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Our ref
MEM

Date
27 March 2023

By email [Redacted]

Dear Sir or Madam

Re: Consultation Paper on Rule Amendments Following Mainland China Regulation Updates and Other Proposed Rule Amendments Related to PRC Issuers

We refer to the Consultation Paper on Rule Amendments Following Mainland China Regulation Updates and Other Proposed Rule Amendments Related to PRC Issuers (the "**Consultation Paper**") issued in February 2023 and are pleased to respond with comments. Unless otherwise defined, all capitalised terms used in this letter shall have the same meanings as defined in the Consultation Paper.

As we do not have detailed comments on all of the questions set out in the Consultation Paper, we have not completed the questionnaire and prefer to respond in more general terms which we trust is acceptable.

Overall observations

We fully support the Exchange's timely amendments to the Listing Rules in making the consequential changes needed to ensure that the Listing Rules reflect the most up-to-date PRC laws and regulations.

With the implementation of the New PRC Regulations with effect from 31 March 2023, we note that holders of domestic shares and H shares will no longer be deemed as different classes of shareholders, with separate class meetings no longer being required. This change will bring PRC issuers more in line with other overseas companies that are not required to have a separate class for their overseas-listed shares. As such, we support the Exchange's initiatives to equalise the treatment of PRC issuers with other overseas listed issuers, particularly given the legal, regulatory and other developments in the PRC since Chapter 19A was introduced into the Listing Rules in 1993.

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In relation to the specific proposals, we set out below our comments.

Question 1: Do you agree with the proposal to set the limit on general mandate for issuance of new shares at 20% of the total issued shares of a PRC issuer, instead of 20% of each of domestic shares and H shares? Please provide reasons for your views.

Yes. As noted above, we support the Exchange's objective of ensuring consistent treatment of issuers listed in Hong Kong. With the changes in the PRC law to remove the separate class requirement for domestic and H shares, we agree that the mandate should be applied to the total issued shares of a PRC issuer.

The general mandate enables shareholders to give up-front approval for the issuance of shares up to the mandate limit, with the mandate limit protecting shareholders against excessive dilution. With the removal of the deemed separate classes, from an economic dilution perspective there is no need to apply separate mandates across the H shares and domestic shares given they will be the same class of ordinary shares.

Question 2: Do you have a concern that given fund raisings through the issuance of A shares may result in an increase in the number of A shares over H shares, the market size and liquidity of the H share market may reduce relative to the A share market? Do you think there should be other provisions to promote the long term development of the H share market, if so please provide reasons for your views and any suggestions.

We note the concern that the H share market may become relatively smaller than the A share market if a PRC issuer only issues new shares in the A share market in the future. However, given the actual number of H shares will not be reduced (and this would only be change in relative terms between the A and H share markets), this should not impact the liquidity of the H shares listed on the Exchange. We note the requirement in Rule 8.08 that issuers maintain an open market in the shares for which listing is sought, with a minimum spread of shareholders and the requirement to maintain a public float. At the time of listing, an assessment would have been required of the shareholding spread, public float (across both A and H shares) and overall comfort in there being an open market post-listing. Post-listing, we consider the ongoing obligation to maintain an open market should be a sufficient safeguard for Hong Kong investors.

Question 3: Do you agree with the proposal to set the limit on scheme mandate for share schemes at 10% of the total issued shares of a PRC issuer, instead of 10% of each of domestic shares and H shares? Please provide reasons for your views.

Yes, for the same reasons set out in response to Question 1 above.

Question 4: Do you agree with the proposal to remove the requirements for directors, officers and supervisors to provide undertakings to the PRC issuers and their shareholders? Please provide reasons for your views.

Yes. We agree that sufficient provisions are included in PRC law to protect shareholders from non-compliance by directors, officers and supervisors without the need for them to provide a separate undertaking to the issuer and its shareholders. Removing this requirement brings the regime for PRC issuers in line with that for overseas issuers.

Question 5: Do you agree with the proposal to move the requirements for compliance advisers set out in Rules 19A.05(2) and 19A.06(3) to Chapter 3A? Please provide reasons for your views.

We agree that the same requirements should apply to PRC and non-PRC issuers as regards ensuring the compliance adviser is provided with access and assistance to enable it to provide its duties. Similarly, we consider that the compliance adviser's role (irrespective of the jurisdiction of



incorporation of the issuer) is to update the issuer on changes to the Listing Rules or laws and regulations in Hong Kong which impact them. We support the proposed new notes to Rules 3A.23 and 3A.24, which are again aimed at ensuring the rules in this regard are consistent across all issuers.

Question 6: Do you agree with the proposal to remove Rules 19A.05(3), 19A.05(4), 19A.06(1) and 19A.06(4)? Please provide reasons for your views.

We agree with the proposal to remove the above-referenced provisions in Chapter 19A as we consider that these rules are sufficiently addressed by the general requirements on sponsors and compliance advisers in Chapter 3A.

Question 7: Do you agree with the proposal to remove the requirements relating to online display and physical inspection of documents under Rules 19A.50 and 19A.50A? Please provide reasons for your views.

We agree that the additional above-referenced requirements for PRC issuers should not be required as PRC issuers should be treated in the same way as other overseas issuers (who are not subject to such specific requirements for online display and physical inspection of equivalent documents for each of their overseas jurisdictions).

Question 8: Do you agree with the proposal to remove the requirements relating to disclosure of material differences between the laws and regulations in the PRC and Hong Kong in listing documents of new applicants that are PRC issuers? Please provide reasons for your views.

Yes, for the same reasons set out in response to Question 7 above.

Please let us know if you have any queries in relation to the above.

We confirm that we are happy for the contents of this letter to be made publicly available as part of the consultation process.

Yours faithfully

Herbert Smith Freehills