

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

23 March 2018

Dear Sir

Emerging and Innovative Companies CP

Over the past few decades, Hong Kong has successfully established itself as an international financial centre in Asia that offers an efficient and well-regulated capital market to channel capitals from investors to corporations. With the development of technology, emergence of new economy and increasing competition from other capital markets as venues of IPO listings, Hong Kong listing rules need to be constantly measured up to international standards.


To diversify the economy and strengthen the long-term economic growth of Hong Kong, ACCA (the Association of Chartered Certified Accountants) welcomes new measures introduced by Hong Kong Exchanges and Clearing Limited (HKEX) to attract entities from high-potential and innovative sectors to seek primary or secondary listings in Hong Kong. We would like to set out our comments on the captioned consultation paper which seek to clarify some of the technical issues.

Biotech companies

1. Referring to paragraph 8(g) of the Consultation Paper, one of the features that a new Biotech Company has to demonstrate its suitability for listing is that 'it must have previously received meaningful third party investment from at least one Sophisticated Investor at least six months before the date of the proposed listing'. The definition of Sophisticated Investor is set out in the definition section of the consultation paper to mean 'an investor that HKEX considers to be sophisticated by reference to factors such as net assets or assets under management, relevant investment experience, and the investor's knowledge and expertise in the relevant field'. Such a definition is not mentioned in Chapter 18A. We wonder whether HKEX will clarify in more details regarding the definition of Sophisticated Investor in Chapter 18A or the related guidance letter.


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ACCA

 +852 2524 4988

 info@accaglobal.com

 www.accaglobal.com

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2. The proposed rule 18A.03(4) requires that a Biotech Company has available sufficient working capital to cover at least 125% of the group's costs for at least 12 months from the date of publication of its listing document. Whilst we note that there is a similar requirement for mineral companies under rule 18.03(4) in Chapter 18 of the Listing Rules, a mineral company is specifically required by rule 18.03(5) to state in its listing document that it has available sufficient working capital for 125% of the group's present requirements. We would like to clarify if there will be any similar disclosure requirement for a Biotech Company.
3. The sub-title of rule 18A.11 is 'Dis-application of rules 18A.08 to 18A.10'. However, under rule 18A.11, it says when a listed Biotech Company can demonstrate to the Exchange's satisfaction that it is able to meet the requirements of rule 8.05, rules 18A.07 to 18A.10 would not apply to the Biotech Company upon its application. We would appreciate if HKEX can clarify its intention of whether rule 18A.07 should also dis-apply once the listed Biotech Company meets the requirement of rule 8.05.
4. According to the same rule, when a Biotech Company is able to meet the requirements of rule 8.05, rules 18A.07 to 18A.10 will dis-apply upon its application, and its stock name does not need to end with the marker 'B'. We consider it helpful if HKEX will clarify the required procedures regarding the 'application' under rule 18A.11.

Issuers with Weighted Voting Rights (WVR) Structures

5. Paragraph 133 of the Consultation Paper states that an issuer with a WVR structure must also disclose any dilution impact of a potential conversion of WVR shares into ordinary shares in its Listing Documents and in its interim and annual reports. We are unsure if this dilution impact should refer to the dilution in earnings per share, if any (given that there should be no change in economic interests), as defined in the Hong Kong Accounting Standard 33 issued by the Hong Kong Institute of Certified Public Accountants or should it refer to the potential impact on the market price of the listed ordinary shares that may result from the increase in supply of the listed shares. We would appreciate if HKEX could provide more guidelines on the methodologies of quantifying any dilution impact.

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6. Rule 1.01 defines 'controlling shareholders' as any person who is or group of persons who are together entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of the issuer. Under the Takeovers Code, 'control' shall be deemed to mean a holding, or aggregate holdings, of 30% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control. We understand that HKEX has had extensive discussions with the SFC and trust that, in the event that the new Chapter 8A is adopted, the regulators will have in place a set of procedures for dealing with any implications brought about by a potential change in Controlling Shareholders resulting from the conversion of WVR shares into ordinary shares (and therefore the application of the relevant provisions in the Takeovers Code and the Listing Rules).
7. According to rule 8A.14, the beneficiaries of WVR must beneficially own collectively at least 10% and not more than 50% of the underlying economic interest in the applicant's total issued share capital at the time of its initial listing. HKEX would accept a lower minimum shareholding percentage, on a case by case basis, if the lower underlying economic interest still represents a very large amount in absolute dollar terms. To ensure clarity, we recommend HKEX clearly spell out the lowest acceptable limit so that issuers and market participants can better prepare and plan for their IPO process.
8. Whilst we understand that HKEX proposes to mandate certain provisions of the CG Code regarding the role of an independent non-executive director (INED), Rule 8A.27 specifically requires that the role of an independent non-executive director of a listed issuer with a WVR structure must include the functions described in a few Code Provisions including A.6.2 and A.6.7. Code Provisions A.6.2 and A.6.7 require NEDs/INEDs to attend board meetings and general meetings of the listed companies. Given this is now a mandatory requirement, HKEX may need to give advice or guidance to INEDs when they may need to be excused from board/general meetings with valid reasons under practical circumstances in order not to breach the Listing Rules.

Conclusion

ACCA appreciates the initiatives to reform the Hong Kong capital market in order to reinforce Hong Kong's position as an international financial centre. Clear and specific rules and guidelines will better facilitate compliance and planning of issuers and market participants.

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info@accaglobal.com



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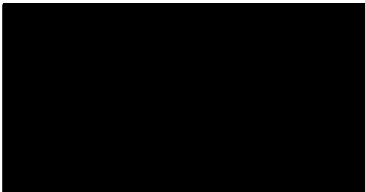


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Should you wish to clarify any of the above issues, please do not hesitate to contact the undersigned at [REDACTED]

Yours faithfully,



Teresa Tso
Chairman

ACCA



+852 2524 4988



info@accaglobal.com



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