

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.

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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.

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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.

From market development perspective, we have reservation on using a 3-year period in assessing a series of arrangement.

We also have comments on the proposed practice for calculation of the size test for a series of transactions as described in paragraph 47 of the consultation paper.

It was proposed that the numerator of a size test would be calculated by aggregating the financials of the target acquired or to be acquired over a 3-year period. The above seems contradictory to the spirit of the aggregation rule 14.22 which only requires transactions, that (i) are completed within a 12-month period and (ii) have characteristics described under rule 14.23, to be aggregated for determining the transaction size. The examples 1 to 3 shown in Appendix II of the consultation paper seems suggesting that the Exchange has a discretion to aggregate a series of transactions for RTO assessment without taking into account the factors as stipulated in Rule 14.23. It creates uncertainties to the market practitioners as to the situations when the Exchange will require aggregation of acquisitions under the proposed practice as opposed to current rules 14.22 and 14.23.

It was also proposed that the denominator of the size test would be the lower of the issuer's latest published financials (i) for the immediate past year before the first transaction in the series and (ii) at the time of the last transaction in the series. The Exchange considered that the approach is in line with those adopted under Rule 14.06(6)(b). However, we believe the drafting of Rule 14.06(6)(b)(A)&(B) (as well as the CSRC aggregation rules) aims to prevent circumvention of the RTO requirements by purposively delaying assets injection from the person gaining control of the issuer (i.e. an incoming controlling shareholder can to certain extent decide the timing of its asset injections into the issuer). On the contrary, it would be impracticable, if not impossible, to have a similar pre-ordained strategy in the context of a series of transactions which normally involved different counterparties. As such, the proposed practice might not be appropriate.

Besides, as in all major financial markets, Hong Kong operates a disclosure-based regulatory regime. The issuer is subject to applicable requirements (e.g. announcement and shareholder approval requirements) under the Listing Rules for its corporate transactions. After completion of the transactions, the issuer still have to comply the ongoing disclosure requirements (e.g. inside information provision and financial reporting) to update the market about the status of these transactions, the performance and financial position of the underlying target. Given that the shareholders and potential investors should have been given sufficient information and time to appraise the business development of an issuer based on the existing disclosure requirements, we consider it would be more appropriate to gauge the size of the proposed acquisition in a series of transactions as part of RTO assessment based on the latest published financials of the issuer at the time of the proposed transaction. These are in line with the current Rules 14.16 and 14.17 requirements.

(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.

It is considered that the inclusion of "proposed" acquisitions is not certain and unduly burdensome having considered that the subsequently aborted proposed transaction may bring forward the completed acquisitions to be imposed of additional requirements on the issuer by requiring it to engage a financial advisor to conduct due diligence and make enhanced disclosures in the completed acquisitions in the series.

We also disagreed the RTO rules to be applied on a completed transaction on the ground that (i) the proposal does not achieve any regulatory objective as what's done is done; (ii) it might be unduly burdensome for the issuers to comply with additional requirements several years after completion of an acquisition; and (iii) it foresees difficulty in engaging sponsor as the advisory fee (without any equity fund raising) unlikely commensurate with the risks and efforts involved in the engagements.

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.

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(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 suggest the Exchange to (1) provide guidance on the size of the disposal that may constitute a "material disposal" for the purpose of Rule 14.92 (proposed Rule 14.06E); and (2) clarify whether the SFC general waiver on Rule 14.92 dated 13 February 2009 shall remain in force after implementation of the proposed rule changes.

We disagreed on extension of the application of Rule 14.92 (proposed Rule 14.06E) to a disposal at the time of change in control. The rule intention is to address circumvention of RTO Rules by deferring a disposal after an injection of assets to issuer shortly following a change in control. The proposed amendment does not meet the rule intent as there usually does not have any acquisition of new business as part of the transaction (e.g. sale of a controlling stake of existing shares) resulting in a change in control. On the contrary, the disposal itself is subject to the Rule 13.24 (sufficiency of business and assets) requirements and any subsequent acquisition is still subject to the RTO rules and therefore, the regulatory risks should be properly safeguarded and therefore, the decision on disposal of existing business irrespective of its size at time of change in control is entirely commercial and should not be restricted by listing rule requirements.

(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.

Suggest not to take up the proposed additional requirements (i.e. in addition to those set out in Guidance Letter GL78-14) set out in new Rule 14.06C(1)(a) and (b). This is to avoid those "small size listed issuers which are not part of a conglomerate" (i.e. those with no principal business with substantial size (with annual revenue or total asset value of HK\$1 billion or more, which is even more stringent than those as required under Rule 8.05) or under the control of a large business enterprise) being jeopardized and prohibited to carry out any "extreme transaction".

- (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.

To ensure consistence with new Rules 14.06C and 14.54, suggest to delete "and those rules agreed with the Exchange" in (a)(i) of the Financial Adviser's Declaration (For Extreme Transaction) as set out in Appendix 29 of the Consultation Paper that "[t]he enlarged group is able to meet all the new listing requirements in Chapter 8 of the Rules (except for Rule 8.05 and those rules agreed with the Exchange)".

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.

Q.7(b). Suggest to delete the proposed amendment to Rule 14.54(2) regarding the compliance of Chapter 8 of the Listing Rules by the enlarged group. While it is logical and reasonable to ensure the compliance of all the new listing requirements set out in Chapter 8 of the Rules by the acquisition target, however, it may not be practical and unduly burdensome to have the enlarged group (while the target to be acquired should be able to meet Chapter 8 requirements, the enlarged group also include the listed company who originally has failed to comply with Rule 13.24) to meet all new listing requirements set out in Chapter 8 of the Listing Rules.

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.

Please consider elaborating what kind/type of investments should be considered as "securities" (e.g. whether or not it includes other types of investments such as commodity, property, minority investment in other operating companies or businesses, etc.) to be excluded by the Exchange when considering whether the issuer can meet Rule 13.24(1).

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.

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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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