

Part B Consultation Questions

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.

We propose it would be more appropriate to retain the principle based test for RTOs and extreme transactions in guidance form due to the complexity and discretionary nature of the regime and to better address evolving market behaviour and backdoor listing structures. Our comments below relate to the substance of the proposals and apply irrespective of whether the regime is codified in the Rules or retained in guidance form.

Given the potentially broad scope of the principle based test, we suggest the Exchange should specify situations that would normally fall outside the RTO regime. For example:

- a) acquisitions for expansion or development of existing businesses - this carve out is in the existing RTO guidance letter and we propose it should be retained (in guidance form or otherwise); and
- b) acquisitions of a new line of business in the absence of certain key factors, which we submit should be change in control or de facto control, fundamental change in principal business and an "extreme" size of transaction.

We note the existing RTO guidance letter limits the principle based RTO to "extreme cases" by reference to the assessment criteria. We propose that the same or similar wording be used (in guidance form or otherwise) to help distinguish acquisitions that are part of normal commercial activities from those that constitute a listing of the assets and a means to circumvent new listing requirements.

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.

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, subject to our comments below

No

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

We support specifying a typical aggregation period. In relation to the proposed wording that the Exchange may regard transactions as a series if they "take place in a reasonable proximity to each other (which normally refers to a period of 3 years or less) or are otherwise related", it would be helpful if the Exchange could clarify the intended application of “or are otherwise related” and whether it would catch a series of acquisition of targets operating in the same line of business that occurred over a long period of time (well over 3 years). We are concerned that normal commercial development of a company’s business would otherwise be delayed or subject to costly submissions to the Listing Division due to concerns by advisers as to the scope and intent of the rules.

- (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.

We agree with the proposed rule, but strongly disagree that an aborted transaction could trigger the additional requirements described in para 52 (e.g. appointment of financial advisor and DD on previously completed acquisitions) given the completed acquisitions did not constitute an RTO. If this surprising concept is retained after this consultation, we propose the Exchange should emphasise that this would not affect issuers that consult with the Exchange on the application of the RTO rules prior to entering into the proposed agreement.

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.

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.

We propose the following clarificatory amendments to the drafting: "a listed issuer may not carry out a disposal of a material part of its existing principal business (or distribution in specie amounting to such disposal)...".

(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, subject to our comments below

No

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

Yes, subject to including the same carve out as Rule 14.06E (i.e. there should be no disposal restriction if the remaining group or injected assets can satisfy Rule 8.05, 8.05A

or 8.05B). We note the Exchange may apply this restriction only if it considers the disposal forms part of an arrangement to circumvent new listing requirements.

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.

We propose it would be more appropriate to retain the concept of extreme transactions in guidance form for the reasons mentioned in Q1 above. Further, we would like to seek clarification on whether there are any requirements to be satisfied, in addition to those under proposed Rules 14.06C(1) and (2), in order to demonstrate the acquisition is not an attempt to circumvent the new listing requirements.

- (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.

The proposed note to Rule 14.54(1) requires to the effect that each of the acquisition targets (rather than the targets as a whole) must meet all the new listing requirements under Chapter 8 if there is information to suggest the RTO is to avoid any new listing requirement. We think more detailed clarification is required as to: (a) when this provision is intended to apply and (b) how to demonstrate that the acquisition targets satisfy Chapter 8 listing requirements on an individual basis, in particular how to demonstrate each previously acquired target satisfies the financial track record requirements on an individual basis.

(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 see our query at Q7(a) above in relation to demonstrating compliance with Chapter 8 for each acquisition target on an individual basis.

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.

We do not disagree with the substance of the rule relating to large scale issue of securities, but propose it would be more appropriate to retain it in guidance form.

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.

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.

We understand the purpose of the exclusion is to prevent issuers from relying on proprietary securities trading and investments as a business of substance. We do not disagree with this rationale, but propose the drafting should be amended to clarify non-proprietary securities trading and/or investments can count towards sufficiency of operations. This would make clear that a securities brokerage house or financial institution that conducts such activities on behalf of customers as its principal business would not breach Rule 13.24.

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.

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.

We agree, but could the Exchange please confirm that the revenue exemption available under Listing Decision LD53-2 for treasury activities (i.e. where the listed issuer has a clearly stated and established treasury policy and the transactions are conducted in accordance with such policy) would still be available.

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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