

NON-DISCLOSURE OF IDENTITY REQUESTED.

RESPONSE TO HKE_x CONSULTATION PAPER: LISTING REGIME FOR OVERSEAS ISSUERS (MARCH 2021)

We are providing our comments to the Exchange's "Consultation Paper: Listing Regime for Overseas Issuers" published on March 31, 2021 (the "Consultation Paper").

Overall, we welcome and support the direction of the proposals set out in the Consultation Paper, subject to comments on specific proposals as set out in our responses. Specifically, we have reservations and/or recommendations on two topics:

- a. The application of the Core Standards to all issuers (including existing listed issuers); and
- b. The proposal to cater for secondary listed issuers which seek a primary listing on a voluntary basis (*i.e.*, before the Trading Migration Requirement is triggered).

We address these two areas below.

a. Application of the Core Standards

We set out below our comments on the Core Standards based on different categories of issuers:

- i. **Existing primary listed overseas issuers incorporated in the Cayman Islands and Bermuda.** This group of issuers represents the overwhelming majority of issuers listed on the Exchange (see paragraph 37, Consultation Paper).

These issuers have listed on the Exchange based on the outdated Appendix 3 and Appendix 13 to the Listing Rules. These appendices have, as the Consultation Paper points out, remained largely unchanged over the years and no longer adequately address the difference in shareholder protection standards between Hong Kong on the one hand and Cayman Islands and Bermuda on the other. Different drafting approaches to the articles of association of these issuers have also contributed to the lack of uniformity across this group of issuers.

We believe there is a good case for addressing the consistency of the shareholder protection standards of this group of issuers (including existing issuers), given its large number and the expectation (as well as assumption) of investors that these issuers have broadly uniform shareholder protection standards.

- ii. **Existing primary listed overseas issuers incorporated in Acceptable Jurisdictions.** This group comprises 39 primary listed issuers¹ and five dual primary listed issuers, as set out in the List of Acceptable Overseas Jurisdictions on the Exchange's website.

¹ The 39 issuers include HSBC Holdings plc, Prudential plc and Standard Chartered Plc, which also have primary listings outside the Exchange.

We agree that the Core Standards should apply to all future Overseas Issuers to facilitate consistency of the shareholder protection of different issuers. However, we believe that most if not all of the existing issuers among this group of primary listed overseas issuers, many of which are long standing companies, made a decision to list on the Exchange at the relevant time based on the then applicable shareholder protection standards which the Exchange considered to be adequate upon their respective listings. Some of these issuers were listed before Country Guides were published and often engaged in detailed discussions with the Exchange with regard to the question of equivalence, or alternative ways of addressing equivalence. In particular, for dual primary listed issuers incorporated in Acceptable Jurisdictions, we believe the difference or change in the level of shareholder protection standards that a Hong Kong listing would bring about compared to those applicable in their other primary listing venue was one of the determining factors in the decision to list on the Exchange for those seeking a dual primary listing in Hong Kong. It would be unfair, and harsh, to now require these existing issuers to comply with the Core Standards, especially when they had already previously satisfactorily addressed the issue of broadly equivalent shareholder protection.

We strongly believe that this group of 44 existing issuers be given a grandfathered status, and we suggest that they be subject to a “comply or explain” requirement (the explanation can be made in the issuer’s annual report or in a Company Information Sheet).

- iii. **Existing secondary listed issuers.** This group comprises 14 Chapter 19C issuers² (all but one (YUM China) of which are incorporated in the Cayman Islands), and three other secondary listed issuers (two listed under the Joint Policy Statement (“JPS”) and one (Manulife) listed before the JPS).

The 14 Chapter 19C issuers are all “Grandfathered Greater China Issuers” and were listed with shareholder protection standards provided under Listing Rule 19C.07. We believe that the agreed shareholder protections standards set out in Listing Rule 19C.07 and the waivers that were provided were an important factor in the decisions of the “Grandfathered Greater China Issuers” to take advantage of the so-called “concessionary route” under Chapter 19C of the Listing Rules (“Chapter 19C”) to list on the Exchange. The other three secondary listed issuers are in a position similar to other issuers with a primary listing under the JPS as discussed in paragraph ii. above.

For the same reasons as those set out above relating to existing primary listed overseas issuers incorporated in Acceptable Jurisdictions, it would be unfair, and harsh, to now require these existing issuers to comply with the Core Standards, especially when they had already previously satisfactorily addressed the issue of broadly equivalent shareholder protection through compliance with Listing Rule 19C.07. We strongly believe that this group of existing secondary listed issuers should also be given a grandfathered status, and we suggest that they be subject to a “comply or explain” requirement (the explanation can be made in the issuer’s annual report or in a Company Information Sheet).

² Trip.com Group Limited was listed on April 19, 2021 after the publication of the Consultation Paper.

iv. **Future primary and secondary issuers to be listed on the Exchange.**

We agree that the proposals on Core Standards should apply to all future primary and secondary issuers to be listed on the Exchange, with the exception of those existing secondary listed issuers in paragraph iii above migrating to a primary listing on the Exchange. Please see our proposals regarding a voluntary migration to a primary listing, as further discussed below.

We believe that our “grandfathering” proposal above affords fair treatment to the 61 existing issuers, and does not prejudice investors on the basis of the additional “comply or explain” requirement that would be clearly disclosed to investors, and also given that the standards with which these issuers were listed were already accepted to be adequate protection for investors. We do not think that investors would be prejudiced by this grandfathering and “comply or explain” arrangement as they have already been trading the securities of these issuers and are familiar with their shareholder protection standards.

b. **Voluntary Migration to Primary Listing by Chapter 19C Issuers**

The market has welcomed the Chapter 19C regime and we believe that Chapter 19C issuers have looked favorably upon their listing on the Exchange and may consider a dual primary listing on the Exchange to reflect the importance of the Hong Kong market to them. Chapter 19C only provides for a mandatory migration to a primary listing after the Trading Migration Requirement has been triggered, but does not cater for a voluntary migration where the majority of trading does not take place in Hong Kong.

We would like to provide a proposal to the Exchange that is not addressed in the Consultation Paper, but which we think should form an important part on the Exchange’s proposals for listings by Overseas Issuers.

Chapter 3 of the Consultation Paper addresses dual primary listings. In particular, it (a) proposes to codify the Common Waivers for dual primary listed issuers, (b) proposes that Grandfathered Greater China Issuers be allowed to dual primary list directly on the Exchange while retaining their Non-compliant WVR and/or VIE Structures, and (c) clarifies/proposes that Grandfathered Greater China Issuers can retain Non-compliant WVR and/or VIE Structures if they dual primary list as a result of the Trading Migration Requirement or if they are de-listed from their Qualifying Exchange. A draft Guidance Letter (the “Draft Guidance Letter”) dealing with the requirements for a primary listing as a result of the Trading Migration Requirement or if an issuer is de-listed from its Qualifying Exchange is set out in Schedule E to the Consultation Paper.

In connection with your primary listing proposals for Grandfathered Greater China Issuers, we propose that the Draft Guidance Letter should also address the situation where a Grandfathered Greater China Issuer seeks to voluntarily convert its secondary listing into a dual primary listing before the bulk of trading has migrated to the Exchange’s markets on a permanent basis under Listing Rule 19C.13 (*i.e.*, before the Trading Migration Requirement is triggered). We refer to this process as “Voluntary Migration” for ease of reference.

Background to our Proposal on Voluntary Migration

We believe that Chapter 19C issuers may be interested in a Voluntary Migration and that the Hong Kong market would benefit from such migration for the following reasons:

- a. Many of the Chapter 19C issuers are among the most actively traded stocks in Hong Kong. In the first four months of 2021, three of the top 20 most-traded stocks in Hong Kong were Chapter 19C issuers. To date, one of them has been included as a constituent of the Hang Seng Index. We believe that Hong Kong's position as an international financial center would benefit from some of these Chapter 19C issuers having a primary listing in Hong Kong.
- b. Voluntary Migrations of Chapter 19C issuers would most likely lead to higher liquidity and trading volumes for these stocks and the overall Hong Kong market. Stock Connect inclusion would increase the number of eligible investors from Mainland China to invest in these stocks and liquidity of these stocks, driving more international institutional investors to trade in Hong Kong instead of on other Qualifying Exchange(s). The increased trading volume could subsequently promote a more active warrant market, further contributing to liquidity and investor choices.
- c. The current group of Chapter 19C issuers are all "Greater China Issuers." With many of their businesses and stakeholders located in Greater China, Hong Kong is their natural "Home Market" and a primary listing on the Exchange would reflect this.
- d. Voluntary Migrations to a primary listing before the Trading Migration Requirement under Listing Rule 19C.13 is triggered would facilitate an orderly transition to a primary listing, particularly as it would take significant planning and time to make changes for compliance purposes. We believe an orderly transition would be in the interests of the market participants in Hong Kong, and would also involve substantial communications with and review by the Exchange. A framework that allows for Voluntary Migrations to a primary listing would also help mitigate against a potentially large number of migrations taking place at the same time in response to potential geopolitical developments.

Proposal on Voluntary Migration

We propose that the Draft Guidance Letter should be expanded (or further guidance should be published) to address the following:

- a. A Grandfathered Greater China Issuer which has already been secondary listed on the Exchange for two full years and has a good compliance record, and which undertakes a Voluntary Migration to a primary listing, will be permitted to maintain the same compliance profile under Chapter 19C, at least until the Trading Migration Requirement is triggered. This essentially means that the general exceptions under Listing Rule 19C.11 and the specific waivers granted at the time of the secondary listing will continue to be in place.

- b. This treatment is effectively a time-relief waiver or extended grace period (a concept contemplated under Listing Rule 19C.13) until the Trading Migration Requirement is triggered.

Application of the Voluntary Migration Proposal

Chapter 3 of the Consultation Paper sets out proposals to facilitate primary listings by new applicants. Our proposal on Voluntary Migration applies to secondary listed issuers that are already listed on the Exchange. We propose that, in line with the proposals set out in Chapter 3 of the Consultation Paper to address Grandfathered Greater China Issuers, the proposal on Voluntary Migration should also apply to Grandfathered Greater China Issuers. We do not propose that the proposal on Voluntary Migration should apply to Non-Grandfathered Greater China Issuers to avoid regulatory arbitrage by such issuers.

We understand that the proposal creates another sub-set of primary listed issuers in Hong Kong, but we believe that this is not dissimilar to the other proposals set out in Chapter 3 of the Consultation Paper. This proposal would not create a large class of voluntarily migrated primary listed issuers, as the total number of Grandfathered Greater China Issuers is limited (approximately 28 issuers in total).

As additional safeguards to ensure that suitable issuers are permitted to dual primary list with a Chapter 19C compliance profile, we propose that Grandfathered Greater China Issuers which seek to take advantage of the Voluntary Migration proposal should demonstrate a long listing and compliance history on a “Qualifying Exchange” (say, five full financial years – a concept taken from paragraph 199(a) of the Consultation Paper) and have a track record of good regulatory compliance in Hong Kong of, say, at least two full years on the Exchange. Given the relatively small number of Grandfathered Greater China Issuers under Chapter 19C and the different timings that they were listed, this will also encourage gradual voluntary migration of these issuers and give these issuers more time to prepare for eventual full compliance with the Listing Rules as a primary listed issuer. While the number of these issuers is ultimately limited, their gradual voluntary migration would nonetheless alleviate some burden on the Exchange in reviewing waiver applications from a large number of issuers in a short time in the event of mandatory migration or as a result of geopolitical developments, and also provide valuable precedent and guidance to other issuers who would also be looking at how best to comply eventually with the Listing Rules as a primary listed issuer.

Rationale for the Voluntary Migration Proposal

Since the introduction of the Chapter 19C regime, the Exchange has seen a strong pipeline of Chapter 19C listings in Hong Kong (all of whom are Grandfathered Greater China Issuers to date).

The Chapter 19C regulatory framework has proven to offer robust investor protection, with Chapter 19C issuers having increasingly mature disclosure profiles in Hong Kong. We believe that Grandfathered Greater China Issuers which are subject to full-scale securities compliance regulation in another primary listing jurisdiction (by virtue of being listed on a “Qualifying Exchange” or an SEC reporting company) are adequately regulated from both disclosure and an investor protection perspectives, including with regard to Hong Kong

investor protection, even if such Grandfathered Greater China Issuers convert to a primary listing before their shares are mostly traded in Hong Kong.

While we note the Exchange's comment that the risk of a proliferation of secondary listings on the Exchange can be mitigated as described in paragraph 213 of the Consultation Paper, there is an increasing pipeline of secondary listings under Chapter 19C (and we believe that this will likely continue given the number of U.S. listings by Chinese issuers and the continued geopolitical developments), we believe that it is in the interests of the Hong Kong market to see an orderly transition of qualifying Chapter 19C issuers to a primary listing.

Justifications for the Voluntary Migration Proposal

1. Consistent with Regulatory Policy

The Voluntary Migration proposal requires a Grandfathered Greater China Issuer to be continued to be primary listed on a Qualifying Exchange (and for the bulk of trading not to have permanently migrated to Hong Kong). As such, the proposal does not contradict the premise of the Consultation Paper that primary or dual primary listed issuers normally have all or the majority of their trading on the Exchange and are therefore required to fully comply with the Listing Rules, unless specifically waived – see paragraphs 42 and 141 of the Consultation Paper. Similarly, the Trading Migration Requirement was put in place to prevent Greater China Issuers from attempting to avoid compliance with the full extent of the Listing Rules – see paragraph 147 of the Consultation Paper.

This Voluntary Migration proposal is effectively a time-relief waiver or extended grace period when a Chapter 19C issuer still has the bulk of trading outside the Exchange's markets as it would be unduly burdensome and unnecessary to impose additional compliance obligations on such an issuer while this remains the case.

2. Beneficial to the Hong Kong market

The Consultation Paper rightly expects that there will be many more secondary listings on the Exchange (see paragraph 4 of the Consultation Paper). Even if the risk of a proliferation of secondary listings can be mitigated as described in paragraph 213 of the Consultation Paper, there is a strong argument for the orderly transition of qualifying Chapter 19C issuers to a primary listing given that:

- a. The Chapter 19C issuers represent a meaningful contribution to the liquidity of Hong Kong stock market. The top three most-actively traded Chapter 19C issuers in Hong Kong represented 14% of the total trading volume of top 20 most actively-traded stocks in Hong Kong for the four months ended April 30, 2021. With more companies seeking secondary listings in Hong Kong, Chapter 19C issuers' contribution to the liquidity of Hong Kong stock market is expected to continue. We believe that a Voluntary Migration mechanism that encourages the most actively traded stocks to become primary listed in Hong Kong would further enhance the attractiveness and reputation of the Exchange.

- b. We expect the Chapter 19C issuers who adopt Voluntary Migration mechanism to be included into the Stock Connect Program, which could drive significant incremental liquidity of the relevant stocks by allowing more eligible investors from Mainland China to own and trade these stocks. For the three months after Meituan and Xiaomi’s Stock Connect inclusion on October 25, 2019, the average daily trading volume increased, respectively, by 37% and 126% compared to the three months prior to Stock Connect inclusion. For the first four months of 2021, the trading volume through Stock Connect for Tencent, Meituan and Xiaomi were 31%, 31% and 41%, respectively. The higher liquidity of the relevant stocks in Hong Kong as a result of Stock Connect inclusion could encourage more international institutional investors to trade in Hong Kong instead of the U.S. or other Qualifying Exchange(s) and also promote a more active warrant market, further contributing to trading turnover of the Exchange and investor choices. Higher liquidity of a stock would technically also result in reduced bid/ask spreads and better trade execution for investors, driving even higher trading turnover of the Exchange.
- c. The absence of a practical framework for Voluntary Migration is likely to mean that many of the Grandfathered Greater China Issuers (as well as other Chapter 19C issuers) will remain secondary listed in Hong Kong. Currently, the Hong Kong trading volume of Chapter 19C issuers only represents 12% of their total average daily trading volume for the four months ended April 30, 2021, far below the 55% threshold. Given continuing geopolitical developments, certain Grandfathered Greater China Issuers may want to become primary listed on the Exchange. A Voluntary Migration mechanism could ensure orderly migration towards a primary listing for qualifying Chapter 19C issuers. It would be desirable to mitigate against the impact on some of the Exchange’s largest issuers and most actively traded stocks from potential unexpected de-listings and geopolitical developments.

3. *Hong Kong Investor Protection*

We believe that the Chapter 19C regulatory framework has proven to offer robust investor protection in Hong Kong, through the combined regulatory regimes of the Qualifying Exchanges (including the U.S.) and Chapter 19C, which was designed in part to avoid duplication of regulation. Hong Kong investors are further protected by the requirements for corporate misconduct or management misfeasance (such as the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)).

Given the robustness of the regulatory supervision over a Chapter 19C issuer, and the requirement that a Grandfathered Greater China Issuer must continue to be primary listed on a Qualifying Exchange to take advantage of the Voluntary Migration proposal, there is no difference to Hong Kong investor protection whether the Grandfathered Greater China Issuer is secondary or dual primary listed – investors would be investing in an issuer with exactly the same compliance profile before and after a Voluntary Migration.

Following Voluntary Migration, a Grandfathered Greater China Issuer would become eligible for inclusion in the Stock Connect program, with a new class of investors

potentially investing in the issuer's securities. This has no impact on shareholder protection as Stock Connect investors are given the same level of investor protection as other Hong Kong investors.

4. *Natural Progression of "Two Step" Approach*

The Voluntary Migration proposal is a natural progression of the "two step" approach to primary listing and the direct primary listing route discussed in the Consultation Paper. The current "two step" approach envisages a secondary listing under Chapter 19C and the triggering of the Trading Migration Requirement because the bulk of trading has permanently migrated to Hong Kong (see paragraph 17 of the Consultation Paper). Chapter 3 of the Consultation Paper seeks to facilitate a direct dual primary listing by certain Grandfathered Greater China Issuers.

A direct dual primary listing by certain Grandfathered Greater China Issuers (*i.e.*, with Non-compliant WVR and/or VIE Structures) would be subject to full compliance with the Listing Rules, unless specifically waived. The Voluntary Migration proposal would give such Grandfathered Greater China Issuers a different compliance profile – this is justified because of our proposal that Grandfathered Greater China Issuers seeking to take advantage of the Voluntary Migration proposal would need to demonstrate a long listing and compliance history on a "Qualifying Exchange" and have a track record of good regulatory compliance in Hong Kong. In other words, such Grandfathered Greater China Issuers would have gone through a "probation" period as a listed issuer in Hong Kong and there is again no difference to investors before or after the Voluntary Migration.

5. *Orderly Migration*

The Voluntary Migration proposal provides a framework for the orderly transition of qualifying issuers to a primary listing, particularly as it would take significant planning and time to make changes for compliance purposes. By allowing an extended period for such transition, qualifying issuers would have additional time to discuss with the Exchange well in advance on the feasibility and validity of applicable specific waivers granted upon secondary listing, and the possible continuation of such waivers even after the completion of the migration, and make applicable adjustments as required. This would allow the qualifying issuers to plan for a reasonable timetable for conversion and to gradually attain full compliance of the Listing Rules as a primary listed issuer.

In addition, as explained above, with our proposal that Grandfathered Greater China Issuers which seek to take advantage of the Voluntary Migration proposal should demonstrate a long listing and compliance history on a "Qualifying Exchange" (say, five full financial years – a concept taken from paragraph 199(a) of the Consultation Paper) and have a track record of good regulatory compliance in Hong Kong of, say, at least two full years on the Exchange, the Voluntary Migration framework will encourage staggered migration of these issuers as soon as they become eligible, and can help alleviate confusion and bottlenecks among investors, issuers and regulators in the event that there are external factors driving trading turnover in Hong Kong

resulting in a large number of Chapter 19C issuers being required to convert to a primary listing around the same time.

Our responses to the questions set out in the Consultation Paper are set out in the Appendix to this letter.

* * * * *

We hope the above is helpful. Our team would be very happy to further explain our proposal or elaborate on any of the points discussed above.

APPENDIX

RESPONSES TO QUESTIONNAIRE

Core Shareholder Protection Standards

Question 1

Do you agree that the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” should be replaced with one common set of Core Standards for all issuers?

Agree. It will provide clarity to the market to have a single set of Core Standards. Please refer to our comment to Question 3 below on the proposed treatment of existing issuers.

Question 2(a)

Do you agree with the proposed Core Standards set out in paragraphs 79 to 137 of the Consultation Paper?

Agree on the proposed Core Standards and that the Core Standards should apply for all new issuers. Please refer to our comment to Question 3 below on the proposed treatment of existing issuers.

Question 2(b)

Do you agree that the existing shareholder protection standards set out in Schedule C of the Consultation Paper should be repealed?

Agree.

Question 3

Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards?

We do not agree that all issuers must conform their constitutional documents to the Core Standards. Our view is that:

- *All existing primary listed overseas issuers incorporated in the Cayman Islands and Bermuda, which represent the overwhelming majority of issuers listed on the Exchange, should be required to conform their constitutional documents to the Core Standards.*
- *Existing primary listed overseas issuers incorporated in Acceptable Jurisdictions (comprising 39 primary listed issuers and 5 dual primary listed issuers), should be given a grandfathered status, and should be subject to a “comply or explain” requirement (the explanation can be made in the issuer’s annual report or in a Company Information Sheet).*
- *Existing secondary listed issuers (comprising 13 Chapter 19C “Grandfathered Greater China Issuers” (as of March 31, 2021), two issuers listed under the Joint*

Policy Statement (“JPS”) and one (Manulife) listed before the JPS, should also be given a grandfathered status, and they should be subject to a “comply or explain” requirement (the explanation can be made in the issuer’s annual report or in a Company Information Sheet).

- *Future primary and secondary issuers to be listed on the Exchange, other than those issuers voluntarily migrating to a primary listing before the Trading Migration Requirement is triggered, should be required to conform their constitutional documents to the Core Standards.*

The group of existing issuers which we believe should be given a grandfathered status are those whose decisions to list on the Exchange were likely to have been made on the basis of the agreed shareholder protection standards required (or waived) at the time of their listing, and it would be unfair, and harsh, to now require these existing issuers to comply with the Core Standards.

Please also refer to our letter for additional details.

Question 4

Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C of the Consultation Paper, should be added or repealed?

No other standards or Listing Rules requirements should be added or repealed.

Question 5

Do you agree that existing listed issuers should be required to comply with the Core Standards?

Please see our response to Question 3 above.

Question 6(a)

Do you agree that existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards?

Agree, subject to our views regarding grandfathering certain existing issuers as set out in our response to Question 3 above.

Question 6(b)

Do you agree that the application of the Core Standards will not cause existing listed issuers undue burden?

Agree, subject to our views regarding grandfathering certain existing issuers as set out in our response to Question 3 above.

Dual Primary Listing

Question 7

Do you agree with the principles set out in paragraph 155 of the Consultation Paper for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong?

The standard of “unduly burdensome or unnecessary” should be clarified – for example, if an issuer was first primary listed on a recognized stock exchange and subsequently primary lists on the Exchange (whether as an “add-on” primary listing or a migration from a secondary listing), waivers should be favorably considered on the basis of the requirements being both unduly burdensome and unnecessary if it can be shown that the jurisdiction of primary listing has broadly similar requirements.

Question 8

Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158 of the Consultation Paper?

Agree that the current “common waivers” should be codified, but that further consideration should be given to sizeable/new economy companies. Otherwise, the Exchange will remain uncompetitive/unattractive for such issuers.

Question 9

Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures should be able to apply for dual primary listing directly on the Exchange as long as they can meet the relevant suitability and eligibility requirements under Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure?

Agree.

Question 10

Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 above be allowed to retain their Non-compliant WVR and/ or VIE Structures (subsisting at the time of their dual primary listing in Hong Kong) even if, after their listing in Hong Kong, they are de-listed from the Qualifying Exchange on which they are primary listed?

Agree. We believe this is already the policy of the Listing Rules, as set out in the Consultation Paper of 2018.

Secondary Listing

Question 11

Do you agree with our proposal to codify requirements (with the amendments set out in the Consultation Paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only?

Agree.

Question 12

Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 of the Consultation Paper for all Overseas Issuers without a WVR structure (including those with a centre of gravity in Greater China) seeking to secondary list on the Exchange?

Agree.

Question 13

Do you agree that an exemption from the listing compliance record requirement be introduced, similar to the current JPS exemption, to cater for secondary listing applicants without a WVR structure that are well-established and have an expected market capitalisation at listing that is significantly larger than HK\$10 billion?

Agree.

Question 14

Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an “Innovative Company”?

Agree.

Question 15

Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing?

Agree. However, further guidance should be issued to the market on this subject.

Question 16

Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210 of the Consultation Paper, if the Exchange suspects that an issuer’s secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing?

Agree. However, further guidance should be issued to the market on this subject.

Question 17

Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing?

Agree.

Question 18

In your opinion, will the extension of the Trading Migration Requirement to all secondary listed issuers be unduly burdensome for those that are not currently subject to this requirement?

No.

Question 19

Do you agree with the codification of the principles set out in paragraph 215 of the Consultation Paper on which exemptions/ waivers are granted to secondary listed issuers?

The waiver principle in paragraph 215(d) should be amended to “unduly burdensome or unnecessary.”

Question 20

Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing?

Agree.

Question 21

Do you agree with the removal of the current condition for granting a waiver from the shareholders’ consent requirement relating to further issues of share capital for secondary listed issuers as described in paragraphs 218 and 219 of the Consultation Paper?

The pre-emptive rights requirement should be clearly disapplied for secondary listed issuers.

Question 22

Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223 of the Consultation Paper)?

Agree.

Question 23

Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of the Consultation Paper?

We do not have any specific comments on the draft Guidance Letter other than our proposal set out in our separate letter to the Exchange with regard to the need to address voluntary migrations to primary listing by Grandfathered Greater China Issuers.

Codification of Other Requirements

Question 24

Do you agree that the Exchange should codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242 of the Consultation Paper) into Chapter 8 of the Listing Rules for all issuers?

Agree.

Question 25

Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 of the Consultation Paper that can be used to audit the financial statements of Overseas Issuers?

Agree.

Question 26

Do you agree to codify the JPS requirement that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between that body of standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the standards with IFRS?

No Comment.

Question 27

Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7 (see Schedule E of the Consultation Paper)?

No Comment.

Question 28

Do you agree to codify the JPS requirement that a dual primary or secondary listed issuer that adopts a body of alternative financial reporting standards for its financial statements (other than issuers incorporated in an EU member state which adopted EU-IFRS) must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative standards?

No Comment.

Question 29(a)

Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS?

No Comment.

Question 30

Do you agree that, for the sake of consistency of approach, an issuer must demonstrate a reason for adopting US GAAP for the preparation of its financial statements (including

annual financial statements and the financial statements included in its accountants' reports) and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it de-lists from a US exchange)?

No Comment.

Question 31

Do you agree that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements must include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS?

No Comment.

Question 32

Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules?

Agree.

Question 33

Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO?

Agree.

Question 34

Do you agree to amend the Listing Rules to allow Overseas Issuers to appoint an audit firm that is not qualified under the PAO (but it is a Recognized PIE Auditor of that issuer under the FRCO) for PIE Engagements to prepare an accountants' report for a reverse takeover or a very substantial acquisition circular relating to the acquisition of an overseas company?

Agree.

Question 35

Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271 of the Consultation Paper?

Agree.

Question 36

Do you agree to amend the Listing Rules to codify the amendments to the FRCO on the collection of levies by the Exchange on behalf of the FRC as described in paragraphs 280 and 281 of the Consultation Paper?

Agree.

Question 37

Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288 of the Consultation Paper?

Agree.

Question 38

Do you agree that the Company Information Sheet requirement should be applied to: (a) secondary listed issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors?

Agree.

Question 39

Do you agree to amalgamate the guidance described in paragraphs 289 and 290 of the Consultation Paper into one combined guidance letter for overseas issuers (see Schedule E of the Consultation Paper)?

Agree.