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By Hand & By E-mail

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

Re: Emerging and Innovative Companies CP

Email: response@hkex.com.hk

Dear Sirs:

Response to *Consultation Paper: A Listing Regime for Companies From Emerging and Innovative Sectors*

We refer to the *Consultation Paper: A Listing Regime for Companies From Emerging and Innovative Sectors* dated February 2018 (the "**Consultation Paper**") issued by Hong Kong Exchanges and Clearing Limited ("**HKEX**"). We are writing to submit our comments on the Consultation Paper for the consideration of HKEX. Terms defined in the Consultation Paper shall have the same meanings when used in this submission, unless the context otherwise requires.

We set out below our comments on the draft amendments to The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited ("**Draft Listing Rules**"), as presented in Appendix I of the Consultation Paper, and related sections of the Consultation Paper, where applicable.

Amendment to Listing Rule 8.11

We consider that the proposed amendment to Listing Rule 8.11 is not sufficient as the current amendment addresses only the listing and issuance of B Shares by an already-listed issuer, but does not address the position for new listing applicants, nor does it address the position for secondary listing applicants under new Chapter 19C. Accordingly we would suggest a further amendment as follows:

> 8.11 The share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid ("B Shares") unless permitted by Chapter 8A and/or Chapter 19C of these rules. The Exchange will not be prepared to list any new B Shares issued by a listed issuer nor to allow any new B Shares to be issued by a listed issuer (whether or not listing for such shares is to be sought on the Exchange or any other stock exchange) except:—
>
> (1) in exceptional circumstances agreed with the Exchange; or
>
> (2) in the case of those listed companies which already have B Shares in issue, in respect of further issues of B Shares identical in all respects with those B Shares by way of scrip dividend or capitalisation issue, provided that the total number of B Shares in issue remains substantially in the same proportion to the total number of other voting shares in issue as before such further issue; or
>
> (3) as permitted by Chapter 8A and/or Chapter 19C of these rules.

Draft Listing Rule 8A.07

We note that Draft Listing Rule 8A.07 anticipates weighted voting rights attach to "a class of an issuer's equity securities". It is unclear whether HKEX's intention is that only one class of securities may have WVRs or whether it is possible for an issuer to establish multiple classes of WVR Shares (with the potential for different weighted voting rights for each class within the limit set out in Draft Listing Rule 8A.10), provided that the other requirements including those in Drafting Listing Rules 8A.09 and 8A.14 are met.

As a minor drafting point, if the specific carve-out reference to Draft Listing Rule 8A.25 is deemed necessary (we are not sure that it is, given that WVR structures would be "subject to" the entirety of Chapter 8A including Draft Listing Rule

8A.25 in any event), we consider it better placed at the end of the first sentence rather than the beginning.

Our suggested drafting amendments as follows:

> 8A.07 ~~Subject to the requirement of rule 8A.25, a~~A WVR structure must attach weighted voting rights only to a class (or classes) of an issuer's equity securities and confer on a beneficiary enhanced voting power on resolutions tabled at the issuer's general meetings only, subject always to the requirements of rule 8A.25. In all other respects, the rights attached to a class of equity securities conferring weighted voting rights must otherwise be the same as the rights attached to the issuer's listed ordinary shares.

Draft Listing Rules 8A.11, 8A.12 and 8A.20

We understand, further to paragraph 121 of the Consultation Paper, that HKEX understands and accepts the desire for company shareholders to place the shares that they hold – including WVR shares – into trusts, partnerships, private companies or other vehicles in particular for tax and estate planning purposes. We further understand that the Draft Listing Rules have been drafted with the intention of accommodating this, including in Draft Listing Rule 8A.12.

However, there are a number of matters in the Draft Listing Rules which we consider require clarification if the above intention is to be achieved. For example:

- The phrase "beneficiaries of weighted voting rights" is used extensively in the Draft Listing Rules, but the term is not defined and its meaning is unclear. For example, Draft Listing Rule 8A.11 requires "beneficiaries of weighted voting rights" to be members of the board of directors. If WVR share were to be placed in a family trust, this Rule could be read to require that *all the beneficiaries of the trust* would also have to be directors, which is clearly not the intended result.

- Draft Listing Rule 8A.20 provides that that weighted voting rights shall cease upon transfer of "the beneficial ownership of, or economic interest in, those shares". However, by definition the transfer of shares into a trust involves the transfer of both the beneficial ownership and economic interest in the shares from the legal owner to the beneficiaries of the trust. Thus on the face of the present rules, the transfer of WVR shares into a trust would lead to those shares automatically losing WVRs.

As background, we note that under US market practice, founders can generally transfer WVR shares to "affiliates" without losing their WVR rights. One

possible approach would be to amend Draft Listing Rule 8A.20 to permit transfers to "associates" as defined under Chapter 14A of the Listing Rules. Given that associates are presumed under Chapter 14A to have sufficiently close connection that transactions with those persons require regulation under the connected transaction rules, such connection would arguably be sufficient to permit continued enjoyment of WVRs, broadly consistent with the approach adopted in the US market. However, we also recognize the policy desire of HKEX to restrict WVRs in the Hong Kong market to a more limited group of persons.

Accordingly, in relation to the present Draft Listing Rules, it is submitted as follows:

- It is submitted that it is necessary for the Listing Rules to contain a clear definition of the phrase "beneficiaries of weighted voting rights", in particular given that the phrase is a key concept used to regulate WVRs throughout multiple rules of Chapter 8A. We presume that such persons will also be required to meet the conditions set out in paragraph 106(c) and (d) of the Consultation Paper, which we understand would be addressed in the forthcoming guidance letter.

- In the event that it is considered impracticable or undesirable to articulate a precise definition of the phrase "beneficiaries of weighted voting rights", it is submitted that the Listing Rules (or related guidance letter) explicitly articulate the policy that WVR shares must be ascribed to a particular qualifying person (the "WVR nominee"), and subsequent dealings in those shares by the WVR nominee within a certain permitted scope would *not* result in those shares losing WVRs.

- A clear exemption to Draft Listing Rule 8A.20 – either in the rule itself or in the note to the rule – is necessary to permit the transfer of WVR shares to a trust or limited partnership. This could be subject to certain restrictions – for example provided that:
  - the "beneficiary of weighted voting rights" is trustee, controls the trustee or is an appointor of the trust;
  - provided that only defined family members of the WVR shareholder are permitted to be beneficiaries; and/or
  - the WVR shareholder may transfer the beneficial/economic interest but does not transfer the legal title to the WVR shares, or otherwise maintains control over the exercise of voting rights of the WVR shares held by any such trust or other vehicles.

We appreciate there are also taxation law concerns which would impact the drafting of such exemption, however we are of the view that the current drafting does not achieve the intended aim.

Draft Listing Rule 8A.14

We are of the opinion that the upper limit of a 50% interest in the underlying economic interest in the applicant's total issued share capital at the time of initial listing is not reasonable.

We understand the argument that founders holding more than 50% of a Company at the time of listing are already in effective control and do not need the benefit of WVR to control the company. However, founders' shareholdings can be diluted very quickly through standard corporate actions such as future equity capital raising and ESOP plans, hence requiring WVR for those founders to maintain effective control moving forward.

We submit that no upper limit is required at all, given that there will be a natural effective limit imposed as a result of the public float requirement and the interests of existing external investors (which will be required pursuant to paragraph 106(e) of the Consultation Paper), and therefore that Draft Listing Rule 8A.14 should be deleted.

Draft Listing Rule 8A.16 / Top-up placings

The current Draft Listing Rules would not permit WVR shareholders to carry out "top-up placings".

We note that top-up placings are a common feature of the Hong Kong market, and the current regulatory regime already facilitates top-up placings through a number of exemptions, including exemptions from connected transaction requirements pursuant to Listing Rule 14A.92(4).

It is submitted that a similar exemption be incorporated into Draft Listing Rule 8A.16 to permit new WVR shares to be issued to controlling shareholders in top-up placing situations. Reference to Listing Rule 14A.92(4) is appropriate in this regard given that WVR shareholders will be deemed connected persons pursuant to Draft Listing Rule 8A.21.

It is submitted that investor interests would be sufficiently protected given that the absolute number of shares held by the relevant WVR shareholder(s) before and after completion of the top-up placing would remain exactly the same and the proportion of WVR shares would in fact decrease (as a matter of dilution). At the same time, the interests of issuers would be served by permitting them access to

this important mechanism for raising equity capital. We further note that there is no technical reason why top-up placings cannot be utilized for WVR issuers (*contra* PRC H-share issuers where controlling shareholders often do not hold H shares and the issuance of new shares is subject to PRC approval process).

Our suggested drafting amendments as follows:

> 8A.16 A listed issuer with a WVR structure may only allot, issue or grant shares carrying weighted voting rights with the prior approval of the Exchange and pursuant to (1) an offer made to the issuer's shareholders pro rata (apart from fractional entitlements) to their existing holdings; (2) a pro rata issue of securities by way of scrip dividends; ~~or~~ (3) pursuant to a stock split or other capital reorganization; or (4) pursuant to a "top-up placing and subscription" that meets the conditions set out in rule 14A.92(4), in each case provided that the Exchange is satisfied that the proposed allotment or issuance will not result in an increase in the proportion of shares carrying weighted voting rights.

At the same time, we would suggest that an additional Note be added to Listing Rule 14A.92(4) in the following terms:

> *Note: In the case of a "top-up placing and subscription" by beneficiaries of weighted voting rights, the Exchange will consider condition (a)(i) above to have been met notwithstanding that the WVR shares, when placed, will no longer carry weighted voting rights upon placing pursuant to rule 8A.20 and, provided that the other conditions in rule 14A.92(4) are met, new shares carrying weighted voting rights of a corresponding number may be issued to the beneficiary of weighted voting rights placing the shares pursuant to rule 8A.16.*

Draft Listing Rule 8A.16 and 8A.20 / Stock Borrowing

We note that the current Draft Rules do not provide any mechanism to permit stock lending by WVR holders.

As you will be aware, the purpose of stock borrowing arrangements is to facilitate over-allocations in the context of global offerings and in the interest of the listing applicants and shareholders as a whole. Exemptions exist to facilitate stock borrowing under the current Hong Kong regulatory regime, including exemptions in relation to stamp duty liability.

Given that stock lending/borrowing involves a transfer of shares, if WVR shares were to be lent under a stock borrowing arrangement, the effect of Draft Listing Rule 8A.20 in its current form would lead to the relevant WVR shares losing

their WVR status upon being lent out, while the shares to be returned to the WVR shareholder upon closing out the stock borrowing would not be entitled to WVR as there is no mechanism to permit this under Draft Listing Rule 8A.16.

We consider that an exemption under Draft Listing Rules 8A.16 and 8A.20 to permit stock lending/borrowing would be appropriate. Investor interests could be protected by reference to the conditions that apply to the present stamp duty exemption. The relevant WVR shareholder(s) would lend and be returned exactly the same number of shares, thus the absolute number of shares held by the relevant shareholder(s) before and after completion of the stock borrowing/return would remain exactly the same.

We would suggest drafting as follows:

An additional note to be added to Draft Listing Rule 8A.16 as follows:

> *Note 4:Where a WVR beneficiary lends WVR shares under a stock borrowing and lending transaction, a listed issuer may re-designate as WVR shares the ordinary shares returned to the relevant WVR beneficiary pursuant to that stock borrowing and lending transaction, provided that shares of the same quantity are lent and returned and that the stock borrowing and lending transaction otherwise qualifies for stamp duty relief under the Stamp Duty Ordinance, Cap. 117 and related rules and guidance issued by the Inland Revenue Department.*

An additional note to be added to Draft Listing Rule 8A.20 as follows:

> *Note 4: Rule 8A.20 would have the effect that the weighted voting rights attached to a beneficiaries shares would cease upon transfer to another person pursuant to a stock borrowing and lending transaction, however an equivalent number of such shares may be re-designated as WVR by the listed issuer pursuant to Note 4 of rule 8A.16.*

Draft Listing Rule 8A.19

We support the approach adopted in Draft Listing Rule 8A.19 to include the reference to convictions of an offence involving fraud or dishonesty to an explanatory note to the rule.

It is submitted that a bright-line test requiring WVRs to cease if the beneficiary were convicted of certain offences may give rise to concerns where WVR holders are located in jurisdictions with legal systems that may not always be fair / transparent and may impose penalties for political / extra-legal reasons. In these

circumstances a disqualification for "any" conviction involving fraud or dishonesty may in some circumstances be disproportionate and unfair to the WVR holder.

We note in addition that:

- the current Listing Rules do not specify any circumstances in which a director would be *automatically* disqualified;

- section 214(1)(b) of the Securities and Futures Ordinance requires that in order to be subject to disqualification the director must have committed an act of fraud, misfeasance or misconduct "towards [the issuer] or its members or any part of its members". We consider this qualification to be important, and note that the Draft Rules disregard whether the fraudulent or dishonest act is committed *towards the issuer or its members*.

That said, we note that the Draft Rules provide some discretion to the Exchange to exercise its judgment in relation to whether a particular conviction leads the Exchange to believe the person to no longer have the necessary character and integrity. We would like to emphasise that it is important this discretion is retained and a brightline test not be introduced in this regard, and we trust that the Exchange will exercise its discretion accordingly in the situations we have identified above.

Draft Listing Rule 8A.22

We have noted the content of the note to 8A.22 which provides that the Exchange's prior approval is required for the listing of shares that are issuable upon conversion of WVR shares. We would request HKEX to clarify that, as part of the listing process, the Exchange would at the time of IPO approve for listing any shares subsequently converted from WVR shares to ordinary shares (similar to the approval granted for the listing of shares issued upon exercise of share options under share options schemes also granted at the time of IPO).

Draft Listing Rule 8A.24

We consider the provision to permit shareholders holding only 10% of shares to convene an EGM and to have resolutions tabled to be pose significant threat to the ability of WVR holders to control the company. It is submitted that shareholders may rely on the ordinary corporate law principles of the jurisdiction of incorporation of the company. See our further comments in relation to Draft Listing Rule 8A.25 below.

Draft Listing Rule 8A.25(1)

The *Consultation Conclusions: New Board Concept Paper* (December 2017) paragraph 266(c) provided that "material changes" to the constitutional documents would need to be decided on a one-share one-vote basis. We note that HKEX has adopted a stricter standard in the Consultation Paper, with Draft Listing Rule 8A.25(1) requiring that *any* changes of the constitutional documents of the company be decided on a one-share one-vote basis.

We consider this higher standard to be inappropriate and threatens to undermine entirely the legitimate purpose of a WVR share structure to enable the WVR beneficiaries to exert control over the company. We see this threat as particularly serious when combined with the ability of shareholders to requisition a meeting and put resolutions to the meeting under Draft Listing Rule 8A.24.

We understand that HKEX considers the protections offered by "variation of class rights" rules (for example as contained in Listing Rules Appendix 13, paragraph 2(1) in relation to Cayman companies) to be sufficient protection to prevent shareholders from changing the articles to remove WVRs.

However, we foresee numerous situations where shareholders could utilize Draft Listing Rules 8A.24 and 8A.25(1) to undermine WVR holders control of the company and defeat the entire purpose of a WVR structure.

Concrete examples where a determined minority may effectively use these rules to usurp control from WVR shareholders include the following:

- Minority shareholders could propose an amendment to the articles which would impose a "super majority" vote for numerous routine corporate matters. Even if this super majority vote were to be held on a WVR basis, and therefore the amendment would not affect the WVR rights as a class right, depending on the particular WVR shareholding the super majority level could be set sufficiently high (say, 95%) to prevent the WVR holder being able to approve or block those corporate matters.

- Minority shareholders could propose an amendment to the articles requiring that INEDs constitute more than half of the board of directors, and then with the effect of Draft Listing Rule 8A.25(3), proceed to elect INED candidates on a one-share, one-vote basis. This would result in WVR holders losing control of the board of directors, and thus, losing management control of the company.

These are just two examples of the types of mischief a disruptive group of shareholders would have the ability to cause under the present Draft Listing Rules.

Accordingly, we strongly suggest that item (1) of Draft Listing Rule 8A.25 be deleted, and, instead of forcing WVR holders to rely upon the "variation of class rights" protections, rather the converse is the logical and appropriate principle to apply, i.e. where the articles are proposed to be amended to affect the class rights of the ordinary shareholders, separate class meetings would be required so that the ordinary shareholders have a veto right over such amendments.

Draft Listing Rule 8A.34

We respectfully submit that the requirement in Draft Listing Rule 8A.34 that an issuer with a WVR structure appoint a compliance adviser on a permanent basis is excessive and of limited utility. The appointment of a compliance adviser is in no way a guarantor of an increased standard of investor protection, and there is no evidence that WVR issuers would have a greater propensity to breach the Listing Rules compared to other main board issuers warranting the imposition of this additional expense and administrative burden on a permanent basis.

If HKEX considers some gesture to increased compliance and monitoring is necessary, it is submitted that the compliance adviser requirement apply for an extended period of time (for example, two or three full financial years after listing, compared to the usual one full financial year after listing applicable under Listing Rule 3A.19).

Draft Listing Rule 8A.37

We note the requirement for the issuer's directors and certain other parties, including "advisors" to undergo training on the listing rules and the risks associated with a WVR structure.

It is submitted that "advisors" should be deleted from this rule, as it is both unclear in scope, impracticable and unnecessary. In particular:

- It is unclear who would be covered by the term "advisors". If the rule is intended to catch professional advisors to the issuer, which professional advisors are covered? Would it include sponsors, non-sponsor underwriters, reporting accountants, legal counsel (and if legal counsel, just the Hong Kong counsel or counsel from all jurisdictions including the PRC, Cayman Islands, etc.)? In addition, which team members of the advisors would it include, would the training be required for only "core"

team members, or for every single employee of the advisory firm involved in the listing application?

- It is assumed that legal counsel to the issuer would be expected to provide this training. If so it would seem peculiar to require one set of legal counsel to provide training to the other legal counsel advising on the transaction.

- Most of these advisors hold professional qualifications and are licensed and/or regulated under existing regimes pursuant to which they are qualified to advise on Listing Rules-related matters. For example, solicitors are regulated by the Law Society, sponsors are regulated by the SFC as corporate finance advisors, and accountants are regulated by Hong Kong Institute of Certified Public Accountants. It is not clear what additional benefit would be gained by requiring these qualified professionals to undertake further training.

- Many of these professional advisors regularly advise on multiple transactions in the market, and as a result advisors would be required to undertake the same training on multiple occasions.

- To the extent HKEX anticipates "advisors" other than these qualified professionals to receive the training, it is unclear what role they would be undertaking that would necessitate the training.

One additional drafting comment is that the parenthetical "including those that are beneficiaries of weighted voting rights and independent non-executive directors" omits reference to other directors (i.e. executive directors and non-executive directors who are neither beneficiaries of weighted voting rights nor independent) and thus rather than serving to clarify instead gives rise to potential confusion. Provided that the HKEX's intention is that *all* directors receive training, we consider the parenthetical unnecessary.

Our suggested drafting amendments to the rule as follows:

> 8A.37 A new applicant and its directors must confirm to the Exchange, as part of its listing application, that each of its directors, ~~(including those that are beneficiaries of weighted voting rights and independent non-executive directors) and~~ members of senior management, and company secretary ~~and advisers~~ have undertaken training on these rules and the risks associated with a WVR structure.

Draft Listing Rule 8A.38

We note the requirement that the "front page" of all listing documents, circulars and other corporate documents include disclosure that would "describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders". We observe that meeting the requirements of this rule would necessitate lengthy substantive disclosure, far beyond the limited space available on the cover pages of listing documents and circulars in common market practice, which are already crowded with extensive legends required under other listing rules, applicable laws, and CCASS requirements. It would be helpful if HKEX could provide further guidance or sample disclosure it considers would meet the requirements of this Draft Rule within the practical space limitations of what can be disclosed on the front page of a listing document.

In the alternative, it is submitted that a more practicable, workable approach would be:

- the requirement as to legend on the front page be limited to the simple warning statement: "A company controlled through weighted voting rights"; and

- the disclosure that would "describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders" be permitted on the inside-front page, in the summary, at the top of the table of contents or some other prominent position inside the document.

Draft Listing Rules 8A.40 and 8A.41

A minor comment that, given the contents of Draft Listing Rules 8A.40 and 8A.41 refer to disclosure in listing documents as well as interim and annual reports, the heading of this section should be amended to reflect the contents accurately, as follows:

> Disclosure in Listing Documents and Interim and Annual Reports

Draft Listing Rule 8A.41

In relation to Draft Listing Rule 8A.41, it is submitted that the required disclosure of "dilution impact of a potential conversion of WVR shares into ordinary shares" is not necessary as there is no such dilution upon any conversion. As required by Draft Listing Rule 8A.22, conversion of WVR shares into ordinary shares is on a one-to-one ratio, and as required by Draft Listing Rule 8A.07 the economic interests in a company represented by WVR shares are identical to those of ordinary shares. It is unclear therefore what "dilution" would be required

to be disclosed pursuant to this rule. It is submitted that this the rule should be deleted, or HKEX clarify what dilution is referred to for the purposes of this rule.

Consultation Paper paragraph 106(e)

We note the intention that pre-IPO investors will be required to retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO. We should be grateful if HKEX could clarify whether:

- this requirement relates to each and every pre-IPO investor;
- this requirement would apply only to one nominated "Sophisticated Investor" for the purposes of meeting this requirement; or
- whether this is considered in a broader concept that 50% of the shares of the pre-IPO investors taken together shall be subject to the lock-up.

Definition of "controlling shareholders" and ownership continuity and control requirement

We note that the definition of "controlling shareholder" under Listing Rule 1.01 is "any person...entitled to exercise or control the exercise of 30%...or more of the voting power at general meetings" of the company.

We further note the requirements of Listing Rule 8.05 and Guidance Letter HKEx-GL89-16 in relation to the "ownership continuity and control" requirement.

We consider that two clarifications would be helpful from the HKEX:

(a) does HKEX intend to interpret the definition of "controlling shareholder" taking into account votes exercised pursuant to WVR?

(b) if so, does HKEX consider that the "ownership continuity and control" requirement is not met if, pursuant to a pre-IPO reorganization introducing a WVR structure, a shareholder or group of shareholders comes to exercise more than 30% of the voting power of the company taking into account votes exercised pursuant to WVR, even where such shareholder(s) were both before and after the restructuring the single largest shareholder (shareholder group)?

Draft Listing Rule 18A.06

Biotech companies by their nature have long product cycles and require very heavy capital investments over multiple years. The continued support of existing shareholders, and in particular sophisticated shareholders who have participated in previous financing rounds, is paramount in ensuring the success of ongoing capital raisings.

In light of this, it is submitted that it is important to the development of a strong market for biotech companies in Hong Kong that that existing shareholders of biotech companies be permitted to:

(a) participate in their initial public offerings in Hong Kong; and

(b) continue to participate in offerings conducted by a company after it has been listed on the HKEX.

We understand that the HKEX does not object to (a) above, and has noted in paragraph 86 of the Consultation Paper that the HKEX is proposing to allow shareholders that do not meet the criteria set out in existing guidance (namely, HKEX Guidance Letter GL85-16) to participate in initial public offerings as cornerstone investors. However, Draft Listing Rule 18A.06 makes no mention of the ability of existing shareholders to participate in initial public offerings, nor do the Draft Listing Rules otherwise provide for this. To the extent that this will be permitted through a Guidance Letter to be issued by HKEX (or an update to GL85-16), we would be grateful if HKEX could issue the relevant Guidance Letter in draft form for public comment prior to formal issuance, in order to give market participants the opportunity to provide comment on the proposed rules.

With respect to (b) above, while we note that the current form of the Listing Rules would not necessarily preclude existing shareholders from taking part in future financing rounds, where such existing shareholders were connected persons it would effectively restrict biotech companies to conducting financings by way of either rights issues or open offers. These means of raising equity capital are sub-optimal in terms of longer timelines, greater execution risk and higher discount price. As a result, we note that they are seldom adopted by listed issuers in Hong Kong: we note that during the entire 2017 only 26 rights issues and 8 open offers were conducted by companies listed on the HKEX, none of which were seasoned issuers with meaningful market capitalizations. Most worryingly, the 26 rights issues and 8 open offers took an average of 96.2 days and 94.7 days, respectively, from the date of their announcement to completion and were priced at an average discount to the closing price on the day prior to their announcement of 25.3% and 29.2% (compared to much lower discounts for

placings under general mandate), respectively, highlighting that they are highly unattractive methods for raising finance for reputable issuers.

Accordingly, it is submitted as follows:

- A clear exemption from Listing Rules 10.03 and 10.04 and paragraph 5(2) of Appendix 6 to the Listing Rules should be set out in the new Chapter 18A to permit existing shareholders to participate in initial public offerings either as cornerstone investors or placees under the international tranche.

- A mechanism to permit existing shareholders, including those who are connected persons, to participate in placings conducted by biotech companies pursuant to the issue of shares under a general mandate should be incorporated in Chapter 18A. If necessary, this could be restricted to certain sophisticated shareholders identified in a biotech company's prospectus at the time of its listing on the HKEX and whose future participation in ongoing capital raisings up to their pro rata amount of the shares being offered is clearly disclosed to investors (i.e., in the same way that listing applicants often apply for multi-year exemptions from the connected transactions rules at the time of their initial public offerings provided they are on normal commercial terms and full disclosure is made in the prospectus).

Draft Listing Rule 18A.03(1)

We consider the language of Draft Listing Rule 18A.03(1) to be vague and does not identify the bases upon which the HKEX will determine whether a biotech company is "both eligible and suitable for listing", which leaves for a significant degree of subjective judgment to be exercised by the HKEX. We understand that more detailed guidelines are expected to be set out in a separate Guidance Letter to be issued by HKEX in due course. We believe that it would provide greater certainty to market participants if the HKEX laid out clear parameters for what it considered to be suitable for listing for biotech companies (whether in the Listing Rules or a separate guidance letter), and we would be grateful if HKEX could issue the relevant Guidance Letter in draft form for public comment prior to formal issuance.

Draft Listing Rule 18A.08

On the basis that Listing Rule 13.24 will apply to all listed companies, including biotech companies, we see no need for sufficiency of operations to be separately addressed in Draft Listing Rule 18A.08. However, we do believe that the HKEX should clarify (whether in Draft Listing Rule 18A.08, Listing Rule 13.24, or a

separate guidance letter) that when considering whether a company has sufficient operations to justify its continued listing that the absence of revenues will not be taken into account as a factor for biotech companies.

Draft Listing Rule 18A.09

We believe that Draft Listing Rule 18A.09 should be amended or clarified (whether through a note to the Rule or separate guidance issued by HKEX) to ensure that the rule is not intended to preclude biotech companies from engaging in M&A activities in the broader biotech industry.

The rule should not operate in a way which would potentially preclude biotech issuers from undertaking transactions that they may consider in the best interests of their shareholders, for example the acquisition of other companies to boost their own product pipelines. To the extent that a biotech company undertakes a significant transaction, it will in any event be subject to shareholder approval under Chapter 14 (and potentially also Chapter 14A) of the Listing Rules, which should provide sufficient protection to shareholders.

Applicability of cash company rules to biotech issuers

We note that in HKEX Guidance Letter 84-15 issued in 2015 the HKEX interpreted Listing Rules 14.82 to 14.84 (the "Cash Company Rules") to mean that a company with 50% or more of its assets comprising of cash as a result of a fundraising would be regarded as having assets consisting wholly or substantially of cash, and thus potentially unsuitable for listing under those rules. For the reasons outlined above, biotech companies require significant amounts of capital and there is a corresponding need to conduct regular capital raisings to fund ongoing research and development and operating costs.

A strict application of the Cash Company Rules to biotech companies would make it difficult for companies to conduct capital raisings after listing on the HKEX, potentially having a significant negative effect on their ability to fund the multi-year investments necessary for them to bring their products to market. It is therefore submitted that the HKEX should clarify (either in the Listing Rules or an updated GL84-15) that the Cash Company Rules will not apply to biotech companies provided that funds raised are used for purposes consistent with their stated business plans, or set aside in short term investments pending such uses.

Draft Listing Rule 19C.04

We note the requirement of "a track record of good regulatory compliance of at least two full financial years" under Draft Listing Rule 19C.04. There is some uncertainty as to whether:

- this rule sets out two conjunctive requirements – i.e. (1) a Qualifying Issuer must have been listed on a Qualifying Exchange for at least two full financial years; and (2) that Qualifying issuer must have a track record of good regulatory compliance of at least two of those years (presumably the Exchange intends it to be the two most recent years?); or

- the rule does not set out a minimum listing period, but to the extent a Qualifying Issuer has been listed for two years or more, it must have a track record of good regulatory compliance of at least the two (most recent?) full financial years.

If the HKEX intends the former interpretation to apply, we would suggest an amendment to clarify as follows:

> 19C.04 A Qualifying Issuer must have ~~a track record of good regulatory compliance of~~ had (1) a primary listing for at least two full financial years on a Qualifying Exchange; and (2) a track record of good regulatory compliance for at least the two most recent full financial years prior to applying to list on the Exchange under this chapter.

If the HKEX intends the latter interpretation to apply, we would suggest an amendment to clarify as follows:

> 19C.04 A Qualifying Issuer must have a track record of good regulatory compliance of at least [the] two [most recent] full financial years on a Qualifying Exchange (or for the entirety of any such shorter period as the Qualifying Issuer has been primary listed on that Qualifying Exchange).

Conclusion

We are grateful to HKEx for the opportunity to present our views on the Consultation Paper for your consideration. If you have any questions in relation to this submission, please do not hesitate to contact our Julie Gao, Christopher Betts or Antony Dapiran.

Yours faithfully,

Skadden Arps Slate Meagher & Flom

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