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.

Please refer to the attachment.

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.

Please refer to the attachment.

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.

Please refer to the attachment.

(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.

Please refer to the attachment.

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.

Please refer to the attachment.

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.

Please refer to the attachment.

(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.

Please refer to the attachment.

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.

Please refer to the attachment.

(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.

Please refer to the attachment.

(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.

Please refer to the attachment.

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.

(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.

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.

Please refer to the attachment.

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.

Please refer to the attachment.

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.

Please refer to the attachment.

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.

Please refer to the attachment.

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.

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.

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.

- End -

ATTACHMENT TO QUESTIONNAIRE ON BACKDOOR LISTING, CONTINUING LISTING CRITERIA AND OTHER RULE AMENDMENTS

Q1 – 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? If not, why?

No

Under the current proposal, the Exchange proposes to discourage activities related to the trading of, or acquisitions of, "listed shells" for backdoor listings. The aggregation period for bright line test and the restriction from material disposal will be extended from 24 months to 36 months from a change in control. The proposed codification and modifications of the six assessment criteria under the principle based test restrict listed issuers' ability to circumvent the new listing requirements by building up a new business through a series of smaller acquisitions, or acquiring a new business and then disposing of its original business. In short, a listed issuer engaging in a business through greenfield operations coupled with acquisitions, which is different from its principal business before a change in control, or a business expansion which size and resources are inconsistent with that of the listed issuer, may be seen as an attempt to circumvent the new listing requirements and thus trigger the RTO Rules.

Under the HKEx Guidance Letter GL78-14, it is stated that "A balance needs to be struck between allowing legitimate business activities (such as business combinations and expansions) and the need to maintain market quality (by subjecting these transactions to the new listing requirements)". However, we consider that the Exchange's proposal will stop a large number of legitimate business transactions as well as business expansions but cannot maintain market quality. Under the assessment criteria, even if the transaction passes the bright line test (that is assets to be acquired are not VSA and/or no change in control), the Exchange can still reject a transaction in which, among others:

(a) The listed issuer is a small one – We disagree because the scale does not imply an "attempt" of shell activities but a free market outcome whether it is a young company with growth prospects, an old company in a sunset industry or any ordinary company of a size it sees fit. The Listing Rules should be applied universally and should not be discriminative. It would infringe the HKSAR financial regulatory principal of maintaining a level-playing field.

(b) There is a change of business – We disagree because business reinvention is a "legitimate business activity", in the Exchange words. In the face of the everchanging world, businesses have to continually reinventing itself or die. It has nothing to do with "shell activities". Rather, it is a matter of life and death. Take a few examples.

    (i) IBM used to be a computer manufacturer. Its success led to its own demise. "PC clones" flooded the market. IBM responded by, in the Exchange's words, "fundamentally changing its principal business" from computer-making to business service providing.

    (ii) Berkshire Hathaway started as a textile company. In 1960's, textile industry shrank. Warren Buffet took over the company (change of control), sold out textile (discontinued an existing business) and turned it into the

most world's most successful financial company (financial being totally unrelated to textile).

(iii) Royal Dutch Shell started as an antique store. Over the years, in response to market opportunities, it moved to import/export and eventually to oil business.

(iv) Nokia was a paper company. It tried out rubber tires and boots before breaking through in mobile phone.

(v) Nintendo's journey was even wilder. Having realized that its playing-card offered limited opportunities, it experimented with taxi service, instant rice, hourly hotels and toys – all "greenfield" in the Exchange's words, before hitting video game

(vi) Western Union used to be a successful telegraph company. But the industry declined, replaced by long-distance phone calls. Fortunately, it has always had diverse interests (the Exchange would have regarded them as an "aggregation of non-core businesses"). It was its wire money transfer that flourished. In the meantime, it aggregated with fax service, commercial communication satellite, commercial email services. The business diversification involved many "early-stage explorations" at the time.

(vii) American Express delivered stock certificates, notes, currency for banks – a logistic business. It offered travellers' check and currency exchange. It ventured into luxury travel. Charge card was another "greenfield" which are now AE most known of.

(viii) Steve Jobs rescued Apple by transforming it from a computer company to a music and mobile app platform operator and handheld device manufacturer.

(ix) Netflix started as a video rental company. Blockbuster failed but Netflix did not because it moved into video streaming and content production. The old rental business became "very immaterial".

(x) Uber moved from taxi-hailing service to logistics.

Listed issuers today are facing fast and sharp changing environment. Their original businesses may be successful in the past. However, their performance may decline and even become loss making due to a number of reasons, such as increased competition, rapid change in market demand and/or technology, lack of sufficient working capital, etc. Listed issuers need to grow and expand their businesses to survive and remain competitive. Diversification is one of the methods used as a growth strategy. Diversification is a normal and legitimate business activity and includes, but not limited to, (i) equity fundraisings; (ii) restructuring, scaling down and/or disposing its original business; (iii) acquiring new businesses; and/or (iv) starting greenfield operations. Diversification therefore inevitably involves changing principal business which is part and parcel of diversification and has pros and cons. Whilst changing principal business is also an essential part of shell activities, the Exchange should not

only focus on the defects of changing principal business but ignore its benefits to listed issuers and their shareholders.

The Exchange does not explain in detail the reason for setting the three-year limit in respect of diversification and/or aggregation. For example, a listed issuer has commenced diversification and has already made certain acquisitions with good performance. Further acquisitions together with equity fundraising may be required as synergies for the previous acquisitions as soon as practicable, i.e. strike while the iron is hot. If the listed issuer is prevented from conducting such further acquisitions/ equity fundraising within three years, it may lose the opportunity to develop and expand its business. We consider that the proposals totally defeat the purpose of diversification and are against the benefits of the listed issuer and its shareholders as a whole.

We take few diversification examples below which involve change in control, disposing existing principal business and/or changing principal business:

China Everbright Limited (formerly IHD Holdings Limited ("IHD"), stock code: 165) – In 1994, IHD was takeover by China Everbright Group and its name was changed to China Everbright-IHD Pacific Limited. In July 1997, China Everbright-IHD Pacific Limited changed its name to China Everbright Limited ("China Everbright"). China Everbright terminated its original retail and restaurant ventures and acquired various companies, including AXA Insurance, International Bank of Asia, China Everbright Bank, Everbright Securities, Standard Life Asia and Everbright Financial Holdings Co., Ltd., to build itself into a financial holding company. China Everbright is now a large financial conglomerate directly under the State Council of China and ranked 313th in Fortune's "Global 500".

CITIC Limited (formerly Tylfull Company Limited ("Tylfull"), stock code: 267) – In 1990, Tylfull was takeover by CITIC Group. CITIC Group sold properties it owned to Tylfull, which also acquired a 38.3% interest in Dragonair. In 1991, Tylfull changed its name to CITIC Pacific Limited, and increased its shareholding in Dragonair to 46% and bought a 12.5% interest in Cathay Pacific. CITIC Pacific also purchased a 20% stake in Macau Telecom and invested in Dah Chong Hong. In 1993, CITIC Pacific acquired a 56% interest in the Ligang power station, and a 50% stake in the Xinli power plant. CITIC Pacific also acquired a controlling interest in the Jiangyin Xingcheng Steel Works. In August 2014, CITIC Pacific changed its name to CITIC Limited ("CITIC"). CITIC is now China's largest conglomerate and a constituent of the Hang Seng Index.

Galaxy Entertainment Group Limited (formerly K. Wah Construction Materials Limited ("K. Wah"), stock code: 27) – In July 2005, K. Wah disposed of its then principal business in construction material business and acquired a 97.9% interest in Galaxy Casino SA which owns and operates hotels and casinos in Macau. In October 2005, K. Wah changed its name to Galaxy Entertainment Group Limited ("Galaxy"). Galaxy is now a constituent of the Hang Seng Index.

Geely Automobile Holdings Limited (formerly Guorun Holdings Limited ("Guorun"), stock code: 175) had been an IT company which would have been delisted under the proposals. It recorded a net loss for each of the past 5 years ended December 2002. For 2002, its turnover of HK$71.8 million made it look like "shell". In 2003, it entered into a JV agreement with Geely Holdings Limited to inject automobile making business and related assets into Guorun – a completely new business. In March 2004, Guorun changed its name to Geely Automobile Holdings Limited ("Geely"). The financial statements of the automobile making business were not disclosed. We never know

whether it is suitable for listing or not. Before the JV agreement was announced, the share closed at HK$0.62. Today, Geely is a Hang Seng Index constituent – a blue chip. Share is trading at around HK$20 which gives a market cap of HK$176 billion. 2017 revenue RMB92.8 billion; profit RMB10.6 billion.

China Gas Holdings Limited (formerly Hai Xia Holdings Limited ("Hai Xia"), stock code: 384) changed its business from apparel retailing to gas distribution – a "greenfield" business – after acquiring the business in 2002. In July 2002, Hai Xia changed its name to China Gas Holdings Limited ("China Gas"). Without the disclosure of track record. Loss-making for years, the "shell" had a turnover of HK$4.8 million for the year ended March 2002. Before the transaction, the share closed at HK$1.17. Today, around HK$34. Market cap HK$167 billion – beating any listed apparel company. China Gas is a constituent of Hang Seng Large Cap Index. Last year, revenue HK$52.8 billion; profit HK$6.1 billion.

Beijing Enterprises Water Group Limited (formerly Shang Hua Holdings Limited ("Shang Hua"), stock code: 371) was formerly engaged in computer trading before turning to a water treatment business through a VSA in 2008. In March 2008, Shang Hua changed its name to Beijing Enterprises Water Group Limited ("BJ Enterprises"). The transaction is within one year of changing ownership. That would have been rejected under the proposals. Barely breaking even, the acquired assets would have been considered "not suitable for listing". Shang Hua been loss-making for five years and 2007 revenue was HK$20 million – a "shell". Today, BJ Enterprises is another Hang Seng Large Cap with market cap of HK$42 billion. Revenue HK$21.2 billion and profit HK$3.7 billion for 2017. In contrast, few computer trading companies have remained listed.

The above listed issuers are now very successful with very significant market cap. They turnaround their non-performing businesses through, among others, diversification which involves change in control, disposing existing principal business and/or changing principal business, which are also elements of shell activities. Nevertheless, these examples demonstrate that, among others, change in control, disposing existing principal business and/or changing principal business, could be beneficial to the listed issuers and their shareholders, as well as the stock market in Hong Kong as a whole.

Were the above listed issuers shells for trading? No, their businesses have been sustainable and growing ever since.

Share volatile? That may be true immediately after the relevant announcements. But they have presented long-term sustainable growth in the years that follow.

The Exchange's intention is to stop "shell creation" because it leads to speculative trading, market manipulation, insider trading and unnecessary volatility which "are not in the interest of the investing public".

1. Market manipulation and insider trading are criminal offenses. We already have the laws.

2. Speculative trading and volatility -- risks are part of the market. Excessive regulation increases policy risks.

Any significant transaction or change of shareholding may lead to speculative trading and volatility, and potentially market manipulation and insider trading. The Exchange's

description above does not make clear what they really want to achieve.

The Exchange is mainly concerned of the "quality of listed issuers" which is a good intention. However, the proposal cannot achieve that aim. The Exchange believes setting a high barrier to RTO would achieve that goal. Maintaining quality and public interests can cause conflicts. However, setting a high barrier cannot prevent listed issuers from making losses in the consequential years due to market changes, industrial cycles or mismanagement or other reasons. The quality of listed issuers may still deteriorate. What can the Exchange do?

The Exchange should have provided statistics in relation to, among others, shell activities and the performance of listed issuers after change in control, e.g. whether they are performing good or bad, to justify its proposals, and for listed issuers, market practitioners and public investors etc to consider their effects and to make an informed assessment of the proposals.

Again, changing principal business is a normal and legitimate business activity and is part and parcel of diversification. We agree that it is important to address the concerns about shell activities with a view towards maintaining the reputation of our market and quality of listed companies, however it is equally important to provide listed issuers with reasonable flexibility to conduct normal and legitimate business activities as and when necessary. Given that shell activities are limited to a small segment of the market, the Exchange should not further confine listed issuers to conduct normal and legitimate business activities with a view just to prevent shell activities.

Instead of imposing further restrictions on changing principal business, we consider that the Exchange may think about stringent supervision on disposal of existing principal business which is profitable and has good prospect. Public investors acquiring shares in a listed issuer are mainly due to, among others, its principal business. If the listed issuer disposes of its existing profitable principal business, especially within a relatively short period of time after a change in control, we consider that it is not in the interests of the listed issuer and its shareholders as well as the stock market in Hong Kong as a whole.

The SFC is currently adopting a "front-loaded" approach to regulate listed issuers but is not stopping or preventing them to conduct legitimate business activities. We consider that the Exchange should not micro-manage and stop listed issuers in diversifying their business through, among others, acquisitions and greenfield operations which are, again, legitimate business activities.

Under the Singapore listing rules, RTO is similar to that defined in the bright line test under the Listing Rules. Like the bright line test under the Listing Rules, an acquisition which is a VSA and leads to changes in control is considered an RTO. Unlike the bright line test, there is no 2-year limit and no restriction on disposals under the Singapore listing rules. There is nothing else that leaves to subjective judgement – so called "principle based test". Under the Australia listing rules, RTO is similar to that defined in the bright line test under the Listing Rules and is subject to shareholders' approval. There is no 2-year limit and no restriction on disposals. Again, there is no "principle based test".

The Exchange also proposes to codify the current "extreme VSA" requirements and to impose additional requirements on listed issuers that may use the extreme transaction category: (a) an existing principal business with substantial size which will continue

after the transaction; or (b) the listed issuer has been under the control of a large business enterprise for a long period and the transaction forms part of a business restructuring of the group and would not result in a change in control.

Furthermore, the Exchange proposes to codify and modify its current practice that it may refuse to grant listing approval for a large scale issue of new shares to acquire new business where the Exchange considers that would be to circumvent the new listing requirements and to achieve a listing of new business. Equity fundraising is one of the benefits as a listed issuer, and as set out in the preceding paragraph, equity fundraising is also a part and parcel of diversification. The Exchange's proposal is effectively deprived of listed issuers' right in raising sufficient equity funding for diversification.

In other words, the Exchange's proposal is to encourage, or only allow, listed issuers to conduct acquisitions without being regarded as RTOs within 36 months from a change in control only if such listed issuers:

(a) operate a principal business with annual revenue or total asset value of HK$1 billion or more which will continue after the transaction, i.e. must be large listed issuers and no change in existing business;

(b) conduct equity fundraisings with a view to expand their existing principal business, i.e. no new business; or

(c) restructure their business only if they have been under control of a large business enterprise for a long period (normally not less than three years) and the transactions form part of a business restructuring of the group and would not result in a change in control, i.e. must be restructuring within a large business enterprise group.

The Exchange defines "a principal business with substantial size" as those with annual revenue or total assets exceeding HK$1 billion. Transactions/fundraisings of such listed issuers suspect of backdoor listing attempt by the Exchange will pass on to Listing Committee for consideration whether the transactions are "extreme transaction". For those listed issuers under the HK$1 billion threshold shall normally be regarded as RTO by the Exchange.

The HK$1 billion threshold is too high. IPOs are required to pass any one of the following tests: 1) profit test, 2) market cap/revenue/cash flow test, or 3) market cap/revenue test. The first test does not specify any minimum revenue or assets. The second and third tests require a minimum revenue of HK$500 million only and do not set any limit to assets.

Wouldn't the Exchange approve an IPO and immediately call that a shell? The HK$1 billion threshold is contradictory to the current listing rules.

According to Bloomberg, as of 17 August 2018, there are 716 HK-listed issuers with both annual revenue and total assets below HK$1 billion, representing about one-third of the total.

Such discrimination against smaller listed issuers will encourage investors to sell small caps and buy big/medium caps. Without the liquidity or access to new equity findings, even those small caps that stick to core business cannot expand and inevitably see their growth flatten. That triggers more selling, creating a downward spiral effect. Not

only those changing their new business but all small caps will be doomed.

Taking into account, among others, the extension of the aggregation period from 24 months to 36 months, the restrictions in engaging new business, undertaking large scale equity fundraisings and disposing/terminating of significant original business, the transaction costs associated with a backdoor listing will inevitably be substantially increased. We believe that the Exchange is of the view such increase in the transaction costs will lead to a decrease in demand in shell companies and thus a decrease in the trading and the creation of shell companies. However, such increase in the transaction costs will also undermine and hamper the ability of small to medium size listed issuers, i.e. with annual revenue or total assets below HK$1 billion, to diversify and expand their business. These listed issuers will not be allowed to conduct equity fundraisings to do new business if they are not under a large business enterprise's control for more than 3 years. The Exchange's proposals are very unfair to those listed issuers by narrowing their ability to diversify and expand their business.

Listed issuers are required to maintain sufficient operations and assets under the Listing Rules. As set out above, diversification is one of the key growth strategies. In case the business of these small to medium size listed issuers is deteriorating, they might need to raise funds and diversify their business to comply with this continuing listing obligation. The proposed restrictions in engaging new business, undertaking large scale equity fundraisings and disposing/terminating of significant original business will make them more difficult to maintain sufficient operations and assets required by the Listing Rules. They will be facing more hurdles to operate and survive in today's fast changing environment and eventually a much higher risk of delisting from the Exchange. If more small to medium size listed issuers are delisted eventually, then more peoples will get loss and thus the image of Hong Kong as the international financial centre will also be damaged. Furthermore, small to medium size listed issuers will be prevent from diversification whilst their existing principal business may deteriorate. As a result, we consider that the proposals will effectively create more shell companies. We doubt whether the proposals can really enhance the quality of the stock exchange in Hong Kong.

It would be beneficial to the listed issuers and their shareholders by giving them chances to diversify and clear benchmarks to follow. It is beneficial to the market quality as well. There are two ways to enhance market quality – 1) allow the under-performers to get back on their feet, or 2) simply kick out the under-performers. The Exchange is choosing the second approach which, however convenient it might sound, will in our view lead to disaster.

From minority shareholders' point of view, delisting will wipe off the value of their shares, however little there remains. The Exchange will be the culprit for their suffering. It will lead to protests and social discontent against the authority, hence the government. Another "penny stock fiasco" (仙股事件). This time, the blame will be bigger because the proposals create such a trap that there is no way for those stocks to get a new lease of life (through equity fundraising or change in business or control).

Wouldn't that be a detriment to investing public?

Besides, the proposals will encourage a new kind of mischief by black-sheep companies. For example, controlling shareholders would like to privatize listed issuers but do not want to make the costly general offer. With the proposals, it can deliberately lead the listed issuer to delisting which enables him to "steal" 100% of the listed issuer

without paying a cent.

Again, the victims will direct their anger to the Exchange and the government. Are the Exchange going to formulate new rules to stop people from circumvent the privatization rules?

The proposals will impose significant political risks like those sparked by the "penny stock fiasco" in 2002. What more, the political climate today is even worse than 2002.

The Exchange dual role as a regulator and a for-profit enterprise creates conflicts of interest. Highlighting the conflicts is the proposals which will help the Exchange cut cost. Staff costs amounted to HK$2.27 billion and accounted for 64% of total operating expenses. That percentage increased from 58% in 2014. From 2015 to 2017, revenue dropped 5% while staff costs soared 13%. Meanwhile, headcounts increased by 13% to 1,777.

The Exchange's income source is highly concentrated in large stocks. Trading of the 50 blue-chip stocks account for one-half of that of some 1,800 companies in the main board.

However, the Exchange's costs are highly concentrated in small stocks. Workload for regulatory activities is more evenly spread among listed issuers. Larger listed issuers require marginally more workload. Some small listed issuers which frequently make transactions (for the Exchange to approve) may cost even higher than ordinary mid-size companies.

That imbalance creates a strong economic incentive for the profit-seeking the Exchange to get rid of the small players. The Exchange changing rules is self-serving. If implemented, Hong Kong's status as a financial centre will be compromised.

Q2 – 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? If not, why?

No

We consider that the Listing Rules must be clear and specific. For the indicative factor "any substantial change in the issuer's board of directors and key management", it is unclear and unspecific as to (i) the extent of change in the board of directors will be regarded as "substantial"; and (ii) the position(s) which will be regarded as "key management". "Substantial" and "key management" are not defined terms in the Listing Rules and are subjective.

It is also proposed that "any change in its single largest substantial shareholder" is to be one of the indicative factors in assessing whether there is a change in de facto control of the issuer. Under the Listing Rules, "substantial shareholder" means a person who is entitled to exercise or control the exercise of, 10% or more of the voting power at any general meeting of the company. While under the Takeovers Code, "control" means a holding, or aggregate holdings, of 30% or more of the voting rights of a company. "Control" under the RTO Rules has the same meaning as that defined in the Takeovers Code. Thus, a change in substantial shareholder does not constitute a change in control of the listed issuer under the Takeovers Code. We consider that it is unreasonable in proposing to include "any change in its single largest substantial shareholder" as one of the indicative factors.

We consider that this proposal is arbitrary and will cause further confusion as to the application of the principle based test.

Q3(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? If not, why?

No

Please see our comments to Q1.

Under the proposals, when making the assessment where there is a fundamental change in principal business, the Exchange would compare the size of the issuer's new businesses in aggregate with that of its original business at the time of the latest proposed transaction in the series, referring to the financial figures in the most recently published accounts of the issuer and the targets. We consider that the above assessment basis is arbitrary and unfair.

At the time before the first transaction/event in the series, the size of the new business may be insignificant when comparing to that of the listed issuer's original business. However, business is dynamic and not static. After the first acquisition or commencement of new business, both the original business and the new business continue operating and the listed issuer's resources might be reallocated between them. Their ups and downs will be inter-dependent and are not standalone. After a period of time, say two years, their financial figures may be completely different from those at the time of the first transaction/event in the series. Suppose a listed issuer acquired asset A and did very well. The next year, its proposal to acquire asset B was rejected by the Exchange because asset A has grown to a size so big that combining asset A and asset B triggered certain restrictions. Is it fair? Should good performance be punished? As such, we consider that it is meaningless comparing the size of the new businesses in aggregate with that of the original business at the time of the latest proposed transaction in the series using the issuer's and the targets' financial figures in the most recently published accounts.

In addition, we consider that the "series of arrangements" criterion should be consistent with the period under the current Rule 14.06(6)(b), i.e. within 24 months.

Q3(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? If not, why?

No

Please see our comments to Q1.

Q4(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? If not, why?

Yes

Q4(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)? If not, why?

No

Please see our comments to Q1.

Suppose an investor took over a listed issuer with an intention to keep the existing business. However, the business declined or there is a big opportunity emerging. Under the current rules, the investor could not do anything until two years had passed. The proposed rules now would simply postpone its action for another year. It increases the transaction costs and damage the interest of shareholders and investing public. It also increases the investor's investment risk and would have discouraged it from taking over the listed issuer in the first place. The listed issuer being unable to find a new investor would sell its assets at deep discounts. It would again damage the interest of shareholders and investing public. We consider that the aggregation period should remain 24 months.

Q5(a) – Do you agree with the proposed changes to Rule 14.92 (proposed Rule 14.06E) as described in paragraph 56? If not, why?

No

Please see our comments to Q1 and Q3(a).

Q5(b) – Do you agree with the proposal to add a Note to proposed Rule 14.06E as described in paragraph 59? If not, why?

No

Please see our comments to Q1 and Q2.

Q6(a) – Do you agree with the proposal to add a new Rule 14.06C for "extreme transactions" as described in paragraph 62? If not, why?

No

Please see our comments to Q1.

Q6(b) – Do you agree with the disclosure requirements for circulars of extreme transactions set out in proposed Rules 14.53A(1) and 14.69? If not, why?

Yes

Q6(c) – Do you agree with the due diligence requirements for extreme transactions under proposed Rule 14.53A(2)? If not, why?

Yes

Q7(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)? If not, why?

No

The reason for conducting a RTO most of the time is to allow a listed issuer to inject a high quality target business and to get rid of the downturning business. More limitation will discourage listed issuers to bring value to shareholders. The only consequence of adding more limitations would be creating more shell companies for the Exchange to disqualify their listing and shareholders will suffer the most.

Q7(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)? If not, why?

No

Please see our comments to Q7(a).

Q8(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? If not, why?

Yes

Q8(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? If not, why?

Yes

Q9 – 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? If not, why?

No

Please see our comments to Q1. Listed issuers will have insufficient operations and assets not because of any attempt to "shell creation" but because the proposals deny them any opportunity to revival by raising funds to expand operation. The proposals force them to delist. Any listed issuers with total assets less than HK$1 billion is prone to be delisted. Using the proposals to cut the corners, the Exchange mistakes all small caps for shell-trading conspiracy. Does the Exchange want to have large cap only? Imagine an exchange which does not have any small caps.

Q10 – 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? If not, why?

No

Even in an IPO, size of asset has never been a condition for listing. In some business nature listed issuers do not require to maintain sufficient size of asset, they may rely on peoples, or may rely in self-developed technology. A sufficient level of operations and assets of sufficient value are qualitative tests, no guidance or benchmark is given to listed issuers. Whether listed issuers can satisfy these requirements are solely discretionary by the Exchange. We consider that it is not fair to listed issuers.

Q11 – Do you agree with (a) the proposal to add a Note to the proposed Rule 13.24(1) as described in paragraphs 107 to 109; and (b) the proposal to remove the Note to Rule 13.24 as described in paragraph 112? If not, why?

Yes

Q12 – 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? If not, why?

No

Securities trading and/or investment activities are legitimate business transactions. Whilst a small number of listed issuers engaging in proprietary securities trading or investment as part of shell maintenance activities, we consider that the Exchange should not across the board exclude all trading and/or investment in securities when considering the sufficiency of the issuer's operations and assets under Rule 13.24.

Q13 – 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")? If not, why?

Yes

Q14 – 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? If not, why?

Yes

Q15 – 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? If not, why?

Yes

Q16 – 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 above)? If not, why?

Yes

Q17 – Do you agree with the proposal to codify the requirements set out in Listing Decision LD75-4 (as described in paragraph 137 above) for significant distribution in specie of unlisted assets into the Rules? If not, why?

Yes

Q18 – 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? If not, why?

Yes

Q19(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? If not, why?

Yes

Q19(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? If not, why?

Yes

Q20 – 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? If not, why?

Yes