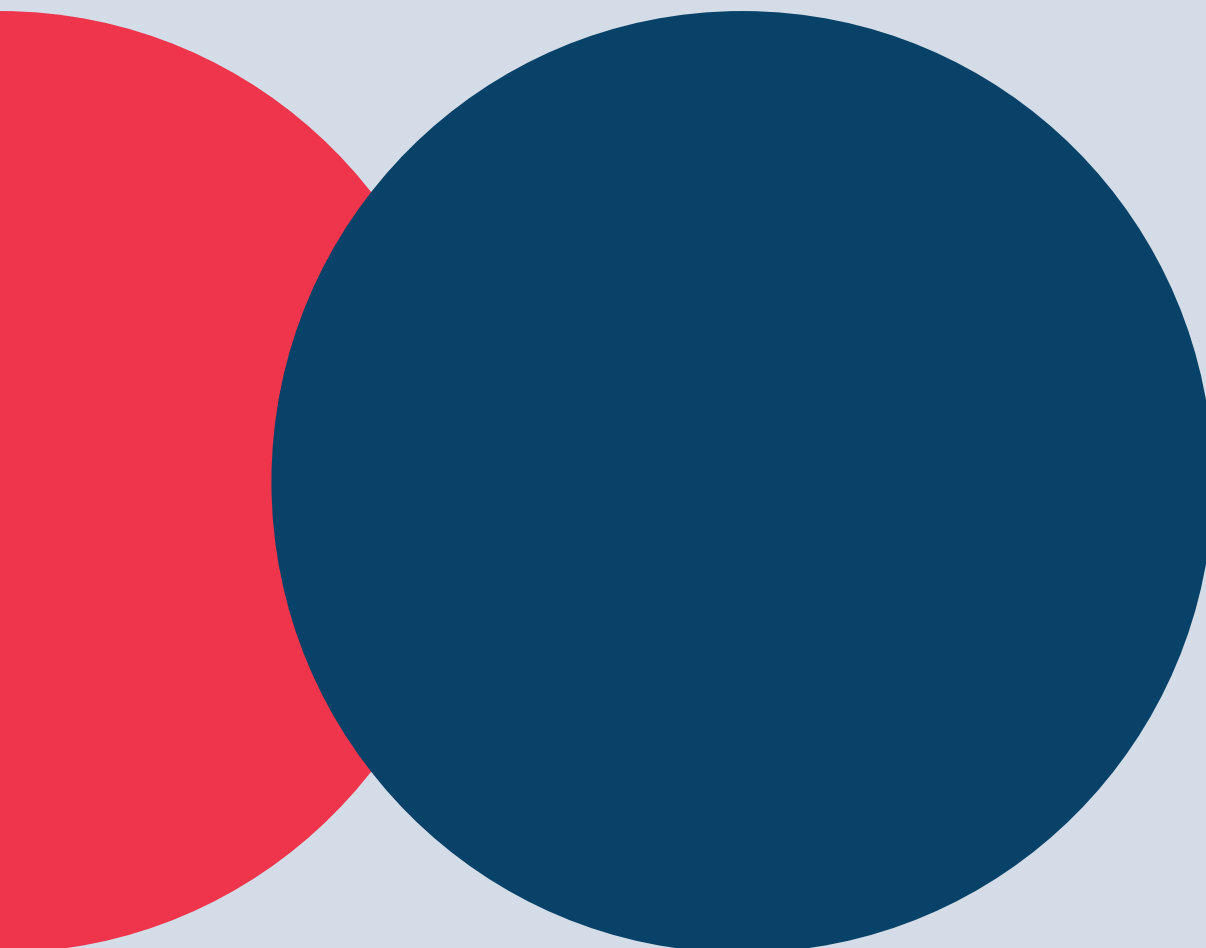


November 2017



## CONSULTATION PAPER

PROPOSED CHANGES TO DOCUMENTARY  
REQUIREMENTS RELATING TO LISTED ISSUERS AND  
OTHER MINOR RULE AMENDMENTS



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The Stock Exchange of Hong Kong Limited (the **Exchange**), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), invites written comments on the matters discussed in this paper, or comments on related matters that might have an impact upon the matters discussed in this paper, on or before **8 December 2017**. You may respond by completing the questionnaire which is available at:

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Respondents are reminded that the Exchange will publish responses on a named basis. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in Appendix IV.

Submissions received during the consultation period by **8 December 2017** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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## EXECUTIVE SUMMARY

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1. This consultation paper seeks comments on our proposed changes to the documentary requirements relating to listed issuers and other minor and housekeeping Rule amendments.

### **Proposed changes to documentary requirements relating to listed issuers (Chapter 2)**

2. The proposals set out in Chapter 2 are made mainly to:
  - simplify the administrative procedures and reduce the documents that need to be submitted by listed issuers and their directors and supervisors;
  - require certain information currently disclosed to the Exchange to also be disclosed to the public; and
  - codify existing practices.
3. We summarise below our proposals:
  - A. Declaration and undertaking by directors and supervisors and related matters (**DU Forms**)
    - To remove the DU Forms and to streamline the procedures required relating to the submission of personal information of directors and supervisors, including:
      - incorporating the directors' and supervisors' obligations currently set out in the DU Forms (including their undertaking to comply with the Rules and other requirements) into the Rules;
      - requiring the submission of a personal details form by directors and supervisors; and
      - not requiring a solicitor's certification and a sponsor's certification (both are currently required under the DU Forms for directors);
    - To modify certain related requirements to:
      - make clear that the contact details that directors and supervisors should submit to the Exchange include telephone and mobile phone numbers, email addresses (if available), facsimile numbers (if available) and correspondence addresses;
      - require disclosure of a director's or supervisor's former name and alias (if any) in his appointment announcement (or in an IPO case, the listing document);
      - provide the Exchange with the power to gather information from supervisors and require supervisors to cooperate with the Exchange's investigation (which is the same as that currently required for directors);
      - remove inconsistencies in certain provisions in the DU Forms under the Main Board Rules and the GEM Rules;

- B. Listed issuer's declaration (Form F in Appendix 5 to the Rules) and board resolutions relating to issue of securities
- To remove the requirements for a listed issuer to submit a declaration and a certified copy of its board resolutions to the Exchange each time the issuer issues new securities. Instead, the issuer would be required to make a confirmation in the relevant next day disclosure return and/or monthly return that the issue of securities has been duly authorized by the board and any pre-conditions and requirements relating to the issue of securities have been fulfilled;
- C. Other documentary requirements relating to listed issuers
- To remove the filing requirements for (i) documents that are submitted to the Exchange for record only; and (ii) documents whose contents are already disclosed to the public, including board meeting notices, notifications relating to change in directors and executive officers or notifiable transactions, company information sheet, and certain documents relating to issue of securities.

### **Proposed minor Rule amendments (Chapter 3)**

4. The proposed minor Rule amendments are mainly to bring the Main Board Rules and GEM Rules in line with each other, to codify or improve certain existing practices and to clarify certain Rule applications.
5. We summarise below our proposals:

- D. Rule amendments relating to new applicants
- To clarify that even if an applicant is permitted to have a shorter trading record period, if it acquired any material businesses/subsidiaries during its trading record period, it must disclose pre-acquisition financial information on such businesses/subsidiaries for the period from the commencement of three (for Main Board) or two (for GEM) financial years immediately preceding the issue of the listing document up to the date of acquisition;
  - To require applicants to submit their Application Proof for publication on the HKEX website "on the same day" (instead of "at the same time") as they submit the listing application;
- E. Rule amendments relating to listed issuers
- To align the formal reporting requirements relating to profit forecasts under the GEM Rules with those of the Main Board Rules (i.e. applicable only to listing documents or an announcement or circular relating to a notifiable or connected transaction or an issue of securities);

- To amend the Main Board Rules to clarify that the Exchange may grant a waiver from the minimum profit requirement for the remaining business under a spin-off proposal where the issuer's failure to meet such requirement is due solely to a significant market downturn;
  - To amend the Main Board Rules to require listed issuers to announce any changes to their own website addresses;
  - To amend the Main Board Rules to make it clear that listed issuers are required to announce (and not only inform the Exchange) certain specific matters, including information relating to appointment of a liquidator or presentation of a winding up petition, insufficient public float, or listing of securities on any other stock exchange;
- F. Rule amendments relating to issuers of structured products (*applicable to the Main Board Rules only*)
- To require issuers of structured products to submit their financial reports and listing documents to the Exchange in electronic form only;
  - To require issuers of structured products to provide liquidity for at least 20 (instead of ten) board lots of their structured products;
  - To allow structured products to be issued at entitlement ratios of five, 50 or 500 structured products for one share (or other security);
  - To clarify and require the inclusion of the following information of the issuer and (in case of a guaranteed issue) the guarantor (instead of the issuer or the guarantor) in a formal announcement for structured products:
    - the full name and country of incorporation or other establishment;
    - a statement whether they are regulated by a body specified in Main Board Rules 15A.13(2), (3) or (4);
    - a statement that the structured products constitute their general unsecured obligations; and
    - their credit rating;
  - To require the submission of one draft (instead of two drafts or proofs) of the listing document to the Exchange for review;
  - To clarify that reference to listing document of structured products include stand alone listing document (in addition to base listing documents, supplemental listing documents and supplementary listing documents);
- G. Rule amendments relating to debt issuers
- To amend the Rules to state that an issuer of debt issues to professional investors must publish a formal notice before listing; and

H. Rule amendments relating to accounting and auditing affairs

- To introduce the definitions of “modified opinion” and “modified report” and related Rule amendments in order to update the audit terminology in the Rules with reference to the new and revised Auditor Reporting Standards.

**Housekeeping amendments which involve no change in policy direction (Chapter 4)**

6. In Chapter 4, we discuss several proposed housekeeping Rule amendments that do not involve questions of policy. The Exchange simply invites comments on the draft amendments with a view to ensuring that there are no ambiguities or unintended consequences arising from the manner in which the proposed Rule amendments are drafted. The proposed housekeeping amendments are straightforward, and intend to improve the clarity of the Rules, to correct clerical errors and/or update outdated references.

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## **CHAPTER 1 : INTRODUCTION**

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7. The Exchange reviews its Listing Rules from time to time to ensure that they address developments in the market and international best practice, and also represent acceptable standards which help promote investor confidence.
8. Under the Rules, listed issuers and their directors (and supervisors of PRC issuers) are required to submit various documents and information to the Exchange according to the timeframe prescribed in the Rules. As part of our continuing efforts to enhance the Rules, we have reviewed the documentary requirements for listed issuers with a view to simplifying the administrative procedures and reducing the documents submitted by listed issuers. This would reduce listed issuers' compliance burden and facilitate timely submission of information to the Exchange.
9. Discussion of the current Rules and our proposals on documentary requirements relating to listed issuers are set out in Chapter 2 of this paper.
10. Chapter 3 of this paper discusses the proposed minor Rule amendments; and Chapter 4 covers other housekeeping Rule amendments.
11. Unless otherwise specified, the Rules cited in this paper refer to the Main Board Rules, and the issues and proposals apply equally to the GEM Rules. Draft amendments to the Rules are set out in Appendices I to III.



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## CHAPTER 2 : PROPOSED CHANGES TO DOCUMENTARY REQUIREMENTS RELATING TO LISTED ISSUERS

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12. In this Chapter, we review the current Rules on document submission relating to listed issuers and other related matters and set out our proposed Rule changes. The proposals also involve certain consequential changes to the requirements for new applicants.

### A. Declaration and undertaking by directors and supervisors and related matters

#### Current Rules

13. Under the Rules, every new director of a listed issuer (and supervisor in the case of a PRC issuer) must sign and lodge a declaration and undertaking in the form set out in Appendix 5B, 5H or 5I (**DU Form**) to the Rules as soon as practicable after his appointment<sup>1</sup>. In an IPO case, every director or supervisor of a new applicant must submit the DU Form as soon as practicable after the new applicant's listing document is published<sup>2</sup>.

14. The director or supervisor is required to:

- provide his personal details for identification purposes (including his name, former name, alias, date of birth, document of identity, nationality and residential address) under Part 1 of the DU Form; and
- disclose his biographical and other information (e.g. other directorships, conviction record, etc.) in the appointment announcement<sup>3</sup>, or in an IPO case, the listing document<sup>4</sup>.

15. The DU Form also includes:

- Part 1 – a **declaration** by the director or supervisor that his personal information submitted in the DU Form and disclosed in the appointment announcement (or the IPO listing document) are true, complete and accurate;
- Part 2 – an **undertaking** by the director or supervisor that he will comply with the Rules and other laws and regulations, and procure the issuer and his alternate to so comply; and

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<sup>1</sup> See Rule 13.51(2).

<sup>2</sup> See Rule 9.11(38).

<sup>3</sup> Rule 13.51(2) requires that a listed issuer must announce an appointment or re-designation of a director or supervisor. The rule also sets out the biographical and other information relating to the director or supervisor that need to be disclosed in the appointment announcement.

<sup>4</sup> See Paragraph 41(1) of Appendix 1A to the Rules.

- Part 3 (for directors only) – a **solicitor’s certification** that they have explained to the director all applicable requirements for completing the DU Form and the possible consequences of making any false declaration or giving false information to the Exchange. In an IPO case, there is also a **sponsor’s certification** that the sponsor is not aware of any information that would cause enquiries on the truthfulness, completeness or accuracy of the director’s personal information submitted in the DU Form and disclosed in the IPO listing document.

## **Proposals**

16. We propose the following Rule changes to remove the DU Forms and to streamline and update certain relevant requirements. The current requirement to file the DU Forms is administratively cumbersome for issuers and their directors / supervisors. Our proposals are administrative in nature and do not change the directors’ / supervisors’ obligations under the Rules. Directors and supervisors would be required to submit their personal information to the Exchange using a new personal details form.

### **(1) Undertaking by directors and supervisors in Part 2 of the DU Forms**

17. We propose to incorporate into the Rules the directors’ and supervisors’ obligations currently set out in Part 2 of the DU Forms.
18. Under this proposal, directors and supervisors would continue to be subject to the same requirements when they are incorporated into the Rules. New directors and supervisors would no longer need to provide an undertaking.

**Question 1: Do you agree with the proposed Rule amendments to incorporate the directors’ and supervisors’ obligations set out in Part 2 of the DU Forms into the Rules? If not, why not?**

### **(2) Solicitor’s certification in Part 3 of the DU Form with regard to directors**

19. We propose not to require a solicitor’s certification.
20. The proposal seeks to streamline the procedures required for directors to submit their personal information to the Exchange.
21. It is, and will continue to be, the director’s responsibility to ensure the accuracy and completeness of his information provided to the Exchange under the Rules and the Securities and Futures Ordinance (the **SFO**). A warning statement in the DU Form would be retained in the personal details form to remind the director of the liability for making a false or misleading statement under Section 384 of the SFO. Whether any legal advice on completing the personal details form is necessary is a matter for the director to decide.

**Question 2: Do you agree with the proposed Rule amendments to not require a solicitor’s certification? If not, why not?**

**(3) Sponsor's certification in Part 3 of the DU Form with regard to directors (for IPO cases only)**

22. We propose not to require a sponsor's certification.
23. Given that the Sponsor's Declaration in Appendix 19 to the Listing Rules already covers the information relating to the new applicant's directors (which, other than the identification document number, would be disclosed in the IPO listing document), the sponsor's certification is not necessary.

**Question 3: Do you agree with the proposed Rule amendments to not require a sponsor's certification? If not, why not?**

**(4) Changes to related requirements**

24. We also propose the following modifications to the requirements relating to directors and supervisors:

**(a) Former name and alias**

25. We propose to require disclosure of the former name and alias (if any) of a director or supervisor in the appointment announcement, or in an IPO case, the listing document. This is currently information submitted to the Exchange under the DU Form.

**Question 4: Do you agree with the proposed Rule amendments to require disclosure of the former name and alias (if any) of a director or supervisor? If not, why not?**

**(b) Contact information**

26. We propose that, in addition to the current requirement for providing residential addresses, directors and supervisors should also provide their contact details to the Exchange, including their telephone numbers, mobile phone numbers, facsimile numbers (if available), email addresses (if available), and correspondence addresses (if different from the residential addresses).
27. Currently, the Rules require issuers to inform the Exchange of any changes in the contact information, including the addresses and telephone numbers, of their directors and supervisors<sup>5</sup>. The proposal would impose an obligation on the directors and supervisors to submit the contact information, and any changes to such information, to the Exchange.

**Question 5: Do you agree with the proposed Rule amendments to require directors and supervisors to provide their contact information as set out in paragraph 26 to the Exchange? If not, why not?**

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<sup>5</sup> See Rule 13.77.

**(c) Information gathering**

28. Currently, there are already requirements in Rule 2.12A and/or the DU Form for issuers and their directors to:
- (i) provide information and documents that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market, and any other information and documents or explanation that the Exchange may require for the purpose of verifying compliance with the Rules;
  - (ii) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange, including answering promptly and openly any questions addressed to the director, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the director is requested to appear.
29. As supervisors have a role to play in listed issuers' Rule compliance and are potential targets of our disciplinary actions, they should also be subject to the same requirements.

**Question 6: Do you agree with the proposed Rule amendments to grant the power to the Exchange to gather information from supervisors and require supervisors to cooperate in the Exchange's investigation? If not, why not?**

**(d) Other changes**

30. We propose to amend the Rules to include in both the Main Board and GEM Rules the provisions that are currently only contained in the Main Board DU Forms or the GEM DU Forms:
- (i) Requirement for directors and supervisors to appoint the issuers as their agents for service of notices and documents by the Exchange (currently only in the Main Board DU Forms).
  - (ii) Requirement for every supervisor to inform the Exchange of any change to his correspondence addresses for a period of 3 years after ceasing to be the supervisor of the issuer (currently only in the GEM DU Forms).
  - (iii) To include in both the Main Board and GEM provisions relating to directors' obligations to comply with other laws and regulations reference to "the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the SFO" (currently only in the GEM DU Forms).

**Question 7: Do you agree with the proposed Rule amendments to align the requirements of the Main Board Rules and the GEM Rules as set out in paragraphs 30(i), (ii) and (iii)? If not, why not?**

## B. Listed issuer's declaration and board resolutions relating to issuance of securities

### Current Rules

31. Under the Rules, where there is an application for the listing of equity securities, a listed issuer is required to submit, among others, the following documents before dealings in the securities commence:
- a certified copy of the board resolutions (the **Board Resolutions**) authorizing the issue and allotment of such securities, the making of the listing application, the making of all necessary arrangements enabling such securities to be admitted into CCASS (if applicable), and approving and authorizing the issue of the listing document<sup>6</sup>; and
  - a declaration substantially in the form set out in Appendix 5F, signed by one of its director and the secretary (the **Form F Declaration**)<sup>7</sup> that all requirements and pre-conditions for listing and other applicable rules and regulations have been fulfilled.

### Proposals

32. We propose to remove the requirements for listed issuers to submit certified copies of the Board Resolutions and the Form F Declaration to the Exchange. Instead, listed issuers would be required to include a confirmation in the relevant next day disclosure returns and/or monthly returns for the issues of securities<sup>8</sup>.
33. It is the responsibility of the directors of listed issuers to ensure that their issues of securities are properly authorized and all necessary requirements and conditions are fulfilled before dealings in the securities commence. The filing of a certified copy of the Board Resolutions and a Form F Declaration is for the directors to demonstrate to the Exchange that they have fulfilled their obligations and the securities issued are of good title. However, the filing requirements also create additional administrative burden when a listed issuer issues securities.
34. The proposal would reduce the documents filed with the Exchange relating to issuance of securities. The directors are still responsible for ensuring any issue of securities is properly authorized and all necessary requirements and conditions are fulfilled before dealings in the securities commence. Their confirmations would instead be made in the relevant next day disclosure returns and/or monthly returns.

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<sup>6</sup> See Rule 9.23(1).

<sup>7</sup> See Rule 9.23(6).

<sup>8</sup> Under the current Rules, a listed issuer must publish a next day disclosure return after any issue of securities as set out in Rule 13.25A. A listed issuer is also required to publish a monthly return in relation to the movements of securities during the reporting month as set out in Rule 13.25B.

35. The existing and proposed requirements are summarised below:

Existing documentary requirements	Proposed requirements
To submit a certified copy of the Board Resolutions	To include in the relevant next day disclosure return and/or monthly return a confirmation that:
<p>To submit a Form F Declaration to confirm the matters set out below (where applicable):</p> <ul style="list-style-type: none"> <li>(i) all money due to the listed issuer in respect of the issue has been received by it;</li> <li>(ii) all pre-conditions for listing imposed by the Rules under “Qualification of listing” have been fulfilled;</li> <li>(iii) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;</li> <li>(iv) all the securities of each class are in all respects identical;</li> <li>(v) all documents required by the Companies (Winding up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;</li> <li>(vi) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue;</li> <li>(vii) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied;</li> <li>(viii) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and a copy has been lodged with the Exchange and that particulars thereof, if so required by law, have been filed with the Registrar of Companies;</li> </ul>	<ul style="list-style-type: none"> <li>(a) the issue of securities has been duly authorized by the issuer’s board of directors; and</li> <li>(b) on the matters set out in (i) to (viii) (where applicable).</li> </ul> <p>For item (viii), we propose not to retain the requirement to submit a copy of the trust deed/deed poll to the Exchange as we do not vet these documents.</p>
<ul style="list-style-type: none"> <li>(ix) information about shares relating to debentures/loan stock/notes/bonds that have been subscribed/purchased for cash and dully allotted issued /transferred;</li> <li>(x) information about shares relating to debentures/loan stock/notes/bonds that</li> </ul>	We do not propose to retain these provisions as details of the new shares or convertible securities issued are already required to be disclosed in the relevant next day disclosure return and monthly return.

have been issued and credited as fully paid by way of conversion/exchange/ consideration for property acquired/ other non-cash consideration;	
(xi) no alteration have been made to the version of the listing document which has been reviewed and cleared by the Exchange	We propose to add a separate Rule that if there is any material change to a document after clearance by the Exchange, the document should be resubmitted to the Exchange for further comments before it is issued.

**Question 8: (a) Do you agree with the proposed Rule amendments to remove the requirement to submit a certified copy of the Board Resolutions and to require the issuer to confirm in the relevant next day disclosure return and/or monthly return that the issue of securities has been duly authorised by the board? If not, why not?**

**(b) Do you agree with the proposed Rule amendments to remove the requirement to submit a Form F Declaration and to require the issuer to confirm in the relevant next day disclosure return and/or monthly return the matters set out in items (a) and (b)(i) to (viii) in the table under paragraph 35? If not, why not?**

**(c) Do you agree with the proposal to add a separate Rule that if there is any material change to a document after clearance by the Exchange, the document should be resubmitted to the Exchange for further comments before it is issued? If not, why not?**

### **C. Other documentary requirements relating to listed issuers**

36. We have reviewed other documentary requirements to identify documents that are filed with the Exchange for record only, or the information provided in the documents is already available to the Exchange through other sources.

37. We propose to remove the requirements for submission of the following documents by listed issuers to the Exchange:

<b>Document</b>	<b>Current Rule</b>	<b>Reasons for proposed removal</b>
<b><i>Documents relating to listing of additional equity securities</i></b>		
1. A copy of the HKSCC written notification stating the new class of securities will be Eligible Securities <i>(to be submitted on or before the date of issue of the listing document)</i>	9.21(2)	<ul style="list-style-type: none"> <li>Information relating to the approval of the securities for admission into CCASS is available on the HKSCC website</li> </ul>

Document		Current Rule	Reasons for proposed removal
2.	A copy of the letter from the Registrar of Companies confirming the registration of the prospectus <i>(to be submitted as soon as after the registration of the prospectus)</i>	9.22(3)	<ul style="list-style-type: none"> <li>Under Rule 2.07C(1)(b)(ii), listed issuers must ensure that their prospectuses are duly registered before publication on the HKEX website. The confirmation letter is currently submitted to the Exchange for record purpose only.</li> </ul>
3.	A certified copy of the notice given under Division 4, Part 13 of the Companies Ordinance <sup>9</sup> <i>(to be submitted before dealings commence)</i>	9.23(3)	<ul style="list-style-type: none"> <li>It is the issuer's responsibility to ensure that other legal requirements are met. The documents are currently filed with the Exchange for record purpose only. We do not vet these documents.</li> </ul>
4.	A certified copy of the court order and of any certificate of registration for capital reduction, scheme of arrangement or other similar proposal <i>(to be submitted before dealings commence)</i>	9.23(4)	
5.	For PRC issuers only, a certified copy of the document from the State Council Securities Policy Committee (or other PRC authority) approving the issue of securities <i>(to be submitted on or before the date of issue of the listing document)</i>	19A.22B	
<b>Company Information Sheet (for GEM issuers only)</b>			
6.	Company Information Sheet	GEM Rule 12.27(9) / GEM Rule 17.52	<ul style="list-style-type: none"> <li>The document is published on HKEX website. A separate submission of the same document to the Exchange is not necessary.</li> </ul>
<b>Notification to the Exchange</b>			
7.	Board meeting notice <i>(7 clear business days in advance of the date of board meeting)</i>	13.43	<ul style="list-style-type: none"> <li>Listed issuers are required to publish announcements relating to these matters on the HKEX website. A separate notification to the Exchange is not necessary.</li> </ul>
8.	Any important change in the holding of an executive office	13.51(2)	
9.	Any change in information required to be disclosed under Rule 13.51(2)(h) to (v) during the term of a director, supervisor or chief executive	13.51B(2)	

<sup>9</sup> Under Division 4, Part 13 of the Companies Ordinance ("Compulsory Acquisition after Takeover Offer"), the offeror is required to give a notice to the minority shareholders on (i) the Right of Offeror to Buy out Minority Shareholders; and (ii) the Right of Minority Shareholder to be Bought out by Offeror. The offeror has to use a prescribed form in sending the relevant notice to the minority shareholder (by personal delivery, registered post or any manner as directed by the Registrar of Companies).



Document		Current Rule	Reasons for proposed removal
10.	Any notifiable transaction	14.34(1)	

**Question 9:** *Do you agree with the proposed Rule amendments to remove each of the documentary requirements set out in items 1 to 10 in the table above? If not, why not?*

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## CHAPTER 3 : PROPOSED MINOR RULE AMENDMENTS

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38. This Chapter sets out the proposed minor Rule amendments which are mainly to bring the Main Board Rules and GEM Rules in line with each other, to codify or improve certain existing practices and to clarify certain Rule applications.

### D. Rule amendments relating to new applicants

#### (1) Period of disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant

39. Main Board Rule 4.05A/ GEM Rule 7.04A is unclear on the extent of the disclosure of pre-acquisition financial information on material businesses/ subsidiaries which is acquired by a new applicant accepted by the Exchange to have a trading record period shorter than three (for Main Board) or two (for GEM) years.
40. To enhance investors' assessment of the performance of the acquired business/ subsidiaries, it is reasonable to require the disclosure of financial information on the acquired business/ subsidiaries for the period from the commencement of the three-year (for Main Board)/ two-year (for GEM) trading record period up to the date of acquisition.
41. We propose to add a Note to clarify that disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant must be for the period from the three (for Main Board) or two (for GEM) financial years immediately preceding the issue of the listing document up to the date of acquisition.

**Question 10:**        ***Do you agree with the proposal to add a Note to clarify the period of disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant as described in paragraph 41?***

#### (2) Time of submission of Application Proof for publication on the HKEX website

42. The Rules require an applicant to submit the Application Proof (which must be in English and Chinese) for publication on the HKEX website "at the same time" it files a listing application which includes copies of the English version of the Application Proof.
43. In practice, we allow an applicant to submit the Application Proof for publication on the HKEX website within the same day as it files its listing application. This is to give time allowance for the submission of the Chinese version of the Application Proof which may not be available when the English version of the Application Proof is submitted to the Exchange.

44. We propose to amend paragraphs 9(a) and (b) of Main Board Rules Practice Note 22 and paragraph 8 of GEM Rules Practice Note 5 to state that applicants must submit the Application Proof for publication on the HKEX website “on the same day” (instead of “at the same time”) they submit the listing application.

**Question 11:** *Do you agree with the proposal to amend paragraphs 9(a) and (b) of Main Board Rules Practice Note 22 and paragraph 8 of GEM Rules Practice Note 5 to state that applicants must submit the Application Proof for publication on the HKEX website “on the same day” (instead of “at the same time”) they submit the listing application?*

#### **E. Rule amendments relating to listed issuers**

##### **(1) Amendments to align the GEM Rules in respect of profit forecasts with the Main Board Rules**

45. Under the Main Board Rules, where a profit forecast is included in a listing document or an announcement or circular relating to a notifiable or connected transaction or an issue of securities, the profit forecast must be reviewed by a reporting accountant or auditor (the **formal reporting requirement**). The formal reporting requirement serves to provide a higher level of assurance for profit forecasts that are made in connection with material corporate actions of issuers. For other announcements (e.g. profit warnings or alerts), the formal reporting requirement does not apply as issuers’ directors are responsible for ensuring that the information disclosed is accurate and complete in all material respects and not misleading or deceptive. This facilitates issuers to timely release updated financial information that may affect investors’ interests in the issuers.
46. The GEM Rules have similar requirements for formal reporting of profit forecasts that are included in listing documents, announcements or circulars relating to notifiable or connected transactions or an issue of securities. However, GEM Rule 17.55 also applies this requirement to any announcement, advertisement or other document that contains a profit forecast, which is more onerous than the Main Board requirements. We propose to remove GEM Rule 17.55 to align the requirements for formal reporting of profit forecasts with those in the Main Board Rules. This is also in line with the current practice for profit warnings/alerts announcements issued by GEM issuers.
47. We propose to remove GEM Rule 17.55 and align the formal reporting requirements for profit forecasts in the GEM Rules with those in the Main Board Rules.

**Question 12:** *Do you agree with the proposal to remove GEM Rule 17.55 and align the formal reporting requirements for profit forecasts in the GEM Rules with those in the Main Board Rules?*

**(2) Amendments relating to possible waiver from the minimum profit requirement for remaining businesses under spin-off proposals**

48. Under paragraph 3(c) of Practice Note 15 (**PN15**) to the Main Board Rules, the existing issuer (**Parent**) must retain sufficient assets and operations of its own, excluding its interest in the entity to be spun-off (**Newco**), to satisfy independently the requirements of Chapter 8 of the Rules. Paragraph 3(c) of PN15 also provides that:

*“Where the Parent, excluding its interest in Newco, cannot meet the minimum profit requirement of Rule 8.05, the Exchange may grant a waiver to the Parent if the Parent is able to demonstrate that it, excluding its interests in Newco, fails to meet the minimum profit requirement of Rule 8.05 due solely to an exceptional factor or a significant market downturn. The Parent must also demonstrate that such factor was temporary in nature and is not likely to continue or recur in the future or that appropriate measures have been taken by the issuer to negate the impact on its profit of the market downturn ...”* (the **Waiver**)

49. The Waiver was introduced into the Main Board Rules in 2000 following a financial crisis that had adversely affected the economy. This is intended to apply only in circumstances where the results of a Parent’s remaining business have been temporarily and adversely affected by a global market downturn.
50. However, some issuers sought a Waiver based on factors particular to their businesses that they considered to be exceptional (such as a delay in the regulatory approval of new products or impairment losses of assets due to a change in business plans) but were unrelated to market downturn. We do not consider that these cases fall within the scope of the Waiver as intended.
51. To better reflect the policy intent of the Waiver, we propose to make it clear that the Exchange may grant the Waiver to the Parent if it fails to meet the minimum profit requirement due solely to a significant market downturn. The reference to an exceptional factor would be removed from paragraph 3(c) of PN15.
52. We propose to amend paragraph 3(c) of PN 15 to clarify that the Exchange may grant a Waiver if the issuer fails to meet the minimum profit requirement under Rule 8.05 due solely to a significant market downturn.

**Question 13:** ***Do you agree with the proposal to amend paragraph 3(c) of PN15 to clarify that the Exchange may grant a Waiver if the Parent fails to meet the minimum profit requirement under Rule 8.05 due solely to a significant market downturn?***

### **(3) Issuer's website**

53. Currently, a GEM listed issuer is required to announce any change to its website addresses by publishing an updated company information sheet. There is no similar disclosure requirement in the Main Board Rules.
54. We propose to amend the Main Board Rules to require listed issuers to announce any changes to their website addresses.

**Question 14:**        ***Do you agree with the proposed amendments to the Main Board Rules to require listed issuers to announce any changes to their website addresses? If not, why not?***

### **(4) Other changes**

55. Currently the GEM Rules require issuers to make announcements for the matters set out below, but the Main Board Rules state that issuers shall inform the Exchange:
- (a) of the appointment of a receiver or a manager; presentation of a winding up petition; passing of a resolution for voluntary winding up and other events as described under Main Board Rule 13.25(1);
  - (b) where the issuer fails to meet the public float requirement (Main Board Rule 13.32(1)(a)); and
  - (c) where any of the issuer's securities become listed or dealt in on any other stock exchange (Main Board Rule 13.32(1)(b)).
56. In practice, Main Board issuers would announce the above matters and not just inform the Exchange. As these matters are likely to be material information that may affect the interests of investors, we propose to amend the Main Board Rules to explicitly require issuers to make announcements in these circumstances.

**Question 15:**        ***Do you agree with the proposed amendments to the Main Board Rules to codify the practices that listed issuers should announce the matters set out in paragraphs 55(a) to (c)? If not, why not?***

**F. Rule amendments relating to issuers of structured products (*applicable to the Main Board Rules only*)**

**(1) Form of submission of financial reports and listing documents of structured products**

57. Currently, the Main Board Rules require an issuer of structured products to submit financial reports, supplemental or stand alone listing documents in printed and/or softcopy form.
58. We consider that the submission of financial reports, supplemental or stand alone listing documents in printed form unnecessary, and we could remove this requirement and make the listing process more environmental friendly.
59. We propose to amend Main Board Rules 15A.21(1) and 15A.64(3) to require issuers of structured products to submit their financial reports, supplemental or standalone listing documents to the Exchange in electronic form only.

**Question 16:** *Do you agree with the proposal to amend Main Board Rules 15A.21(1) and 15A.64(3) to require issuers of structured products to submit their financial reports, supplemental or standalone listing documents to the Exchange in electronic form only?*

**(2) Liquidity provision for structured products**

60. Under the Main Board Rules, an issuer of structured products is required to provide liquidity for at least ten board lots of the structured product.
61. In practice, all issuers of structured products provide liquidity for at least 20 board lots of the structured product.
62. We propose to amend Note 4 to Main Board Rule 15A.22 to require issuers of structured products to provide liquidity for at least 20 (instead of ten) board lots of their structured product. We also propose to make consequential changes to the note to paragraph 17(15) of Appendix 1D to the Main Board Rules.

**Question 17:** *Do you agree with our proposal to amend Note 4 to Main Board Rule 15A.22 to require issuers of structured products to provide liquidity for at least 20 (instead of ten) board lots of their structured products and to make consequential changes to the note to paragraph 17(15) of Appendix 1D to the Main Board Rules?*

### **(3) Entitlement ratio for structured products**

63. Under the Main Board Rules, structured products using shares (or other securities) as underlying assets are normally issued in the ratio of (i) one, ten or 100 structured products for one share; or (ii) one, ten or 100 shares for one structured product<sup>10</sup>. In respect of structured products other than derivative warrants, the Exchange may permit other ratios, provided that the number of structured products for one share shall be an integral power of ten. After listing, the entitlement ratio may be adjusted to a ratio other than those mentioned above as a result of corporate actions of the issuer of the underlying asset.

#### Entitlement ratio of multiple structured products for one share

64. The current entitlement ratios of one, ten and 100 structured products for one share may be too restrictive under certain market conditions, resulting in products being issued with high risk (e.g. products issued deeply out-of-money) or with a higher premium (e.g. longer time to maturity). Structured products in respect of underlying stocks with higher prices may also require higher entitlement ratios.
65. By allowing greater flexibility in the entitlement ratio of multiple structured products for one share (e.g. five, 50 or 500 structured products for one share), it will facilitate the issuance of products with different strike price and time to maturity, which in turn provide investors with a wider choice of products.

#### Entitlement ratio of multiple shares for one structured product

66. Given that there are currently no structured products issued with entitlement ratios of ten or 100 shares for one structured product, there is no market need for making any changes to entitlement ratios of multiple shares for one structured product.
67. We propose to include entitlement ratios of five, 50 and 500 structured products for one share (or other security) in Main Board Rule 15A.40.

**Question 18:** *Do you agree with our proposal to include entitlement ratios of five, 50 and 500 structured products for one share (or other security) in Main Board Rule 15A.40?*

### **(4) Contents of formal announcement for structured products**

68. Currently, a formal announcement for structured products should contain the following information of the issuer and/or the guarantor:
- (a) their full name and country of incorporation or other establishment;
  - (b) a statement whether they are regulated by a body specified in Main Board Rules 15A.13(2), (3) or (4);

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<sup>10</sup> The Main Board Rules do not specify the ratio for structured products using index as an underlying asset. Accordingly, various ratios are used for these structured products

- (c) a statement that the structured products constitute their general unsecured obligations; and
  - (d) their credit rating.
69. In practice, in the case of a guaranteed issue, the above information is required in respect of both the issuer and the guarantor, instead of either the issuer or the guarantor.
70. We propose to amend Main Board Rule 15A.59 to clarify that in case of a guaranteed issue, the information (where available) as described in paragraph 68 of both the issuer and the guarantor are required to be included in the formal announcement for structured products.

**Question 19: *Do you agree with our proposal to amend Main Board Rule 15A.59 to clarify that information (where available) as described in paragraph 68 of both the issuer and the guarantor are required to be included in the formal announcement for structured products?***

**(5) Number of draft listing documents to be submitted to Exchange**

71. Main Board Rule 15A.63 requires issuers to lodge two drafts or proofs of the supplemental or stand alone listing document for review and clearance by the Exchange.
72. We consider that the submission of one draft of a supplemental or stand alone listing document would be sufficient for review, and it would also make the process more environmental friendly.
73. We propose to amend Main Board Rule 15A.63(1) to require the submission of one draft (instead of two drafts or proofs) of the listing document to the Exchange for review.

**Question 20: *Do you agree with our proposal to amend Main Board Rule 15A.63(1) to require the submission of one draft (instead of two drafts or proofs) of the listing document to the Exchange for review?***

**(6) Applicability of Main Board Rules 15A.71-15A.74, and 15A.76 to standalone listing documents of structured products**

74. Currently, the Main Board Rules require a listing of structured products to be supported by a listing document, which may take form of a stand alone listing document, a base listing document, a supplemental listing document or a supplementary listing document.
75. However, none of Main Board Rules 15A.71, 15A.72, 15A.73, 15A.74, and 15A.76 make reference to a stand alone listing document.



76. We propose to amend Main Board Rules 15A.71, 15A.72, 15A.73, 15A.74, and 15A.76 to clarify that these Rules apply to stand alone listing documents (in addition to base listing documents, supplemental listing documents and supplementary listing documents).

**Question 21:** *Do you agree with our proposal to amend Main Board Rules 15A.71, 15A.72, 15A.73, 15A.74, and 15A.76 to clarify that these Rules apply to stand alone listing documents (in addition to base listing documents, supplemental listing documents and supplementary listing documents)?*

**G. Rule amendments relating to debt issuers – publication of formal notice for debt issues to professional investors**

77. Currently, the Rules require an issuer of debt issues to professional investors only (i.e. debt securities listed under Chapter 37 of the Main Board Rules or Chapter 30 of the GEM Rules) to publish a formal notice on listing.
78. In practice, in relation to debt issues to professional investors, an issuer must publish a formal notice before listing.
79. We propose to amend Main Board Rule 37.39 and GEM Rule 30.32 to require an issuer of debt issues to professional investors only to publish a formal notice “before” listing.

**Question 22:** *Do you agree with our proposal to amend Main Board Rule 37.39 and GEM Rule 30.32 to state that an issuer must publish a formal notice before listing?*

**H. Rule amendments relating to accounting and auditing affairs – to update audit terminology with reference to the new and revised Auditor Reporting Standards**

80. Currently, the audit terminology used in the Rules is out of date<sup>11</sup> and is based on the pronouncements previously issued by the Hong Kong Institute of Certified Public Accountants (the **HKICPA**). Therefore, we consider that the audit terminology in the Rules should be updated with reference to the new and revised Hong Kong Standards on Auditing (**HKSA**) on auditor reporting (the **Auditor Reporting Standards**), which are issued by the HKICPA on 31 August 2015 and became effective for audits of financial statements for periods ended on or after 15 December 2016.

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<sup>11</sup> We published the FAQ No. 001-2017 on 6 January 2017 to alert issuers to the new and revised Auditor Reporting Standards, and different terminologies used in the current Rules and HKSA. We indicated that we intend to consult the market on the proposed Rule amendments in due course.

81. The table below summarises the terminologies used in the current Rules and HKSA:

Meanings	Terminology used		
	Current Rules	HKSA	Our proposal (see paragraphs 82 to 84 below)
Matters that do affect the audit opinion: - qualified opinion - adverse opinion - disclaimer of opinion	Qualified / Qualification	“Modified opinion” <sup>12</sup>	Introduce the HKSA defined term “Modified opinion”
Matters that do affect the audit opinion: - qualified opinion - adverse opinion - disclaimer of opinion  <b>AND/OR</b> Matters that do not affect the audit opinion: - emphasis of matter - material uncertainty related to going concern	Modified / Modification	No specific equivalent term	Introduce a newly defined term “Modified report”

82. We propose to introduce a newly defined term “modified report” in the Rules to accommodate the new and revised Auditor Reporting Standards to cover:

- (a) matters that do affect the audit opinion; and
- (b) matters that do not affect the audit opinion but are modifications to the audit report.

83. To improve the clarity on the scope of the current application, we propose to introduce the HKSA defined term “modified opinion” into the Rules. This will distinguish the term “modified report” from “modified opinion” and clarify the difference between the two terms.

<sup>12</sup> This is the audit terminology as set out in HKSA 705 (Revised) “Modifications to the Opinion in the Independent Auditor’s Report” issued by the HKICPA on 31 August 2015.

84. We also propose consequential changes to individual Rules where “qualified”/“modified” auditors’ reports and “qualification”/“modification” are referred to, and replace them with the proposed new terms, “modified opinion” and “modified report”, where appropriate.

**Question 23:** *Do you agree with the proposal to introduce the definitions of “modified opinion” and “modified report” and the proposed consequential amendments in Appendix II in order to update the audit terminology in the Rules with reference to the new and revised Auditor Reporting Standards issued by the HKICPA?*

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## **CHAPTER 4 : PROPOSED HOUSEKEEPING RULE AMENDMENTS**

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### **DISCUSSION OF HOUSEKEEPING AMENDMENTS**

85. We propose to make various housekeeping amendments to the Rules. Set out below is a summary of the intended objective of certain Rule amendments. The remaining amendments that are not discussed below are essentially to improve the clarity of the Rules, to correct clerical errors and/or update outdated references.
86. All housekeeping Rule amendments will become effective on a date to be announced, subject to the necessary regulatory approvals. In the meantime, we welcome comments regarding whether the manner in which the proposed Rule amendments are drafted will give rise to any ambiguities or unintended consequences.

#### **Amendments to outdated references to the standard on the preparation of accountants' reports**

87. HKICPA's Auditing Guideline 3.340 "Prospectuses and the Reporting Accountant" (Statement 3.340) has been replaced by Hong Kong Standard on Investment Circular Reporting Engagements 200 "Accountants' Reports on Historical Financial Information in Investment Circulars" (HKSIR 200), which became effective for engagements where the investment circular is dated on or after 1 July 2017. We propose to update Main Board Rule 4.08 and GEM Rule 7.08(3) and Note to GEM Rule 7.18 to reflect this change.

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## APPENDIX I : DRAFT RULE AMENDMENTS FOR PROPOSALS DESCRIBED IN CHAPTER 2

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### Main Board Listing Rules

#### Chapter 2

- 2.07C (1)(b)(ii) Where a prospectus is to be registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the listed issuer or new applicant must submit to the Exchange through HKEX-EPS for publication on the Exchange's website a ready-to-publish electronic copy of each of the prospectus and any application forms. The copies must be submitted to the Exchange at the same time as they are sent to shareholders by the listed issuer or, in the case of a new applicant, their distribution to the public commences. They must be submitted only after the issuer has received the letter from the Companies Registry confirming registration of the prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. ~~The issuer must also promptly submit a copy of the letter to the Exchange for its records.~~

Proposal C

...

#### Chapter 3

##### Directors

...

- 3.09 Every director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer. The Exchange may request further information regarding the background, experience, other business interests or character of any director or proposed director of a listed issuer.

- 3.09A Every director of a listed issuer must, in the exercise of his powers and duties as a director of the issuer:

Proposal A(1)

- (1) comply to the best of his ability with the Listing Rules;
- (2) use his best endeavours to procure the issuer and, in the case of depositary receipts, the depositary, to comply with the Rules;
- (3) use his best endeavours to procure any alternate of his to comply with the Rules; and

(4) comply to the best of his ability, and use his best endeavours to procure the issuer to comply, with the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Securities and Futures Ordinance, the Code on Takeovers and Mergers, and Code on Share Buy-backs and all other securities laws and regulations from time to time in force in Hong Kong.

**Proposal  
A(4)(d)(iii)**

3.09B Every director of a PRC listed issuer must also, in the exercise of his powers and duties as a director of the issuer:

**Proposal A(1)**

(1) comply to the best of his ability with all applicable laws, rules, regulations and normative statements from time to time in force in the PRC relating to governing, operation, conduct or regulation of public companies in the PRC or elsewhere;

(2) comply to the best of his ability with the provisions of the issuer's articles of association (including all provisions regarding the duties of directors) and use his best endeavours to procure the issuer to act at all times in accordance with its articles of association;

(3) inform the Exchange forthwith and in writing, at any time while he is a director of the issuer (or within 12 months of his ceasing to be a director of the issuer), of any administrative or governmental notice or proceeding alleging a breach by the issuer or any of its subsidiaries or directors of any applicable laws, rules, regulations or normative statements in force in the PRC relating to the governing, operation, conduct or regulation of public companies; and

(4) use his best endeavours to procure any alternate of his to comply with the provisions set out in (1) to (3) above.

3.09C Every director of a listed issuer, whether when he is a director of the issuer or thereafter, shall:

**Proposal A(1)**

(1) provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:

(a) any information and documents that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(b) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Rules; and

(2) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee, including answering promptly and openly any questions addressed to the director, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the director is requested to appear.

3.09D Every director, in accepting to be a director of a listed issuer, shall be considered as having:

**Proposal A(1)**

(1) irrevocably appointed the listed issuer as his agent, for so long as he remains a director of the issuer, for receiving on his behalf any correspondence from and/or service of notices and other documents by the Exchange; and

(2) authorised the Executive Director – Listing, or to any person authorised by him, to disclose any of his personal particulars given by him to members of the Listing Committee and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

...

3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:-

(1) ...

...

An independent non-executive director shall submit to the Exchange a written confirmation which must state:

(a) ...

...

(c) that there are no other factors that may affect his independence at the same time as the submission of his declaration and undertaking in Form B or H of Appendix 5 at the time of his appointment as an independent non-executive director.

**Proposal A**

...

3.20 Every director of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(1) immediately upon his appointment, the following personal particulars:

(a) his date of birth, nationality and Hong Kong identity card number (or in the case of a non-Hong Kong identity cardholder, the passport number or any identification document number and the name of the issuing authority);

(b) his telephone number, mobile phone number, facsimile number (if available), email address (if available), residential address and contact address (if different from the residential address) for correspondence from and service of notices and other documents by the Exchange;

**Proposal  
A(1), A(2),  
A(3)**

**Proposal  
A(4)(b)**

- (2) for so long as he remains as a director of the issuer, any change to the contact information as described in paragraph (1)(b) as soon as reasonably practicable and in any event within 28 days of such change;
- (3) Every director of a listed issuer shall provide to the Exchange, immediately upon his resignation as a director of the listed issuer, his up-to-date contact information as described in paragraph (1)(b), including his address for correspondence from and service of notices and other documents by the Exchange and telephone number; and
- (4) for a period of 3 years from the date on which he ceases to be a director of the issuer, any change to his contact address for correspondence from and service of notices and other documents by the Exchange as soon as reasonably practicable and in any event within 28 days of such change.

Any correspondence from and/or service of notices and other documents by the Exchange to the director when he is a director of the listed issuer or thereafter, for whatever purposes (including but not limited to the service of notice of disciplinary proceedings) shall be deemed to have been validly and adequately served on him when the document or notice is served personally on him or is sent by post, facsimile or email to the address or number he provides to the Exchange. It is the responsibility of every director and former director to keep the Exchange informed of his up-to-date contact details. If a director or former director fails to provide the Exchange with his up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to him, he may not be alerted to any proceedings commenced against him by the Exchange.

3.20A ~~[Repealed [●]] By no later than 31 March 2009, a director who was appointed by a listed issuer before 1 January 2009 and who continues to hold office shall execute and submit to the Exchange a new Undertaking in the form set out in Part 2 of Form B or H of Appendix 5 (as the case may be) save for the omission of the declaration set out in paragraph (i) thereof.~~

### **Supervisors (for PRC issuers only)**

**Proposal A(1)**

3.20B Every supervisor of a PRC issuer must, in the exercise of his powers and duties as a supervisor of the issuer:

- (1) comply to the best of his ability with all applicable laws, rules, regulations and normative statements from time to time in force in the PRC relating to the responsibilities, duties and obligations of a supervisor in connection with the governing, operation, conduct or regulation of public companies in the PRC or elsewhere;
- (2) comply to the best of his ability with the provisions of the issuer's articles of association (including all provisions regarding the duties of supervisors) and use his best endeavours to procure the issuer and its directors to act at all times in accordance with the issuer's articles of association;
- (3) use his best endeavours to procure the issuer and its directors to comply with the Rules, the Code on Takeovers and Mergers, the Code on Share Buy-backs and all other relevant securities laws and regulations from time to time in force in Hong Kong;



- (4) inform the Exchange forthwith and in writing, at any time while he is a supervisor of the issuer, of the initiation by the issuer's supervisory committee of legal proceedings against any director of the issuer;
- (5) comply to the best of his ability, as if the same applied to supervisors to the same extent as it does to directors, with Parts XIVA and XV of the Securities and Futures Ordinance, the Model Code set out in Appendix 10 to the Rules, the Code on Takeovers and Mergers, the Code on Share Buy-backs, and all other relevant securities laws and regulations from time to time in force in Hong Kong; and
- (6) use his best endeavours to procure that any alternate of his to comply with the provisions set out in (1) to (5) above.

3.20C The requirements under rules 3.09C, 3.09D and 3.20 apply to every supervisor of a PRC issuer with the term "director" replaced by "supervisor".

**Chapter 9**

9.11 ...

(3b) a written confirmation and undertaking signed by each director/supervisor and proposed director/supervisor to the following effect:

...

(iii) ~~[Repealed [●]] to lodge with the Exchange in accordance with rule 9.11(38) a declaration and undertaking, in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor.~~

...

(36) a declaration substantially as in Form E in Appendix 5, duly signed by the sponsor; and

(37) a declaration substantially as in Form F in Appendix 5, duly signed by a director and the secretary of the new applicant together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8); and

(38) ~~[Repealed [●]] a written declaration and undertaking, in Form 5, duly signed by each director/supervisor and proposed director/supervisor of the new applicant.~~

**Proposal  
A(1), A(4)(b),  
A(4)(c),  
A(4)(d)(i),  
A(4)(d)(ii)**

**Proposal A**

**On or before the date of issue of the listing document**

9.21 The following documents must be submitted to the Exchange on or before the date of issue of the listing document:-

- (1) every written undertaking from the listed issuer, its shareholders and/or other relevant parties to the Exchange referred to in the listing document;<sup>3</sup> and
- (2) ~~[Repealed [●]]for listing of a new class of securities, a copy of the written notification issued by HKSCC stating that the securities will be Eligible Securities.~~

**Proposal C**

**In case of a listing document constituting a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance**

9.22 If the listing document constitutes a prospectus under the Companies (Winding up and Miscellaneous Provisions) Ordinance, the following documents must be submitted to the Exchange:-

...

- (d) any power of attorney or other authority under which the prospectus is signed, together with a certified copy thereof;<sup>3</sup> and

- (3) ~~[Repealed [●]]as soon as after the registration of the prospectus, a copy of the letter from the Registrar of Companies confirming the registration (see rule 2.07C(1)(b)(ii)).~~

**Proposal C**

**Before dealings commence**

9.23 The following documents must be submitted to the Exchange before dealings commence:-

- (1) ~~[Repealed [●]]a certified copy of the resolution(s) of the board of directors or other governing body or any other person to whom it has properly delegated these powers (together, in such cases, with a certified copy of the power of attorney or resolution delegating the powers) authorizing the issue and allotment of such securities, the making of the application for listing in the form set out in Form C1 in Appendix 5, and where applicable, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and approving and authorizing the issue of the listing document;~~

**Proposal B**

- (2) ...

(3) ~~[Repealed [●]]in the case of securities issued as consideration for shares in a listed company which are acquired under Division 4 of Part 13 of the Companies Ordinance, a certified copy of the notice given under that section;~~

**Proposal C**

(4) ~~[Repealed [●]]if the listing document provides for a capital reduction, scheme of arrangement or similar proposal requiring the approval of the court, a certified copy of the court order and of any certificate of registration issued by the Registrar of Companies or of any equivalent document;~~

**Proposal C**

(5) ...

(6) a declaration substantially set out in the form set out in Form F in Appendix 5, signed by a director and the secretary of the issuer together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8).

**Proposal B**

### Chapter 13

13.25C A listed issuer shall, in relation to each new issue of securities reported in the next day disclosure return under rule 13.25A and the monthly return under rule 13.25B, confirm that (where applicable):

**Proposal B**

- (1) the issue of securities has been duly authorised by its board of directors;
- (2) all money due to the listed issuer in respect of the issue of securities has been received by it;
- (3) all pre-conditions for listing imposed by the Rules under “Qualification of listing” have been fulfilled;
- (4) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- (5) all the securities of each class are in all respects identical;

Note: "Identical" means in this context:

(a) the securities are of the same nominal value with the same amount called up or paid up;

(b) they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and

(c) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank pari passu in all other respects.

(6) all documents required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;

(7) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue;

(8) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied; and

(9) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and particulars thereof, if so required by law, have been filed with the Registrar of Companies.

...

13.43

An issuer shall ~~inform the Exchange and~~ publish an announcement in accordance with Rule 2.07C at least seven clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year or other period is to be approved for publication.

**Proposal C**

...

...

13.45

An issuer shall ~~inform and~~ announce immediately after approval by or on behalf of the board of:-

**Proposal C**

(1) any decision to declare, recommend or pay and dividend ...

...

## Changes

13.51 An issuer must publish an announcement as soon as practicable in regard to:-

...

- (2) any changes in its directorate or supervisory committee, and shall procure that each new director or supervisor or member of its governing body shall ~~provide the information required under rule 3.20(1) or 3.20C to sign and lodge with the Exchange as soon as practicable after his appointment a declaration and undertaking in the form set out in Form B, H or I, where applicable in Appendix 5.~~

**Proposal A**

Where a new director, supervisor or chief executive is appointed or the resignation, re-designation, retirement or removal of a director, supervisor or chief executive takes effect, the issuer must announce the change as soon as practicable and include the following details of any newly appointed or re-designated director, supervisor or chief executive in the announcement –

- (a) ~~the full name (which should normally be the same as that stated in the declaration and undertaking of the director or supervisor in the form set out in Form B, H or I in Appendix 5) including former name(s) and alias(es), if any) and age;~~

**Proposal A(4)(a)**

...

The issuer must also disclose in the announcement of resignation or removal of director, supervisor or chief executive the reasons given by or to him for his resignation or removal ... . The issuer shall procure the director or supervisor to provide his up-to-date contact information to the Exchange as required under rule 3.20(3) or 3.20C.

**Proposal A(4)(b)**

The issuer must ~~notify the Exchange and~~ publish an announcement on any important change in the holding of an executive office, including changes to any important functions or executive responsibilities of a director.

**Proposal C**

...

13.51B (1) ...

(2) Where, following the implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (h) to (v) of rule 13.51(2) during the course of a director's, supervisor's or chief executive's term of office, the issuer must ~~inform the Exchange and~~ publish an announcement in accordance with rule 2.07C as soon as practicable setting out the updated information regarding the director, supervisor or chief executive and any other information concerning that change that needs to be brought to the attention of holders of the issuer's securities.

**Proposal C**

...

13.52 Subject to rule 13.52A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the Exchange Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 13.52(1) or (2).

(1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:

...

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

**Proposal B**

A document should be resubmitted to the Exchange for further comment prior to issue if any material change is made to the document after the Exchange has issued the "no further comment" confirmation (other than changes made to address the comments attached to the "no further comment" confirmation). If there is any doubt as to whether or not a change is material please consult the Exchange as soon as possible.

...

#### **Directors' contact information**

13.77 An issuer shall inform the Exchange as soon as reasonably practicable of any change(s) in the contact information, including the information set out in rule 3.20(1)(b) address(es), and telephone number(s), of its directors (and, in the case of a PRC issuer, supervisors).

**Proposal A(4)(b)**

...

## Chapter 14

14.34 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalized, the listed issuer must in each case:-

(1) ~~[Repealed [●]]~~inform the Exchange; and

Proposal C

(2) publish an announcement as soon as possible. See also rule 14.37.

## Chapter 19A

19A.22B ~~[Repealed [●]]~~Rule 9.21 is amended by adding the following new provision:

Proposal C

~~(3) a certified copy of the document issued by the China Securities Regulatory Commission or other PRC competent authority expressly approving the issuance of equity securities in the manner contemplated by the PRC issuer's listing application.~~

## Appendix 5

~~Form B Declaration and Undertaking with regard to Directors [Repealed]~~

Proposal A

...

~~Form H Declaration and Undertaking with regard to Directors of an Issuer incorporated in the People's Republic of China ("PRC") [Repealed]~~

Proposal A

~~Form I Declaration and Undertaking with regard to Supervisors of an Issuer incorporated in the People's Republic of China ("PRC") [Repealed]~~

Proposal A

## GEM Listing Rules

### Chapter 5

5.02 Every director must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of an issuer. The Exchange may request information regarding the background, experience, other business interests or character of any director or proposed director of an issuer. The Exchange expects every director of an issuer:-

- (1) to be cognizant of the GEM Listing Rules and reasonably familiar with the obligations and duties imposed upon him and the issuer pursuant to the GEM Listing Rules, the Securities and Futures Ordinance, the Companies Ordinance, the Takeovers Code and the Code on Share Buy-backs. The Exchange reserves a right to require directors to demonstrate their knowledge and understanding of the same; and
- (2) to respond, in a prompt and efficient manner, to all enquiries directed at him by the Exchange.

5.02A In the exercise of his powers and duties as a director of a listed issuer, every director shall:

**Proposal A(1)**

- (1) comply to the best of his ability with the GEM Listing Rules;
- (2) use his best endeavours to procure the issuer to comply with the GEM Listing Rules;
- (3) use his best endeavours to procure any alternate of his to comply with the GEM Listing Rules; and
- (4) comply to the best of his ability, and use his best endeavours to procure the issuer to comply, with the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Securities and Futures Ordinance, the Code on Takeovers and Mergers, and Code on Share Buy-backs and all other securities laws and regulations from time to time in force in Hong Kong.

**Proposal A(4)(d)(iii)**

5.02B Every director of a PRC listed issuer must also, in the exercise of his powers and duties as a director of the issuer:

**Proposal A(1)**

- (1) comply to the best of his ability with all applicable laws, rules, regulations and normative statements from time to time in force in the PRC relating to governing, operation, conduct or regulation of public companies in the PRC or elsewhere;
- (2) comply to the best of his ability with the provisions of the issuer's articles of association (including all provisions regarding the duties of directors) and use his best endeavours to procure the issuer to act at all times in accordance with his articles of association;



- (3) inform the Exchange forthwith and in writing, at any time while he is a director of the issuer (or within 12 months of his ceasing to be a director of the issuer), of any administrative or governmental notice or proceeding alleging a breach by the issuer or any of its subsidiaries or directors of any applicable laws, rules, regulations or normative statements in force in the PRC relating to the governing, operation, conduct or regulation of public companies; and
- (4) use his best endeavours to procure any alternate of his to comply with the provisions set out in (1) to (3) above.

5.02C

Every director of a listed issuer, whether when he is a director of the issuer or thereafter, shall:

**Proposal A(1)**

- (1) provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:
  - (a) any information and documents that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
  - (b) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Rules; and
- (2) cooperate in any investigation conducted by the Listing Division and/or the GEM Listing Committee, including answering promptly and openly any questions addressed to the director, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the director is requested to appear.

5.02D

Every director, in accepting to be a director of a listed issuer, shall be considered as having:

**Proposal A(1)**

- (1) irrevocably appointed the listed issuer as his agent, for so long as he remains a director of the issuer, for receiving on his behalf any correspondence from and/or service of notices and other documents by the Exchange; and
- (2) authorised the Executive Director – Listing, or to any person authorised by him, to disclose any of his personal particulars given by him to members of the GEM Listing Committee and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

...

5.09 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:-

...

An independent non-executive director shall submit to the Exchange a written confirmation which must state:

...

(c) that there are no other factors that may affect his independence ~~at the same time as the submission of his declaration, undertaking and acknowledgment in the relevant form set out in Appendix 6 at the time of his appointment as an independent non-executive director.~~

**Proposal A**

...

5.12A ~~[Repealed [●]]By no later than 31 March 2009, a director who was appointed by a listed issuer before 1 January 2009 and who continues to hold office shall execute and submit to the Exchange a new Undertaking in the form set out in Part 2 of Form A or B in Appendix 6 (as the case may be) save for the omission of the declaration set out in paragraph (i) thereof.~~

...

5.13A Every director of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

**Proposals  
A(1), A(2),  
A(3)**

(1) immediately upon his appointment, the following personal particulars:

(a) his date of birth, nationality and Hong Kong identity card number (or in the case of a non-Hong Kong identity cardholder, the passport number or any identification document number and the name of the issuing authority);

(b) his telephone number, mobile phone number, facsimile number (if available), email address (if available), residential address and contact address (if different from the residential address) for correspondence from and service of notices and other documents by the Exchange;

**Proposal  
A(4)(b)**

(2) for so long as he remains as a director of the issuer, any change to the contact information as described in paragraph (1)(b) as soon as reasonably practicable and in any event within 28 days of such change;

(3) immediately upon his resignation as a director of the listed issuer, his up-to-date contact information as described in paragraph (1)(b); and

(4) for a period of 3 years from the date on which he ceases to be a director of the issuer, any change to his contact address for correspondence from and service of notices and other documents by the Exchange as soon as reasonably practicable and in any event within 28 days of such change.

Any correspondence from and/or service of notices and other documents by the Exchange to the director when he is a director of the listed issuer or thereafter, for whatever purposes (including but not limited to the service of notice of disciplinary proceedings) shall be deemed to have been validly and adequately served on him when the document or notice is served personally on him or is sent by post, facsimile or email to the address or number he provides to the Exchange. It is the responsibility of every director and former director to keep the Exchange informed of his up-to-date contact details. If a director or former director fails to provide the Exchange with his up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to him, he may be not alerted to any proceedings commenced against him by the Exchange.

**Supervisors**  
**(for PRC issuers only)**

**Proposal A(1)**

5.13B Every supervisor of a PRC issuer must, in the exercise of his powers and duties as a supervisor of the issuer:

- (1) comply to the best of his ability with all applicable laws, rules, regulations and normative statements from time to time in force in the PRC relating to the responsibilities, duties and obligations of a supervisor in connection with the governing, operation, conduct or regulation of public companies in the PRC or elsewhere;
- (2) comply to the best of his ability with the provisions of the issuer's articles of association (including all provisions regarding the duties of supervisors) and use his best endeavours to procure the issuer and its directors to act at all times in accordance with the issuer's articles of association;
- (3) use his best endeavours to procure the issuer and its directors to comply with the GEM Listing Rules, the Code on Takeovers and Mergers, the Code on Share Buy-backs and all other relevant securities laws and regulations from time to time in force in Hong Kong;
- (4) inform the Exchange forthwith and in writing, at any time, while he is a supervisor of the issuer, of the initiation by the issuer's supervisory committee of legal proceedings against any director of the issuer;
- (5) comply to the best of his ability, as if the same applied to supervisors to the same extent as it does to directors, with Parts XIVA and XV of the Securities and Futures Ordinance, rules 5.46 to 5.67 of the GEM Listing Rules relating to securities transactions by directors, the Code on Takeovers and Mergers, the Code on Share Buy-backs, and all other relevant securities laws and regulations from time to time in force in Hong Kong; and
- (6) use his best endeavours to procure that any alternate of his to comply with the provisions set out in (1) to (5) above.

5.13C The requirements under rules 5.02C, 5.02D and 5.13A apply to every supervisor of a PRC issuer with the term "director" replaced by "supervisor".

**Proposal  
A(1),  
A(4)(b),  
A(4)(c),  
A(4)(d)(i),  
A(4)(d)(ii)**

## **Chapter 12**

12.23 ...

(2b) a written confirmation and undertaking signed by each director/supervisor and proposed director/supervisor to the following effect:

...

(iii) ~~[Repealed [●]]f to lodge with the Exchange in accordance with rule 12.26(9) a declaration, undertaking and acknowledgement, in the relevant form in Appendix 6, duly signed by each director/supervisor and proposed director/supervisor.~~

**Proposal A**

12.26

...

(7) a declaration substantially as in Appendix 5E, duly signed by a director and the secretary of the new applicant together with any fee which is payable and which has not previously been paid (see Appendix 9); and

(8) a declaration substantially as in Appendix 7I duly signed by the Sponsor; and

(9) ~~[Repealed [●]]a written declaration, undertaking and acknowledgement, in the relevant form in Appendix 6, duly signed by each director/supervisor and proposed director/supervisor.~~

**Proposal A**

12.26D **On or before the date of issue of the listing document**

The following documents must be submitted to the Exchange on or before the date of issue of the listing document:

(1) ...

(2) ~~[Repealed [●]]for listing of a new class of securities, a copy of the written notification issued by HKSCC stating that the securities will be Eligible Securities; and~~

**Proposal C**

(3) ...

12.26E **In case of a listing document constituting a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance**

If the listing document constitutes a prospectus under the Companies (Winding up and Miscellaneous Provisions) Ordinance, the following documents must be submitted to the Exchange:

- (1) ...
- (2) ...
- (d) any power of attorney or other authority under which the prospectus is signed, together with a certified copy thereof; ~~and~~
- (3) ~~[Repealed [●]] as soon as after the registration of the prospectus, a copy of the letter from the Registrar of Companies confirming the registration (see rule 16.17(2)(b)).~~

**Proposal C**

12.27 **Before dealings commence**

The following documents must be submitted to the Exchange before dealings commence:-

- (1) ...
- (2) ...
- (3) ~~[Repealed [●]] in the case of securities issued as consideration for shares in a listed company which are acquired pursuant to Division 4 of Part 13 of the Companies Ordinance, a certified copy of the notice given under that section;~~
- (4) ~~[Repealed [●]] if the listing document provides for a capital reduction, scheme of arrangement or similar proposal requiring the approval of the court, a certified copy of the court order and of any certificate of registration issued by the Registrar of Companies or of an equivalent document;~~
- (5) ~~[Repealed [●]] a certified copy of the resolution(s) of the board of directors or other governing body or any other person to whom it has properly delegated these powers (together, in such cases, with a certified copy of the power of attorney or resolution delegating the powers) authorizing the allotment of such securities, the making of the application for listing in the form set out in Appendix 5B, and where applicable, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and approving and authorizing the issue of the listing document;~~
- (6) ...
- (7) ...
- (8) ~~a declaration substantially in the form set out in Appendix 5E, signed by a director and the secretary of the issuer together with any fee which is payable and which has not previously been paid (see Appendix 9); and~~

**Proposal C**

**Proposal C**

**Proposal B**

**Proposal B**

- (9) the completed company information sheet, in the prescribed form set out in Appendix 5F, submitted in the electronic format specified by the Exchange from time to time, for publication on the GEM website, ~~together with a hard copy duly signed by or on behalf of each of the directors of the issuer.~~

Proposal C

## **Chapter 16**

16.17 (1) ...

(2)

(a) ...

- (b) Where a prospectus is to be registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the listed issuer or new applicant must submit to the Exchange through HKEx-EPS for publication on the GEM website a ready-to-publish electronic copy of each of the prospectus and any application forms. The copies must be submitted to the Exchange at the same time as they are sent to shareholders by the listed issuer or, in the case of a new applicant, their distribution to the public commences. They must be submitted only after the issuer has received the letter from the Companies Registry confirming registration of the prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. ~~The issuer must also promptly submit a copy of the letter to the Exchange for its records.~~

Proposal C

## **Chapter 17**

17.27C An issuer shall, in relation to each new issue of securities reported in the return under rule 17.27A and the monthly return under rule 17.27B, confirm that (where applicable):

Proposal B

- (1) the issue of securities has been duly authorised by its board of directors;
- (2) all money due to the listed issuer in respect of the issue of securities has been received by it;
- (3) all pre-conditions for listing imposed by the Rules under "Qualification of listing" have been fulfilled;
- (4) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- (5) all the securities of each class are in all respects identical;

Note: "Identical" means in this context:

- (a) the securities are of the same nominal value with the same amount called up or paid up;

(b) they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and

(c) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank pari passu in all other respects.

(6) all documents required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;

(7) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue;

(8) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied; and

(9) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and particulars thereof, if so required by law, have been filed with the Registrar of Companies.

17.48 An issuer shall ~~inform the Exchange and~~ publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year, quarter-year or other period is to be approved for publication.

**Proposal C**

17.49 ...

*Notes*

The timing of board meetings is a matter for the convenience and judgment of individual boards, but an issuer should ~~inform the Exchange of, and~~ announce decisions on dividends and results as soon as practicable after they have been taken. ...

**Proposal C**

17.50 An issuer must publish an announcement as soon as practicable in regard to:-

(1) ...

(2) any changes in its directorate (and, in the case of a PRC issuer, its supervisory committee), and shall procure that each new director or member of its governing body and, in the case of a PRC issuer, supervisor shall provide the information required under rule 5.13A(1) or 5.13C to sign and lodge with the Exchange as soon as practicable after the date of his appointment a declaration, undertaking and acknowledgment in the relevant form set out in Appendix 6.

**Proposal A**

Where a new director, supervisor or chief executive is appointed or the resignation, re-designation, retirement or removal of a director, supervisor or chief executive takes effect, the issuer must announce the change as soon as practicable and include the following details of any newly appointed or re-designated director, supervisor or chief executive in the announcement:-

- (a) the full name ~~(which should normally be the same as that stated in his declaration, undertaking and acknowledgement in the form set out in Appendix 6 to the GEM Listing Rules)~~ including former name(s) and alias(es), if any and age;

**Proposal  
A(4)(a)**

...

The issuer must also disclose in the announcement of resignation or removal of a director, supervisor or chief executive the reasons given by or to him for his resignation or removal ... The issuer shall procure the director or supervisor to provide his up-to-date contact information to the Exchange as required under rule 5.13A(3) or 5.13C.

**Proposal  
A(4)(b)**

The issuer must ~~notify the Exchange and~~ publish an announcement on any important change in the holding of an executive office, including changes to any important functions or executive responsibilities of a director.

**Proposal C**

...

**17.50A Provision of information in respect of any by directors, supervisors and chief executives**

- (1) ...
- (2) Where, following implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (h) to (v) of rule 17.50(2) during the course of a director's, supervisor's or chief executive's term of office, the issuer must ~~inform the Exchange and~~ publish an announcement in accordance with Chapter 16 as soon as practicable setting out the updated information regarding the director, supervisor or chief executive and any other information concerning that change that needs to be brought to the attention of holders of the issuer's securities.

**Proposal C**

**Amendments to company information sheet**

17.52 An issuer shall submit to the Exchange (in the electronic format specified by the Exchange from time to time) for publication on the GEM website a revised company information sheet, in the prescribed form set out in Appendix 5F, ~~together with a hard copy duly signed by or on behalf of each of the directors of the issuer,~~ as soon as reasonably practicable after any particulars on the form previously published cease to be accurate.

**Proposal C**

17.53 Subject to rule 17.53A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the GEM Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 17.53(1) or (2).



- (1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:

...

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

A document should be resubmitted to the Exchange for further comment prior to issue if any material change is made to the document after the Exchange has issued the “no further comment” confirmation (other than changes made to address the comments attached to the “no further comment” confirmation). If there is any doubt as to whether or not a change is material please consult the Exchange as soon as possible.

**Proposal B**

#### **Directors’ contact information**

- 17.90A An issuer shall inform the Exchange as soon as practicable of any change(s) in the contact information, including the information set out in rule 5.13A(1)(b), of its directors (and, in the case of a PRC issuer, supervisors).

**Proposal A(4)(b)**

#### **Chapter 19**

- 19.34 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalised, the listed issuer must in each case:-

- (1) ~~[Repealed [●]]inform the Exchange; and~~
- (2) submit an announcement to the Exchange to be published on the GEM website as soon as possible. See also rule 19.37.

**Proposal C**

#### **Appendix 6**

~~Form A Director’s Declaration, Undertaking and Acknowledgement [Repealed]~~

**Proposal A**

~~Form B Director’s Declaration, Undertaking and Acknowledgement (PRC Issuer) [Repealed]~~

**Proposal A**

~~Form C Supervisor’s Declaration, Undertaking and Acknowledgement (PRC Issuer) [Repeated]~~

**Proposal A**

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## APPENDIX II : DRAFT RULE AMENDMENTS FOR PROPOSALS DESCRIBED IN CHAPTER 3

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### Main Board Listing Rules

#### Chapter 1

#### Interpretation

...  
1.01

**“modified opinion”**

an opinion in an accountants' or auditors' report which is modified (a qualified opinion, an adverse opinion or a disclaimer of opinion on the financial statements)

**Proposal H**

**“modified report”**

an accountants' or auditors' report: —

(a) in which the opinion is a modified opinion; and/or

(b) which contains any of the following without modifying the opinion: —

(i) an emphasis of matter paragraph; and

(ii) a material uncertainty related to going concern

...

#### Chapter 4

#### **Additional disclosure of pre-acquisition financial information for a Listing Document**

**Proposal  
D(1)**

4.05A

Where a new applicant acquires any material subsidiary or business during the trading record period (see rule 4.04(1)) and such an acquisition if made by a listed issuer would have been classified at the date of application as a major transaction (see rule 14.06(3)) or a very substantial acquisition (see rule 14.06(5)), it must disclose pre-acquisition financial information on that material subsidiary or business from the commencement of the trading record period (or if the material subsidiary or business commenced its business after the commencement of the trading record period, then from the date of the commencing of its business) to the date of acquisition. Pre-acquisition financial information on the material subsidiary or business must normally be drawn up in conformity with accounting policies adopted by the new applicant and be disclosed in the form of a note to the accountants' report or in a separate accountants' report.

*Notes: (1) For the purpose of determining whether an acquisition is material and falls within the classification of a major transaction or a very substantial acquisition, reference shall be made to total assets, profits or revenue (as the case may be) of the acquired business or subsidiary and this shall be compared to the total assets, profits or revenue (as the case may be) of the new applicant as shown in the most recent financial year of the trading record period; and*

(2) If a new applicant which is allowed a shorter trading record period under rule 8.05A or 8.05B acquires any material subsidiary or business during its trading record period, it must disclose pre-acquisition financial information of that material subsidiary or business for the period from the three financial years immediately preceding the issue of the listing document (or if such material subsidiary or business commenced its business less than three financial years ago, then from the commencement date of its business) to the date of the acquisition.

...

#### **Qualified or Modified Reports**

**Proposal  
H**

4.18 Where the reporting accountants ~~qualify or modify~~ issue a modified ~~their~~ ~~accountants'~~ report, they must refer to all material matters about which they have reservations. All reasons for the ~~qualification or~~ modification must be given and its effect quantified if this is both relevant and practical. A ~~qualified or~~ modified ~~accountants'~~ report issued by the reporting accountants in respect of a new applicant may not be acceptable where the ~~qualification or~~ modification relates to a matter of significance to investors.

4.19 Where the accountants' report relates to a very substantial disposal or an acquisition which is a reverse takeover, a very substantial acquisition or a major transaction and the report is expected to ~~be qualified~~ include a modified opinion, the Exchange must be consulted at an early stage.

...

### **Chapter 13**

#### **Winding-up and liquidation**

13.25 An issuer shall inform the Exchange and publish an announcement of the happening of any of the following events as soon as it comes to its attention:-

**Proposal  
E(4)**

- (a) the appointment of a receiver or manager either by any court having jurisdiction or under the terms of a debenture or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer, its holding company or any subsidiary falling under rule 13.25(2);
- (b) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer, its holding company or any subsidiary falling under rule 13.25(2);

- (c) the passing of any resolution by the issuer, its holding company or any subsidiary falling under rule 13.25(2) that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment;
- (d) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios defined under rule 14.04(9); or
- (e) the making of any final judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance which is not subject to any or further appeal, which may adversely affect the issuer's enjoyment of any portion of its assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios defined under rule 14.04(9).

...

...

- 13.32 (1) Issuers shall maintain the minimum percentage of listed securities as prescribed by rule 8.08 at all times in public hands. An issuer shall inform the Exchange and publish an announcement immediately:-
- (a) if it becomes aware that the number of listed securities which are in the hands of the public has fallen below the relevant prescribed minimum percentage; and
  - (b) if any part of the securities of the issuer or any of its securities becomes listed or dealt in on any other stock exchange, stating which stock exchange.

**Proposal  
E(4)**

...

...

13.51 An issuer must publish an announcement as soon as practicable in regard to:-

...

- (6) any change in its Compliance Advisor; ~~and~~
- (7) any revision of interim reports, annual reports or summary financial reports, the reason leading to the revision of published financial reports, and the financial impacts, if any; and
- (8) any change in its website address.

**Proposal  
E(3)**

## Chapter 14

14.67 In addition to the requirements set out in rule 14.66, a circular issued in relation to an acquisition constituting a major transaction must contain:—

...

- (6) (a) on an acquisition of any business, company or companies:
- (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 4 of the Exchange Listing Rules provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and

*Note: Where the accountants can only give a ~~qualified-modified~~ opinion in the accountants' report in respect of the acquisition of the business, company or companies, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction. (See rule 14.86.) In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*

**Proposal H**

...

...

14.68 A circular issued in relation to a very substantial disposal must contain:—

...

- (2) (a) on a disposal of a business, company or companies:
- (i) financial information of either:
- (A) the business, company or companies being disposed of; or
- (B) the listed issuer's group with the business, company or companies being disposed of shown separately as (a) disposal group(s) or (a) discontinuing operation(s),

for the relevant period (as defined in the note to rule 4.06(1)(a)). The financial information must be prepared by the directors of the listed issuer using accounting policies of the listed issuer and must contain at least the income statement, balance sheet, cash flow statement and statement of changes in equity.

The financial information must be reviewed by the listed issuer's auditors or reporting accountants according to the relevant standards published by the Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board of the International Federation of Accountants or the China Auditing Standards Board of the China Ministry of Finance. The circular must contain a statement that the financial information has been reviewed by the issuer's auditors or reporting accountants and details of any ~~qualifications~~ or modifications in the review report; and

**Proposal H**

...

14.86 Shareholders' approval is required for an acquisition that requires an accountants' report under this Chapter where the reporting accountants can only give a ~~qualified~~-modified opinion in the accountants' report in respect of the acquisition of the businesses or companies, for example, because of the absence of adequate records in relation to stock and work-in progress. In such cases, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction.

**Proposal H**

...

## Chapter 15A

### Continuing Obligations

15A.21 In addition to the continuing obligations as set out in the Listing Agreement in Part H of Appendix 7 (subject to such modifications as shall be agreed to by the Exchange in accordance with rule 15A.26) an issuer shall, whilst any structured products issued by it are listed on the Exchange:-

(1) deliver to the Exchange, in ~~printed~~ or electronic form:-

**Proposal F(1)**

(a) as soon as practicable after the date of its publication but, in any event, not later than four months after the date to which they relate, one copy of the issuer's and, where appropriate, the guarantor's annual report including its annual accounts and, where group accounts are prepared, its group accounts, together with the auditor's report thereon,

...

15A.22 The Issuer shall be required to provide liquidity in each structured product issue and shall describe in the stand alone listing document or either of the base listing document or supplemental listing document how it proposes to provide that liquidity. The method adopted must be transparent and must be acceptable to the Exchange;

Notes:

...

4. *The issuer must specify the minimum quantity of structured products for which it will provide liquidity in the stand alone, base or supplemental listing document. An issuer shall provide liquidity for at least ~~ten~~ 20 board lots of the structured product. An issuer must specify the maximum spread between its bid and offer prices in the stand alone, base or supplemental listing document.*

**Proposal F(2)**

...

15A.40 Structured products relating to shares (or other securities) shall normally be issued in the ratio of one ~~structured product, five, ten, structured products 50, or 100, structured products or 500~~ structured products for one share (or other security); or one structured product for one, ten, or 100 shares (or other security). The Exchange may permit other ratios where the number of structured products for one share (or other security), or the number of shares (or other security) for one structured product is an integral power of ten, for structured products other than derivative warrants.

**Proposal F(3)**

...

15A.59 A formal announcement must include at least the following:

**Proposal F(4)**

(1) the full name and country of incorporation or other establishment of the issuer ~~(and/or the guarantor, if any)~~;

...

(9) a statement whether the issuer ~~(and/or the guarantor, if any)~~ is regulated by a body specified in rule 15A.13(2), (3) or (4);

...

(11) where applicable, a statement that the structured products constitute general unsecured obligations of the issuer ~~(and/or the guarantor, if any)~~;

...

(15) if applicable, the credit rating of the issuer ~~(and/or the guarantor, if any)~~;

...

...

15A.63 The items referred to below must be lodged with the Exchange for review as soon as practicable after the structured product is launched to allow sufficient time for review and clearance by the Exchange before the proposed listing date:

**Proposal F(5)**

(1) ~~two a drafts or proofs~~ of the supplemental or stand alone listing document in reasonably advanced form, with full details of the terms and conditions of the structured products, marked in the margin to indicate compliance with the requirements of this Chapter and Part D of Appendix 1; and

...

- 15A.64 The following documents must be supplied to the Exchange as soon as practicable after the launch of the structured product but before the listing of the structured product:–  
...
- (3) ~~4~~ One electronic copy of each of the English language version and the Chinese language version of the supplemental or stand alone listing document ~~to be supplied to the Exchange. A soft copy of these documents should also be provided to the Exchange;~~ **Proposal F(1)**
- ...
- 15A.71 If, at any time after the issue of the listing document (including any base listing document, stand alone listing document, or supplemental listing document) and before the commencement of dealings in the structured products for which listing is sought, the issuer becomes aware that:–  
...
- 15A.72 No amendment to the final proof of the listing document (including any base listing document, stand alone listing document, supplemental listing document or supplementary listing document) shall be made without the prior consent of the Exchange. **Proposal F(6)**
- 15A.73 A listing document (including any base listing document, stand alone listing document, supplemental listing document or supplementary listing document) shall not be issued until the Exchange has confirmed to the issuer that it has no comments thereon. **Proposal F(6)**
- 15A.74 Every issuer is required to accept responsibility for the information contained in a listing document (including any base listing document, stand alone listing document, supplemental listing document or supplementary listing document) and, unless otherwise required by law, this statement may be given on a corporate basis. **Proposal F(6)**
- ...
- 15A.76 Any base listing document in respect of structured product issues, stand alone listing document or ~~any~~ supplemental listing document in respect of a specific structured product, that is a prospectus must be registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The procedures for registration are set out in Chapter 11A and Rule 9.11(33). The requirement to notify the Exchange at least 14 days in advance of the date on which it is proposed to register a prospectus, set out in Rule 11A.09, will not apply in the cases of supplemental listing documents. **Proposal F(6)**

### Chapter 37

- 37.39 An issuer must publish a formal notice ~~on~~ before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 11. **Proposal G**
- ...



### Practice Note 3

#### 5. Accountants' Report Evidencing the Trading Record

Rule 8.05 states that a new applicant must normally have an adequate trading record of not less than three years. In order for the Exchange to be satisfied that the trading record is acceptable, the Exchange will review the underlying audited accounts of the group companies and expects that the accountants' report on the results of a new applicant (or the consolidated results of a new applicant and its subsidiaries) which evidences the trading record, should not normally contain any ~~qualifications~~ modified opinion in respect of the latest two financial periods which relate to a matter of significance to investors.

Proposal H

...

### Practice Note 15

...

#### 3. Principles

...

##### (c) *The remaining business of the Parent*

The Listing Committee must be satisfied that, after the listing of Newco, the Parent would retain a sufficient level of operations and sufficient assets to support its separate listing status. In particular, it would not be acceptable to the Listing Committee that one business (Newco's) supported two listing statuses (the Parent's and Newco's). In other words, the Parent itself would be required to retain, in addition to its interest in Newco, sufficient assets and operations of its own, excluding its interest in Newco, to satisfy independently the requirements of Chapter 8 of the Exchange Listing Rules.

Where the Parent, excluding its interest in Newco, cannot meet the minimum profit requirement of Rule 8.05, the Exchange may grant a waiver to the Parent if the Parent is able to demonstrate that it, excluding its interest in Newco, fails to meet the minimum profit requirement of Rule 8.05 due solely to ~~an exceptional factor or~~ a significant market downturn. The Parent must also demonstrate to the satisfaction of the Exchange that the circumstances that led to its inability to meet the minimum profit requirement ~~such factor~~ was temporary ~~in nature~~ and is not likely to continue or recur in the future or that appropriate measures have been taken by the Parent to negate the impact on its profit of the market downturn (as the case may be). In addition, the Parent, excluding its interest in Newco, must have an aggregate profit attributable to shareholders of not less than HK\$50 million in respect of any three out of the five financial years immediately preceding the spin-off application.

Proposal E(2)

Note: For the purpose of meeting the minimum aggregate profit requirement referred to above, the Parent must satisfy the following criteria:

- (a) the profit/loss in the three consecutive financial years immediately preceding the spin-off application must in aggregate amount to a net profit of not less than HK\$50 million; failing which

- (b) the profit/loss in any three of the four consecutive financial years immediately preceding the spin-off application must in aggregate amount to a net profit of not less than HK\$50 million; failing which
- (c) the profit/loss of any three of the five consecutive financial years immediately preceding the spin-off application must in aggregate amount to a net profit of not less than HK\$50 million.

The relevant profit/loss is the profit/loss attributable to shareholders of the Parent after excluding the Parent's interest in Newco, and should exclude any income or loss of the Parent generated by activities outside the ordinary and usual course of its business.

In the case of (b) or (c) above, the Parent must demonstrate to the satisfaction of the Exchange that the profit/loss of any financial year whose profit/loss is not taken into account in the calculation of the minimum net profit of HK\$50 million was affected by the ~~exceptional factor and/or~~ significant market downturn.

**Proposal E(2)**

...

...

**Practice Note 22**

**Prescribed Timing for Publishing Application Proofs**

- 9. A new applicant must submit its Application Proof through HKEx-ESS for publication on the Exchange's website:
  - (a) in the case of a new applicant for listing equity securities, ~~at the same time on the same day~~ the new applicant files a listing application with the Exchange; or
  - (b) in the case of a new CIS applicant required to publish its Application Proof under rule 20.25, ~~at the same time on the same day~~ the new CIS applicant files an authorisation application with the Commission.

**Proposal D(2)**

...

**Appendix 1A**

- 35. A statement of whether or not the accountants' report ~~is qualified~~ contains a modified opinion by the reporting accountants and if so, such ~~qualification modification~~ modification must be reproduced in full and the reasons for such ~~qualification modification~~ modification given.

**Proposal H**

...

## Appendix 1C

42. ...

- (2) A statement by the directors of whether or not the accountants' report is qualified ~~contains a modified opinion~~ by the reporting accountants and if so, such ~~qualification~~ modification must be reproduced in full and the reasons for such ~~qualification~~ modification given.

**Proposal H**

...

## Appendix 1D

17. The following information:

...

- (15) A statement as to the minimum quantity of structured products for which the liquidity will be provided.

*Note: In normal circumstances an issuer shall provide liquidity for a minimum of ~~ten~~ 20 board lots of the structured product.*

**Proposal F(2)**

...

...

## Appendix 1E

35. A statement of whether or not the accountants' report is qualified ~~contains a modified opinion~~ by the reporting accountants and if so, such ~~qualification~~ modification must be reproduced in full and the reasons for such ~~qualification~~ modification given.

**Proposal H**

## Appendix 16

43. Where the accounting information given in an interim report has not been audited that fact must be stated. If the accounting information contained in an interim report has been audited by the listed issuer's auditor, his report thereon ~~including any qualifications~~ shall be reproduced in full in the interim report.

**Proposal H**

...

45. A listed issuer shall publish a preliminary announcement of its results in accordance with rule 2.07C as required under rule 13.49(1), which has been agreed with its auditors and which includes, as a minimum, the following:

...

(7) where the auditors' are likely to issue a modified report on the listed issuer's annual financial statements ~~is likely to be qualified or modified (whether or not it is also likely to be qualified)~~, details of the ~~qualification or modification~~;

**Proposal H**

...

46. A listed issuer shall publish a preliminary announcement of its results in accordance with rule 2.07C for the first six months of each financial year as required under rule 13.49(6), which shall include, as a minimum, the following information:-

...

(8) where the accounting information contained in a preliminary interim results announcement has been audited by the listed issuer's auditor and the auditor is likely to issue a modified ~~the auditors' report in on~~ the listed issuer's interim financial statements ~~is qualified or modified (whether or not it is also qualified)~~, details of the ~~qualification or modification~~;

**Proposal H**

....

...

**Appendix 24**

...

**Financial Information**

...

Qualified and/or Modified Audit Report by Auditors

...

**Proposal H**

## GEM Listing Rules

### Chapter 1

#### Interpretation

...

1.01

#### “modified opinion”

an opinion in an accountants’ or auditors’ report which is modified (a qualified opinion, an adverse opinion or a disclaimer of opinion on the financial statements)

Proposal H

#### “modified report”

an accountants’ or auditors’ report: —

(a) in which the opinion is a modified opinion; and/or

(b) which contains any of the following without modifying the opinion: —

(i) an emphasis of matter paragraph; and

(ii) a material uncertainty related to going concern

### Chapter 7

#### **Additional disclosure of pre-acquisition financial information for a Listing Document**

7.04A

Where a new applicant acquires any material subsidiary or business during the trading record period (see rule 7.03(1)(a)) and such an acquisition if made by a listed issuer would have been classified at the date of application as a major transaction (see rule 19.06(3)) or a very substantial acquisition (see rule 19.06(5)), it must disclose pre-acquisition financial information on that material subsidiary or business from the commencement of the trading record period (or if the material subsidiary or business commenced its business after the commencement of the trading record period, then from the date of the commencing of its business) to the date of acquisition. Pre-acquisition financial information on the material subsidiary or business must normally be drawn up in conformity with accounting policies adopted by the new applicant and be disclosed in the form of a note to the accountants’ report or in a separate accountants’ report.

*Notes: (1) For the purpose of determining whether an acquisition is material and falls within the classification of a major transaction or a very substantial acquisition, reference shall be made to total assets, profits or revenue (as the case may be) of the acquired business or subsidiary and this shall be compared to the total assets, profits or revenue (as the case may be) of the new applicant as shown in the most recent financial year of the trading record period; and*

*(2) If a new applicant which is allowed a shorter trading record period under rule 11.14 acquires any material subsidiary or business during its trading record period, it must disclose pre-acquisition financial information of that material subsidiary or business for the period from the two financial years immediately preceding the issue of the listing document (or if such material subsidiary or business commenced its business less than two financial years ago, then from the commencement date of its business) to the date of the acquisition.*

Proposal  
D(1)

...

**Qualified or modified reports**

- 7.22 Where the reporting accountants ~~qualify or modify~~ issue a modified their accountants' report, they must refer to all material matters about which they have reservations. All reasons for the ~~qualification or modification~~ must be given and its effect quantified if this is both relevant and practical. A ~~qualified or modified~~ accountants' report issued by the reporting accountants in respect of a new applicant may not be acceptable where the ~~qualification or modification~~ relates to a matter of significance to investors. **Proposal H**
- 7.23 Where the accountants' report relates to a very substantial disposal or an acquisition which is a major transaction, very substantial acquisition or a reverse takeover and the report is expected to ~~be qualified~~ include a modified opinion, the Exchange must be consulted at an early stage. **Proposal H**

...

**Chapter 17**

*Review of documents*

- 17.53 Subject to rule 17.53A ...
- ...
- Notes:
- 1 ...
- 2 ...
- 3 ...
- 4 ...
- 5 Where an announcement or advertisement of a new or further issue of securities contains a profit forecast, the provisions of rules 19.61 and 19.62 will apply. **Proposal E(1)**
- ...
- 17.55 ~~[Repealed [●]]~~ Where an announcement, advertisement or any other document contains a profit forecast, the provisions of rules 14.28 to 14.31 will apply. **Proposal E(1)**
- ...

## Chapter 18

- 18.50 The preliminary announcement of results for the financial year must contain at least the following information in respect of the group: **Proposal H**
- ...
- (8) where the auditors' are likely to issue a modified report on the listed issuer's annual financial statements ~~is likely to be qualified or modified (whether or not it is also likely to be qualified)~~, details of the qualification or modification pursuant to rule 18.51;
- ...
- ...
- 18.51 ~~In connection with the audit of the issuer's annual financial statements:—~~ **Proposal H**
- ~~(1) where the auditors' report is likely to be qualified, the preliminary announcement of results must include details of such qualification; and~~
- ~~(2) where the auditors' report is likely to be modified, whether or not it is also likely to be qualified, details of such modification, together with a full explanation of the circumstances leading to the modification, must be included in the preliminary announcement of results. Where the modifications in the auditors' report refer to specific notes to the financial statements, the information in the financial statements should also be included in the preliminary announcement. [Repealed [●]]~~
- ...
- 18.64 Each half-year report must state whether or not the information provided therein has been audited (and if so, must set out a copy of the auditors' report thereon). In the event that any auditors' report thereon (if any) ~~has been qualified or modified (whether or not it is also qualified)~~ is a modified report, details of such qualification or modification must be set out in the half-year report. **Proposal H**
- ...
- 18.76 Each quarterly report must state whether or not the information provided therein has been audited (and if so, must set out a copy of the auditors' report thereon). In the event that any auditors' report thereon (if any) ~~has been qualified or modified~~ is a modified report, details of such qualification or modification must be set out in the quarterly report. **Proposal H**
- ...

## Chapter 19

19.67 In addition to the requirements set out in rule 19.66, a circular issued in relation to an acquisition constituting a major transaction must contain: —

...

- (6) (a) on an acquisition of any business, company or companies:
- (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 7 provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and

*Note: Where the accountants can only give a qualified modified opinion in the accountants' report in respect of the acquisition of the business, company or companies, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction (See rule 19.86). In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*

**Proposal H**

...

....

19.68 A circular issued in relation to a very substantial disposal must contain: —

...

- (2) (a) on a disposal of a business, company or companies:
- (i) financial information of either:
- (A) the business, company or companies being disposed of; or
- (B) the listed issuer's group with the business, company or companies being disposed of shown separately as (a) disposal group(s) or (a) discontinuing operation(s),
- for the relevant period (as defined in the note to rule 7.05(1)(a)). The financial information must be prepared by the directors of the listed issuer using accounting policies of the listed issuer and must contain at least the income statement, balance sheet, cash flow statement and statement of changes in equity.



The financial information must be reviewed by the listed issuer's auditors or reporting accountants according to the relevant standards published by the Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board of the International Federation of Accountants or the China Auditing Standards Board of the China Ministry of Finance. The circular must contain a statement that the financial information has been reviewed by the issuer's auditors or reporting accountants and details of any ~~qualifications or~~ modifications in the review report; and

**Proposal H**

...

19.86 Shareholders' approval is required for an acquisition that requires an accountants' report under this Chapter where the reporting accountants can only give a ~~qualified-modified~~ opinion in the accountants' report in respect of the acquisition of the businesses or companies, for example, because of the absence of adequate records in relation to stock and work-in-progress. In such cases, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction.

**Proposal H**

...

### Chapter 30

#### Application Procedures

...

30.32 An issuer must publish a formal notice ~~on~~ before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 10.

**Proposal G**

...

### Practice Note 5

#### Prescribed Timing for Publishing Application Proofs

8. A new applicant must submit its Application Proof through HKEx-ESS for publication on the GEM website ~~at the same time on the same day~~ it files a listing application with the Exchange.

**Proposal D(2)**

...

**Appendix 1A**

35. A statement of whether or not ~~the accountants' report is qualified or modified by~~ the reporting accountants issue a modified report and if so, such ~~qualification or~~ modification must be reproduced in full and the reasons for such ~~qualification or~~ modification given.  
...

**Proposal H**

**Appendix 1C**

42. ...  
(2) A statement by the directors of whether or not the accountants' report is ~~qualified~~ contains a modified opinion by the reporting accountants and if so, such ~~qualification~~ modification must be reproduced in full and the reasons for such ~~qualification~~ modification given  
...

**Proposal H**

**Appendix 17**

...  
**Financial Information**  
...  
Qualified and/or Modified Audit Report by Auditors  
...

**Proposal H**

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## APPENDIX III : DRAFT RULE AMENDMENTS FOR PROPOSALS DESCRIBED IN CHAPTER 4

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### Main Board Listing Rules

#### Chapter 2B

##### Definitions and Interpretation

...

- 2B.04 (1) Notwithstanding ~~rule~~Rule 2B.03 and provisions in respect of Form A1, a listed issuer or new applicant shall submit to the Listing Committee, information for an application for listing pursuant to each Form A1 no more than two times subject always to:—
- (a) ...
  - (b) only one right of review by the listed issuer or new applicant against the latest decision made by the Listing Committee as at the date of the Review Request pursuant to ~~rule~~Rule 2B.08; and
  - (c) to ~~rule~~Rule 2B.11(5).
- (2) ...
- (3) Subject to ~~rule~~Rule 2B.04(1), the listed issuer or the new applicant may if it considers necessary, submit a new listing application form again for the consideration by the Listing Committee.

...

##### Review cases of a listed issuer to be considered by the Listing Committee and the Listing (Review) Committee

2B.06

...

- (2) Subject to ~~rule~~Rule 2B.04, where the Listing Committee endorses, modifies or varies the Listing Division's ruling or makes its own ruling, the listed issuer may request that application to be referred to the Listing (Review) Committee again for a second review of the ruling.
- (3) The decision of the Listing Division, the Listing Committee, the Listing (Review) Committee or the Listing Appeals Committee, as the case may be, shall be binding on the listed issuer if the listed issuer does not review the decision of the Listing Division, the Listing Committee or the Listing (Review) Committee, as the case may be; otherwise, the decision of the Listing (Review) Committee or, in the cases to which ~~rule~~Rule 2B.07 applies, the decision of the Listing Appeals Committee, shall be conclusive and binding on the listed issuer.

### Review cases to be considered by the Listing Appeals Committee

2B.07 The Listing Appeals Committee shall be the review hearing body in respect of any decision of the Listing Committee or Listing (Review) Committee on any of the following matters:—

...

(3) Rejection of an authorised representative

(a) Where the Listing Division decides that the role of an authorised representative appointed under ~~rule~~Rule 3.05 be terminated, that authorised representative shall have the right to have that decision referred to the Listing Committee for review.

...

...

### Costs

2B.14 Upon submission of a Review Request pursuant to ~~rule~~Rule 2B.08, a non-refundable fee of HK\$60,000 is payable to the Exchange, for each review, by any party seeking to review a decision of the Listing Division, the Listing Committee or the Listing (Review) Committee, as the case may be, pursuant to this Chapter 2B.

...

## Chapter 4

### Requirements Applicable in All Cases

...

4.08 In all cases:—

...

(3) the accountants' report must state that it has been prepared in accordance with the ~~Auditing Guideline – Prospectuses and the reporting accountant (Statement 3.340)~~ Hong Kong Standard on Investment Circular Reporting Engagements 200 – Accountants' Reports on Historical Financial Information in Investment Circulars (HKSIR 200) issued by the Hong Kong Institute of Certified Public Accountants;

...

...

## Chapter 15A

### Application Procedures and Requirements

...

15A.56 A listing of structured products pursuant to this Chapter must be supported by a listing document. An issuer may use a base listing document supported by a supplemental listing document (see rules 15A.68 to 15A.70) or a “stand alone” listing document.

- (1) An issuer using a base listing document may be restricted from launching structured products until the base document has been finalised. One hard copy (dated and signed by a duly authorized officer of the issuer) and one electronic copy of each of the English language version and the Chinese language version of the base listing document, ~~which must be dated and signed by a duly authorised officer of the issuer,~~ must be supplied to the Exchange. If the base listing document is signed by an agent or attorney, a certified copy of the authorisation for such ~~signature~~ signatory should be provided to the Exchange. ~~A soft copy of each of the English language version and the Chinese language version of the base listing document must also be provided to the Exchange.~~

...

...

15A.64 The following documents must be supplied to the Exchange as soon as practicable after the launch of the structured product but before the listing of the structured product:–

...

- (4) where any document referred to in (3) above is signed by an agent or attorney, a certified copy of the authorisation for such ~~signature~~ signatory;

...

- (7) a certified copy of the written consent by an expert to the issue of the listing document with the inclusion therein, in the context in which it is included, of a statement purporting to be a copy of or extract from or summary of or reference to a report or valuation or other statement by such expert in the form and context in which they are included. Where a written consent by an expert relates to information included in a base listing document the written consent need only be provided to the Exchange when the base listing document is filed with the Exchange ~~or, if applicable, updated.~~

...

### Listing Documents

...

15A.76 Any base listing document in respect of structured product issues, or any supplemental listing document in respect of a specific structured product, that is a prospectus must be registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The procedures for registration are set out in Chapter 11A and ~~rule~~Rule 9.11(33). The requirement to notify the Exchange at least 14 days in advance of the date on which it is proposed to register a prospectus, set out in ~~rule~~Rule 11A.09, will not apply in the cases of supplemental listing documents.

...

### Authorised Representatives

15A.89 Every issuer is required to appoint two authorised representatives in accordance with rules 3.05 to 3.07 save that one of the two authorised representatives must be a senior officer of the compliance department of the issuer ~~and~~ or the guarantor (if any).

...

## Chapter 37

### Securities' Qualifications for Listing

...

37.12 If an issuer is issuing guaranteed debt securities under ~~rule~~Rule 37.08 the guarantee:

- (a) Must have been validly authorised;
- (b) Must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate (including a State corporation); and
- (c) Must comply with the law of the place where the guarantor is incorporated or established.

...

### Asset-backed Securities

...

37.15 If asset backed securities are backed by options or conversion rights relating to equity securities then ~~rule~~Rule 37.18 applies to the securities resulting from the exercise of the option or conversion rights.

...

## Continuing Obligations

...

37.45 If an issuer is required to announce information then

- (a) it must do so by an announcement under ~~rule~~Rule 2.07C, except that the announcement may be in English or Chinese only.

...

...

### Practice Note 5

#### 3. Presentation of interests and short positions required to be disclosed under Part XV of the SFO

...

3.3 For directors and chief executives, the statements should show details of the following matters as recorded in the register required to be kept under section 352 of the SFO:

(1) ...

Notes:

...

- (3) *For (c)(i) above, in respect of options granted to directors or chief executives pursuant to share option schemes under Chapter 17 of the Exchange Listing Rules, the statements should show such details as are required to be disclosed under ~~rule~~Rule 17.07(1) of the Exchange Listing Rules*

...

...

3.4 For substantial shareholders, the statements should show details of the following matters as recorded in the register required to be kept under section 336 of the SFO:

(1) ...

Notes:

...

- (4) For (b)(i) above, in respect of options granted to substantial shareholders pursuant to share option schemes under Chapter 17 of the Exchange Listing Rules, the statements should show such details as are required to be disclosed under ~~rule~~Rule 17.07(1) of the Exchange Listing Rules.

...

...

## Practice Note 15

### 3. Principles

The principles, which apply equally whether the entity to be spun off is to be listed in Hong Kong or overseas, are as follows:

...

(c) *The remaining business of the Parent*

The Listing Committee must be satisfied that, after the listing of Newco, the Parent would retain a sufficient level of operations and sufficient assets to support its separate listing status. In particular, it would not be acceptable to the Listing Committee that one business (Newco's) supported two listing statuses (the Parent's and Newco's). In other words, the Parent itself would be required to retain, in addition to its interest in Newco, sufficient assets and operations of its own, excluding its interest in Newco, to satisfy independently the requirements of Chapter 8 of the Exchange Listing Rules. Where the Parent, excluding its interest in Newco, cannot meet the minimum profit requirement of ~~rule~~Rule 8.05, the Exchange may grant a waiver to the Parent if the Parent is able to demonstrate that it, excluding its interest in Newco, fails to meet the minimum profit requirement of ~~rule~~Rule 8.05 due solely to an exceptional factor or a significant market downturn. The Parent must also demonstrate to the satisfaction of the Exchange that such factor was temporary in nature and is not likely to continue or recur in the future or that appropriate measures have been taken by the Parent to negate the impact on its profit of the market downturn (as the case may be). In addition, the Parent, excluding its interest in Newco, must have an aggregate profit attributable to shareholders of not less than HK\$50 million in respect of any three out of the five financial years immediately preceding the spin-off application.

...

...



## Appendix 1B

### Information about the securities for which listing is sought and the terms and conditions of their issue and distribution

...

18. Where the securities for which listing is sought are offered by way of rights or by way of an open offer to the holders of an existing listed security, a statement as to:—

...

- (4) the matters required to be disclosed by ~~rule~~Rule 7.19(2), (3), (4), (6) and (7), 7.21(1) and (2), 7.24(2), (3), (5) and (6), 7.26A(1) and (2) and/or 14A.92(2)(b), where appropriate.

...

## Appendix 1D

### Information upon the Issuer

...

16. (1) If the issuer is regulated by one of the bodies indicated in ~~rule~~Rule 15A.13(2) or (3), a statement of that fact, identifying the regulatory body, or, if the issuer is not so regulated, a statement of that fact.

...

...

## **GEM Listing Rules**

### **Chapter 7**

#### **Requirements applicable in all cases**

7.08 In all cases:—

...

- (3) the accountants' report must state that it has been prepared in accordance with the ~~Auditing Guideline – Prospectuses and the reporting accountant (Statement 3.340)~~ Hong Kong Standard on Investment Circular Reporting Engagements 200 – Accountants' Reports on Historical Financial Information in Investment Circulars (HKSIR 200) issued by the Hong Kong Institute of Certified Public Accountants;

...

...

#### **Statement of adjustments**

7.18 In preparing the accountants' report, the reporting accountants must make such adjustments (if any) as are in their opinion appropriate for the purposes of the accountants' report and state therein that all adjustments considered necessary have been made, or (where appropriate) that no adjustments were considered necessary. Where adjustments are made, a written statement (the statement of adjustments) is required to be made available for public inspection, and must be signed by the reporting accountants (see paragraph 52 of Part A and paragraph 42 of Part B of Appendix 1).

*Note: Where a listing applicant is seeking a simultaneously listing and is precluded by the regulation in that jurisdiction from making adjustments as envisaged by rule 7.18, additional information should be provided to show details of the adjustments (if any) and the effect of such on the results and net assets and liabilities as if such adjustments would have been made for purpose of the accountants' report prepared on the basis in accordance with the ~~Auditing Guideline – "Prospectus and the Reporting Accountant"~~ Hong Kong Standard on Investment Circular Reporting Engagements 200 – Accountants' Reports on Historical Financial Information in Investment Circulars (HKSIR 200) issued by the Hong Kong Institute of Certified Public Accountants.*

...

## Chapter 13

### Restrictions on preferential treatment

...

13.02 With regard to any securities proposed to be placed by a new applicant:—

- (1) no preferential terms or treatment as to price or otherwise may be afforded to any ~~placee~~ ~~place~~ (but not to others), save that with adequate disclosure in the listing document, preferential treatment may be given to placees in respect of the allocation of securities. For the purposes of this rule, the disclosure to be made in the listing document issued in connection with the placing must include details of existing shareholders or directors and their respective close associates (each identified on an individually-named basis) to whom it is proposed to place shares, indicating, in each case, the number and/or proportion of shares to be so placed. The Exchange reserves the right to reject any such proposed arrangements.

...

...

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## APPENDIX IV: PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY

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Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “**HKEX**”, “**we**”, “**us**” or an “**affiliate**” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEX is accurate. HKEX will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEX will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorized personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

## **Purpose**

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

## **Direct marketing**

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/or any of our affiliates in Hong Kong or elsewhere.

## **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

### **Compliance with laws and regulations**

You agree that HKEX and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

### **Corporate reorganisation**

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

### **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX's administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
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