

## 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.

**Comments: Add at the end of the Note a cross-reference to rule 14.54 along the following lines:**

***“(e) the suitability of the acquisition target***

***In general, an acquisition of a target business that is not eligible or suitable for listing will more likely be considered a circumvention of the new listing requirement.***

***See also rule 14.54 which requires the acquisition target to meet the requirements of rule 8.05 (or rule 8.05A or 8.05B), or to meet all the new listing requirements set out in Chapter 8 of the Listing Rules, as the case may be, where the reverse takeover rules apply.”***

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.

***Comments: Under the Takeovers Code, acquisition of convertible securities are not considered having voting powers unless and until the conversion right is exercised. Any discrepancy on the meaning of "control" under the Listing Rules and the Takeovers Code will likely result in confusion to the market and the practitioners. We note the Exchange has taken a more liberal view interpreting "control" under the Guidance Letter (GL78-14) and Note 1(d) to draft rule 14.06B.***

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.

***We would suggest a two-year aggregation period for both the principle based test and the the bright line tests. As there are already other safeguards and powers that will serve the purposes whether within or outside the aggregation period, we do not see the need to extend the aggregation period to three years. For example:***

***(a) the power of the Exchange to delist an issuer which is no longer suitable for listing, taking into account the guidance set out in Guidance Letter (GL96-18). We noted that some of the arrangements set out in the “series of arrangements” criterion (e.g. change of control, disposal of original business and operation of new businesses) are also covered in the Guidance Letter; and***

***(b) the enhanced cash company rules and the requirements under rule 13.24 on sufficient assets and operations. Arrangements such as equity fundraising for greenfield operations referred to in the “series of arrangements” criterion are also covered in Guidance Letter (GL84-15) on the cash company rules.***

***While we understand that the RTO rules are anti-avoidance provisions to prevent circumvention of new listing requirements and the above rules deal with a separate issue regarding suitability for continued listing, the two sets of rules would overlap to a certain extent when applied in practice. Instead of relying on a fixed aggregation period under the RTO rules, it may serve to better protect the interests of public investors if the Exchange continues to codify and develop a general set of rules on “suitability for continued listing”.***

(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.

**Comments: We understand from the Consultation Paper (paragraphs 48, 49 and 52) that:**

**(a) it is no longer required for the last transaction in the “series of transactions” to be an acquisition to trigger the RTO rules;**

**(b) a proposed disposal that is part of a series of arrangements could result in an earlier acquisition being subject to the RTO rules; and**

**(c) even if the proposed transaction is aborted, the Exchange may impose additional requirements by requiring the issuer to engage a financial adviser to conduct due diligence and make enhanced disclosures on completed acquisitions in the series.**

**As the above requirements/implications are not apparent from subparagraph (f) of Note (1) to draft rule 14.06B, it would be helpful if the Exchange could cover the above in the guidance letter to be issued.**

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 see comments on Question 3(a) above.***

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.

- (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.

***Comments: As stated in paragraph 55 of the Consultation Paper, rules 14.92 and 14.93 (i.e. draft rule 14.06E) are intended to complement the bright line tests and discourage an issuer from resequencing the transactions. Given the “change in the single largest substantial shareholder” is not a component or factor under the bright line tests, we believe it would serve to align the rules if only “change of control” is covered in the rules.***

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.

**Comments: Under the existing regime (Guidance Letter (GL78-14)), the fact that the acquisition target is able to meet the track record requirement under rule 8.05 would be taken as a key indicator that there is no intention to circumvent the new listing requirements and, instead of the RTO rules, the “extreme VSA” requirements may apply. Under the proposed regime, the acquisition target has to satisfy the financial eligibility requirements under rule 8.05 (or rule 8.05A or 8.05B) under both the RTO rules and the extreme transaction rules. Given the ability to satisfy the financial eligibility requirements would no longer be a distinguishing factor for the extreme transaction requirements to apply, it would be helpful if the Exchange could provide further guidance on the application of draft rule 14.06C, e.g.:**

**(a) what are the factors (other than those set out in Note (1) to draft rule 14.06B) which the Exchange or the Listing Committee may take into account in assessing whether “the issuer can demonstrate to the satisfaction of the Exchange that it is not an attempt to circumvent the requirements for new applicants...” as referred to in draft rule 14.06C; and**

**(b) is it likely that the extreme transaction requirements would apply in practice so long as the issuer has a substantial business or is undergoing a business restructuring as referred to in draft rule 14.06C(1)?**

**While we understand each case is to be determined on its own facts, it would be helpful if the Exchange can set out some principles/examples so that listed issuers would have a better understanding on when, or under what circumstances, would they be able to rely on the extreme transaction requirements, e.g. (i) genuine attempt of listed issuers to capture business growth with no attempt to monetise shareholdings; (ii) genuine expansion of business associated with current business line.**

(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.

***Comments: A very high bar if the acquisition target is required to meet rules 8.04 and 8.05 (or rule 8.05A or 8.05B) under both the RTO route and the extreme transaction route. Our concern is that there are sunset businesses which result in a genuine need to diversify into new ventures. There may not be any intention on the part of the issuer or its controlling shareholder to create a listed shell and, instead of having the issuer delisted, it may serve to protect interests of public investors if the issuer is allowed to acquire new businesses (whether such businesses are able to satisfy the new listing requirements or not) subject to a higher approval threshold. For example, we noted that under rules 14.89 and 14.90, the Exchange may grant a waiver allowing a fundamental change in business in the first 12 month after listing if the circumstances are exceptional and the transaction is approved by shareholders' resolution on which any controlling shareholder has to abstain from voting in favor.***

(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.

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.

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.

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.

***Comments: The cash company could have unintended effects for some listed issuers. For example, Biotech Companies usually have an asset-light business model and Biotech Companies listed under Chapter 18A are subject to enhanced working capital requirements under rule 18A.03(4). While tightening the cash company rules, it is important for the Exchange to take into account the nature of the issuer's business when applying the cash company rules.***

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.

***Comments: If securities transactions of listed issuers are to be subject to notifiable transaction requirements, it would be helpful if the Exchange could provide guidance on the application of the aggregation requirements under rules 14.22 and 14.23. For example, if the securities investments are made with different fund houses or through different investment banks, would aggregation be required?***

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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