

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Consultation-Paper/cp201806.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with the proposal to codify the assessment criteria under the principle based test in a Note to the proposed Rule 14.06B?

Yes

No

If your answer is “No”, please give reasons for your views.

***The Listing Rules should be clear and specific. While the purpose of Guidance Letters is to clarify the interpretation of the Listing Rules. Mixing the content set out in Guidance Letters in the Listing Rules does not really add value.***

2. Do you agree with the proposal to extend the current criterion “issue of restricted convertible securities” in the principle based test to include any change in control or de facto control of issuers?

Yes

No

If your answer is “No”, please give reasons for your views.

***This is unclear as to what it means by change in de facto control. It is not clear whether it is a change in voting right of 30% (which is the definition of controlling shareholder under the Takeovers Code) or 50% (which is also conventionally recognised in practice).***

3. (a) As regards the “series of arrangements” criterion, do you agree with the proposal to include transactions and arrangements that take place in reasonable proximity or are otherwise related and normally within a three-year period?

Yes

No

If your answer is “No”, please give reasons for your views.

***Three year period is too long period under current fast changing business conditions. Two year period is long enough to limit the flexibility of making substantial adjustments by issuers to face business challenges.***

- (b) Do you agree with the proposal to amend the RTO Rule 14.06B to clarify that a series of acquisitions may include proposed and/or completed acquisitions?

Yes

No

If your answer is “No”, please give reasons for your views.

***It would be unfair to also include transactions which were subsequently aborted unless there are clear and specific bright line tests and an effective prevetting consulting mechanism so issuer can be better aware of the potential impact (of triggering RTO) of transactions to be entered into.***

4. (a) Do you agree with the proposal to retain the bright line tests under Rules 14.06(6)(a) and (b) in a Note to the proposed Rule 14.06B?

Yes

No

If your answer is “No”, please give reasons for your views.

(b) Do you agree with the proposal to extend the aggregation period from 24 months to 36 months under the bright line test currently set out in Rule 14.06(6)(b)?

Yes

No

If your answer is "No", please give reasons for your views.

***24 months period is adequate for the purpose of RTO assessment. Longer period will limit the adaptability of issuer in face of competitive and changing business environment.***

5. (a) Do you agree with the proposed changes to Rule 14.92 (proposed Rule 14.06E) as described in paragraph 56 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

***As expressed above the 24 months period is adequate for the purpose of RTO assessment. The "material disposal" is not specific enough. Disposal at the time of change in control constitutes a special deal under Takeovers Code and is regulated by relevant rules already. The Exchange should not rule out any genuine need of disposing of any non-performing or uninterested assets/business at the time of change in control.***

(b) Do you agree with the proposal to add a Note to proposed Rule 14.06E as described in paragraph 59 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

***As explained above. Furthermore, as a world class financial market the Listing Rules should be specific and clear on its regulating matters instead of granting the Exchange "discretion" which may create issues of unfair treatments to different issuers, interpretation guessing and backdoor consulting.***

6. (a) Do you agree with the proposal to add a new Rule 14.06C for “extreme transactions” as described in paragraph 62 of the Consultation Paper?

Yes

No

If your answer is “No”, please give reasons for your views.

***The creation of "extreme transactions" should not impose additional subjective and unclear restrictions to issuers. A clear and specific bright line test (e.g. with reference to the existing size based tests) is required to define the extreme transactions.***

(b) Do you agree with the disclosure requirements for circulars of extreme transactions set out in proposed Rules 14.53A(1) and 14.69?

Yes

No

If your answer is “No”, please give reasons for your views.

(c) Do you agree with the due diligence requirements for extreme transactions under proposed Rule 14.53A(2)?

Yes

No

If your answer is “No”, please give reasons for your views.

7. (a) Do you agree with the proposal to amend Rule 14.54 and to add Rule 14.06C(2) as described in paragraph 69(i) of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

***It will be unduly difficult to issuers which are struggling with financial difficulties and restrict the chance for these issuers to turn around.***

(b) Do you agree with the proposal to amend Rule 14.54 to impose additional requirements on RTOs proposed by Rule 13.24 issuers as described in paragraph 69(ii) of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

***As stated above.***

8. (a) Do you agree with the proposed Rule 14.57A to clarify the track record requirements for extreme transactions and RTOs that involve a series of transactions and/or arrangements?

Yes

No

If your answer is "No", please give reasons for your views.

***The three years period is too long as expressed above.***

(b) Do you agree with the proposed Rule 4.30 that sets out the requirements for preparing pro forma income statement of all the acquisition targets in the entire series of acquisitions (where applicable, would include any new business developed by the issuer that forms part of the series) for the track record period?

Yes

No

If your answer is "No", please give reasons for your views.

***Prior years pro forma statements are not meaningful as existing financial reporting regime can also reflect post transaction financial results.***

9. Do you agree with the proposal to add a new Rule 14.06D to codify, with modification, the practice under Guidance Letter GL84-15 as described in paragraph 81 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

***This will further restrict the flexibility and adaptability of small issuers in dealing with good business opportunities and competitive business environments.***

10. Do you agree with the proposal to require issuers to have a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant the continued listing of the issuer's securities?

Yes

No

If your answer is "No", please give reasons for your views.

***This will create a lot of judgemental decision by the Exchange and is not fair to asset light issuers or new economy business operators who may encounter uncertainty and fluctuation in business development.***

11. (a) Do you agree with the proposal to add a Note to the proposed Rule 13.24(1) as described in paragraphs 107 to 109 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

(b) Do you agree with the proposal to remove the Note to Rule 13.24 as described in paragraph 112 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

12. Do you agree with the proposal to exclude an issuer's securities trading and/or investment activities (other than a Chapter 21 company) when considering the sufficiency of the issuer's operations and assets under Rule 13.24?

Yes

No

If your answer is "No", please give reasons for your views.

***Even issuers may not be primarily engaged in securities trading and/or investment as their main business, it should not exclude these kinds of business activities if there are genuine business operations.***

13. Do you agree with the proposal to extend the definition of short-dated securities in the cash company Rules to cover investments that are easily convertible into cash (“short-term investments”)?

Yes

No

If your answer is “No”, please give reasons for your views.

***Investments which are easily convertible into cash are not necessarily short dated securities.***

14. Do you agree with the proposal that the exemption under Rule 14.83 shall only be confined to clients’ assets relating to the issuer’s securities brokerage business?

Yes

No

If your answer is “No”, please give reasons for your views.

***Should also apply to business of asset management.***

15. Do you agree with the proposal to confine the revenue exemption to purchases and sales of securities only if they are conducted by banking companies, insurance companies and securities houses within the listed issuers’ group?

Yes

No

If your answer is “No”, please give reasons for your views.

***Should also apply to business of asset management.***



16. Do you agree with the proposal to require issuers to disclose in their annual reports details of each securities investment that represents 5% or more of their total assets (as described in paragraph 134 of the Consultation Paper)?

Yes

No

If your answer is "No", please give reasons for your views.

17. Do you agree with the proposal to codify the requirements set out in Listing Decision LD75-4 (as described in paragraph 137 of the Consultation Paper) for significant distribution in specie of unlisted assets into the Rules?

Yes

No

If your answer is "No", please give reasons for your views.

18. Do you agree with the proposal to require disclosure on any subsequent change and the outcome of any financial performance guarantee of a target acquired by the issuer in a notifiable or connected transaction as set out in paragraph 140 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

19. (a) Do you agree with the proposal to require disclosure on the identity of the parties to a transaction in the announcements and circulars of notifiable transactions?

Yes

No

If your answer is "No", please give reasons for your views.

***Certain parties to a transaction may need/prefer to keep their identities confidential. This may affect the willingness of such parties to do transactions with the issuer if they insist not to disclose their identities publicly. However, we do not disagree that the Exchange may require the issuer to report their identities through correspondence but should allow room for not disclosing identities in announcements and circulars.***

(b) Do you agree with the proposal to require the disclosure on the identities and activities of the parties to the transaction and of their ultimate beneficial owners in the announcements of connected transactions?

Yes

No

If your answer is "No", please give reasons for your views.

20. Do you agree with the proposal that if any calculation of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14 or 14A?

Yes

No

If your answer is "No", please give reasons for your views.

- End -