

31 August 2018

Hong Kong Exchanges and Clearing Limited
10th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Submitted via email to: response@hkex.com.hk

RE: Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments

Dear Sir/Madam,

BlackRock¹ is pleased to have the opportunity to respond to the “Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments” (Consultation Paper)², issued by the Hong Kong Exchanges and Clearing Limited (“Exchange”).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by this Consultation Paper and will continue to contribute to the thinking of the Exchange on any issues that may assist in the final outcome.

Unless otherwise indicated, the terms used in this letter shall have the same meanings as in the Consultation Paper.

Executive summary

We welcome the Exchange's effort in conducting a review of regulation of listed issuers in light of the increase in market activities related to backdoor listings and the creation of cash shell companies.

While we support all suggested amendments, we have concerns regarding the available actions of the Exchange once a company is identified as a cash shell. These include suspension from trading and potentially delisting. As an institutional investor, trade suspension would inevitably create difficulty in our transaction activities and hence impact our ability to realise value from investments. Though possible, transacting in a suspended company “off exchange” is a time consuming and opaque process from a price discovery perspective. Such hindrance to trading is particularly problematic for providers of index-tracking funds like BlackRock. We believe the rules on suspending the trading of a company on the sole basis of it being a cash company should be reviewed.

We note the recent changes to the Listing Rules relating to long term suspensions and delisting and agree the amended framework can more effectively address concerns about prolonged trading suspensions. Nonetheless, our view is that forced delisting from an exchange should only occur with sufficient dialogue and planning with investors. It is important that investors are provided an opportunity to sell their holdings prior to delisting, and that alternative arrangements are available for shareholders who are unable or do not want to dispose of their positions on exchange. An example of alternative arrangement includes mandatory

¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

² Kindly refer to this link for the Consultation Paper: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/February-2018-Emerging-and-Innovative-Sectors/Consultation-Paper/cp201802.pdf>

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shareholders' vote on cash disbursement (refer to our first recommendation below) which would put a "price floor" for the stock.

We would like the Exchange to consider two suggestions which we believe will act as a deterrent for companies becoming cash shells and result in a much better outcome for shareholders.

1. *Mandatory shareholder meeting for cash company six months into trading suspension*

Once a company has been suspended following its identification as a cash shell, we would expect the directors to develop plans to bring the operations of the company to a state that would qualify for continued listing. If within six months from suspension the company has not resolved the issues which has led to the suspension, it should be required to call a shareholder meeting to allow shareholders to vote on a distribution of cash by either a capital return or dividend to reduce the company's cash levels such that it would no longer be considered a cash company. Controlling shareholders and their affiliates would be prevented from voting on such a proposal. Support of such a proposal by minority shareholders would see cash returned to them and the company allowed to continue to trade. If the proposal fails then the Exchange may continue the company's suspension and/or delisting.

2. *Major transaction resulting in a significant change to principal business or the creation of a cash company to require supermajority shareholder approval*

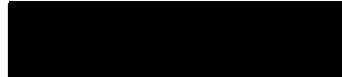
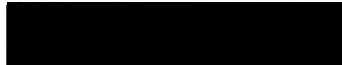
We have observed a number of situations where a cash company is created as the result of a sale of a significant asset and the proceeds used to significantly change the company's principal business. Currently shareholder approval of such transactions requires support of a simple majority to pass. Shareholders have no say with respect to the change of a company's principal business. We would like the Exchange to consider such transactions (where either a cash shell will be created or the proceeds used to significantly change the principal business) to require a supermajority (i.e. 75%) support.

We welcome further discussion on any of the points that we have raised. Thank you.

Yours faithfully,



Pru Bennett
APAC Head of Investment Stewardship



Winnie Pun
APAC Head of Public Policy



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.

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

No

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

- (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.

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.

(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.

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.

(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.

(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.

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.

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