amendments)

⁶ Holders of 100 shares or more or of a unit of trading if less than 100 shares (NYSE Listing Manual 102.01A)

⁷ All currency conversions into Hong Kong dollars in this consultation paper use exchange rates as at 11 August 2010.

APPENDIX II DRAFT RULE AMENDMENTS

Set out below are proposed marked-up draft MB Listing Rule amendments.

8.05 The issuer must satisfy either the profit test in rule 8.05(1) or the market capitalisation/revenue/cash flow test in rule 8.05(2) or the market capitalisation/revenue test in rule 8.05(3).

...

The market capitalisation/revenue test

(3) To meet the market capitalisation/revenue test, a new applicant must satisfy each of the following, unless ~~otherwise~~ waived by the Exchange under rule 8.05A:

- (a) a trading record of at least ~~not less than~~ three financial years;
- (b) management continuity for at least the three preceding financial years;
- (c) ownership continuity and control for at least the most recent audited financial year;
- (d) a market capitalisation of at least HK\$4,000,000,000 at the time of listing; and
- (e) revenue of at least HK\$500,000,000 for the most recent audited financial year; and
- ~~(f) at least 1,000 shareholders at the time of listing.~~

8.08 There must be an open market in the securities for which listing is sought. This will normally mean that:—

- (2) ~~in the case of~~ for a class of securities new to listing, at the time of listing there must be an adequate spread of holders of the securities to be listed, ~~save except~~ where: (a) ~~the securities to be listed~~ they are options, warrants or similar rights to subscribe for or purchase shares; (b) ~~such securities~~ they are offered to existing holders of a listed issuer's shares by way of bonus issue; and (c) in the 5 years ~~preceding~~ before the date of the announcement ~~on~~ of the proposed bonus issue, there are no circumstances to indicate that the issuer's shares ~~of the issuer~~ may be concentrated in the hands of a few shareholders. The number will depend on the size and nature of the issue, but in all cases ~~(save for an issuer which chooses to satisfy the alternative financial standard test under rule 8.05(3) see rule 8.05(3)(f))~~ there must be a ~~minimum of~~ at least 300 shareholders;

APPENDIX III PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data” in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
 - administration, processing and publication of the consultation paper and any responses received;
 - performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - research and statistical analysis; and
 - any other purposes permitted or required by law or regulation.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an “as is” basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data unless specifically required to do so under any applicable law or regulation. If you do not wish your name to be published or your opinion to be published, please state so when responding to this paper.

Access to and Correction of Data

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on
Proposed Change to Minimum Number of Shareholders for
Market Capitalisation/Revenue Test**

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

