

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.

Three years is a lot in restricting a company from going into new ventures. With the economy moving in such an astronomical speed, a flourishing business can easily become bankrupt in less than one year. A year before or even less, no one knows the US would suddenly impose 25% tax on imports. Imagine your business makes a 10% healthy net margin exporting to US, then suddenly if your US customers are super price sensitive and would not give in on pricing, then your business is now a -15% net margin business. Most business owners are skating on thin ice. If you do not allow them to change business, they die, and of course bringing down with them the public minority shareholders. I do not think this is the intention of HKEX. I think one year is enough already for restricting new owners to make any substantial acquisition.

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.

I agree the ban on high discount and high dilutive ratio and also the new convertible bond treatment. It is the fair treatment for all sorts of shareholders which we should focus rather than what the old or new owners do with the companies. As long as it is transparent and legal, we should let the market to decide and run. It had been the laissez-faire policy which made Hong Kong. I do not think it is in anyone's interest for HK to lose that kind of policy especially in the financial markets including China.

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.

As mentioned above, 36 months is an extremely long period and can even be a full stock market cycle. The May 2015 and the recent Feb 2018 peak took less than 3 years. Even the recently listed companies in 2018 1H, plenty dropped more than 50% already. I suggest HKEX to allow more flexibilities for companies in managing or changing operations in this ever volatile market. Market manipulation issues should not be confused with corporate finance issues. Since HKEX already introduced the US style weighted voting rights structures, I suggest HKEX to even allow more flexibilities in business change. Allowing shorts to all stocks like the US would definitely help to counter market manipulation.

- (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.

This should be decided by the minority shareholders. Treating this like a privatization deal would best protect the minority shareholders already.

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.

36 months is extremely long and hinders company development.

- (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 is already very long. The case of 1683 HK is a great example. It was sold in January 2017 and in less than 24 months in July 2018 already came back to the old owner's hand at less than 50% of the original price. 'Shell' (as HKEX defined) is already almost worthless now. This should not concern HKEX much. Anything can be excuses to manipulate stocks. The SFC can check on the suspicious buyers and brokers. If we ban CCASS broker share storage disclose and also broker name showing during trading, this will act more like a mature market like the US and can prevent lots of market manipulation issues. Imagine one wants to create transactions and of course one would only want to buy and sell within his own circle, the current system of showing which broker is buying and selling and also the number of shares definitely help them to create fictitious trading.

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.

Again, 24 months is already way too strict.

- (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.

24 months is already very long The US as we know do not care if the listed company changes its business. Berkshire Hathaway was a garment company. If we apply the same HK sets of rules to Berkshire, the Buffet legend would never have materialised. I do sincerely think that HKEX allow flexibilities just like the US and welcome the next Berkshire originated in HK rather than other exchanges. .

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.

36 months is too long and this should rest mainly with the approval of minority shareholders. Enhanced disclosure is always welcomed.

(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 is already very strict. Disclosure and minority shareholder approval are the keys.

(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.

Why would you DQ companies just because their business becomes too small, and especially without any numerical threshold guidance? This is super unfair. The business world is extremely difficult and according to statistics 8 out of 10 businesses fail within 5 years. Instead of encouraging, the HKEX is penalising for struggling businesses. Market manipulation exists everywhere in any types of securities. It is the SFC responsibilities to investigate what and who causes the abnormal trading patterns rather than for HKEX to change rules to prevent any of these. Market manipulation belongs to SFC. As long as all minority shareholders have their rights protected the HKEX does a great job. It is of extreme importance that the duties of the two are clearly defined and do not cross over each other. Disqualifying listco not because of business failure ie bankruptcy is way more detrimental to market manipulation. It is simple, one is a complete -100% and the other -99.99%. I am sure most prefer the latter one.

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.

This would then exclude the biotech companies which do not have any revenue at all.

(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.

We should allow more flexibilities for listco to operate their businesses. Entire series of acquisitions is difficult to plan much ahead and difficult to define which belongs to which series or which is a non serie acquisition in this ever challenging business world.

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.

Substantial amount of cash injection is not detrimental to minority shareholders; it was the extreme 90%+ discount and dilution we should prohibit. Cash injection into issuer at a share price market value or even premium would not hurt and could even benefit the minority shareholders.

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.

Again, businesses have ups and downs, as long as the creditors do not claim the issuer bankruptcy, they should be allowed to run. Let legacy be legacy, changing rules ad hocly does not create a good image for HK as a fair and open market. The small business old listcos are history. I agree with HKEX in raising listing requirements which definitely helps to eliminate "shell" companies, but you cannot just have different treatments towards the old small companies. It costs north of 50mil hkd of listing fees and the proceeds are sometimes just 100mil hkd, so net is just a mere 50mil. What kind of company would that be and for what intent and purposes to spend half the ipo proceeds on listing costs? But if you raise 500mil in IPO, the real intent is definitely not a shell company then. Time will sort out the old companies. They either die or change business or get sold to a stronger owner. A lot of bankruptcies (ie zero for the public minority shareholders) would have happened way more if not for HKEX leniency in allowing new owner to restructure. Applause for HKEX. As long as the majority shareholder is abstained from all backdoor listing voting it should be fine. Even better is for the HKEX to treat all backdoor listing like a privatisation deal and make voting as easy as possible like online voting. We should all encourage better minority shareholder participation.

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.

As disclosure based as possible is probably what almost all market participants want or do not object. Any qualitative measures only creates potential confusion, unfairnesses, and complaints. If HKEX needs any rules, quantitative is always best and most fair and if HKEX needs to change any rules, please make sure they do not hurt any minority shareholders and if unavoidable please have an at least 12-24 months bridging gap (but 36 months is too much for a bridging gap).

- (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.

See above.

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.

127 HK main profit center lately had been its investment in 3333 HK and had been doing fantastically well. Berkshire Hathaway is an investment listco. If that is any issue, independent directors should raise this and minority shareholders should vote against this.

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.

Many investments such as stocks can be considered both long and short dated. Cash is cash. Let's not make this even more convoluted. We all just want a simple, transparent, and fair market.

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.

Clients or investors would usually view that the more the cash the securities brokerage business have the more trust and confident they have.

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.

Some companies are good at investing. Chapter 21 is very odd. We should allow companies to have more freedom. Independent directors and minority shareholder rights are key to monitoring any fraud and wrongdoings.

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.

- (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.

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