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.

   N/A

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.

   We agree with the Exchange to codify the existing assessment criteria of the principle based test as set out in the guidance letter GL78-14, but we do **not** agree with the proposal to extend the current criterion "change of de facto control arising from issue of restricted convertible securities" to any change in control or de facto control of the listed issuer.

   We note from GL78-14 that the current criterion was introduced because some listed issuers issued restricted convertible securities (upon the conversion of which will lead to a change in control) as consideration for proposed acquisitions as a means to avoid a change in control under the bright line tests. Such criterion was

clear and unequivocal.

We do not consider it is necessary to extend the current criterion to include "change in control" as it is covered by the bright line tests.

The proposal does not set out clearly what constitutes "change in de facto control" and the indicative factors are far from clear and very extensive. This creates uncertainties and would extensively hamper legitimate acquisitions of interests in listed issuers.

The proposal further does not define or explain what constitutes "substantial change" and who are the "key management". We consider this should be clearly defined with parameters including, for instance, the scale: the change in the majority composition of the board; and timing: upon completion of the relevant transaction.

We consider the indicative factor "any change in its single largest substantial shareholder" as too wide as substantial shareholder is defined under the Listing Rules to mean a shareholder who is entitled to exercise or control the exercise of 10% or more voting rights. A 10% shareholder could hardly influence the listed issuer in any way.

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 do **not** agree with the proposal. The proposal would cause great uncertainties for listed issuers when they undertake business expansion or diversification as the ambit of "other transactions or arrangements" is too wide and the meaning of "otherwise related" is undefined and far from clear. It would deter listed issuers from undertaking legitimate business expansion, acquisitions and diversification.

Reasonable proximity for a series of arrangements should be aligned with the aggregation rule under Rule 14.22 of the Listing Rules, which is 12 months. Commercially, 36 months can hardly be considered as "reasonable proximity".

We disagree that in calculating the size tests for acquisitions in a series of

transactions, the denominator should take in account the "market capitalization before the first transaction in the series" especially when the Exchange is looking at a period of three years. It is difficult to see the reason why the market capitalization three years ago is relevant. This would discourage listed issuers from improving their performance or undertaking issuance of new shares.

(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 do **not** agree with the proposal. We would strongly urge the Exchange to set out clearly and unequivocally in the Listing Rules as to:

(a) how will the RTO rules apply to a completed acquisition. Under the current RTO rules, a RTO will be treated as a new listing application and subject to shareholders' approval. What would happen if the listed issuer fails to obtain the new listing approval or shareholders' approval? Since the acquisition has been completed, the listed issuer is not in a position to unwind the acquisition;

(b) what additional requirements the Exchange would impose if a listed issuer is considered to be circumventing the RTO rules; and

(c) in what circumstances would the SFC take regulatory action under the Securities and Futures Ordinance and/or the Securities and Futures (Stock Market Listing) Rules.

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.

N/A

(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.

We do **not** agree with the proposal. The suggested aggregation period of 36 months is arbitrary. The proposal would hinder legitimate business expansion, acquisitions and diversifications of listed issuers which is not in the interests of the shareholders and investors. We consider the current aggregated period of 24 months to be already a very long period of time and restrictive in the present commercial environment.

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 do **not** agree with the proposed extension of the restriction period from 24 months to 36 months which is arbitrary and restrict legitimate disposal by listed issuers. We consider the current aggregated period of 24 months to be already a very long period of time and restrictive in the present commercial environment.

(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.

We do **not** agree with the proposal which extends the application of Rule 14.06E to

"proposed or intended change in the single largest substantial shareholder of the issuer", which is too broad and unnecessary. A shareholder with less than 30% interests is unable to exercise significant influence and effective control over the listed issuer.

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 agree to codify the current extreme VSA requirements under guidance letter GL78-14 into the Listing Rules but we do **not** agree with:

(1) the additional requirements as set out in the proposed Rule 14.06C(1). The threshold of HK$1 billion or more in annual revenue or total asset value attributable to the listed issuer's original principal business is unreasonably high. The alternative requirement of "large business enterprise" is undefined. Such additional requirements would exclude most of the listed issuers in Hong Kong from undertaking "extreme transactions" which we would urge the Exchange to justify such exclusion. Given the target of an "extreme transaction" must meet the eligibility and suitability for the new listing requirements under Chapter 8 of the Listing Rules and is subject to the Listing Committee's decision, all listed issuers should be allowed to undertake such transaction; and

(2) the additional requirement as set out in the proposed Rule 14.06C(2) under which the enlarged group must meet all the new listing requirements set out in Chapter 8 of the Listing Rules (except Rule 8.05). Given the enlarged group is subject to the continuing obligations under the Listing Rules, we do not consider it is necessary or appropriate for the enlarged group to re-comply with all the new listing requirements (except Rule 8.05). In particular, Rules 8.08(2) and 8.03(3) of the Listing Rules which relate to at least 300 shareholders and three largest public shareholders cannot beneficially own more than 50% of the securities in public hands.

We would also urge the Exchange to clearly set out the percentage thresholds for very substantial acquisition, extreme transaction and RTO to avoid confusion.

Please define the percentage ratios to clearly delineate the categorization between VSA (e.g. over 100% and say equal or below 300%) and Extreme Transaction (over

300%).

(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.

Our above response is subject to our comments to Question 6(a).

(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.

Our above response is subject to our comments to Question 6(a).

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 see our response to Question 6(a).

(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.

For a company already under Rule 13.24 situation, they are usually loss-making. Hence, whilst it may be reasonable that the acquisition targets must meet all new listing requirements, the enlarged group must meet all the new listing requirements are too stringent and onerous for Rule 13.24 company (i.e. not only that the to be acquired targets need to satisfy the profits requirements for new listing, but also the profits of the to be acquired targets need to make up for the previous losses of the Rule 13.24 company).

Companies which have become unsuitable for listing under Rule 13.24 as a result of changes in business or industry environments despite good corporate compliance and governance. Shareholders and management of these companies deserve opportunity to expand and rescue the business when opportunity arises, or otherwise their investments could be rendered worthless. The proposed changes will immensely increase the difficulty (especially if the losses are substantial) for rescue and expansion which substantially prejudice shareholders and management of such listed companies.

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.

Guidance Letter GL84-15 is in relation to cash company rule under Rule 14.82. The recently amended Listing Rules re highly dilutive capital raising activities and the proposed new rule to cash company rule under Rule 14.82 are adequate in governing large scale issuance of shares for cash. There is no need to have an additional Rule 14.06D.

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.

Companies having sufficient level of operations may not necessary to have assets of sufficient value, e.g. IT companies, biotech companies. Further, assets sufficiency is not a requirement under Chapter 8 of the Listing Rules for new listing applicants. If so, we wonder why such assets sufficiency requirements would become a must requirement post-listing under Rule 13.24.

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.

Securities trading and investment activities are legitimate business transactions and activities and many listed companies conduct proprietary securities trading and investments. Hence, they should not be excluded in considering the sufficiency of

issuer's operations and assets under 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.

We agree in principle to the proposal, except that the wordings "the nature of the issuer's business and its level of operations and financial position" in Note 2 are not acceptable. It is not clear how the rule can be applied - how to measure the nature of business or level of business operations or financial position?

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.

We agree in principle to the codification of the requirements set out in LD75-4 except for the threshold should not be "very substantial disposal" but that after such distribution in specie would result in the remaining group would not be able to comply with Rule 13.24 (delisting).

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.

The proposed amendment will effectively relies on the Exchange's absolute decision on the alternative size tests calculation to be applied, and without setting clear parameters in the rule or in a note on what factors the Exchange will take into account for it to determine what it considers to be appropriate. We believe the existing rule provides sufficient flexibility in practice.

- End -