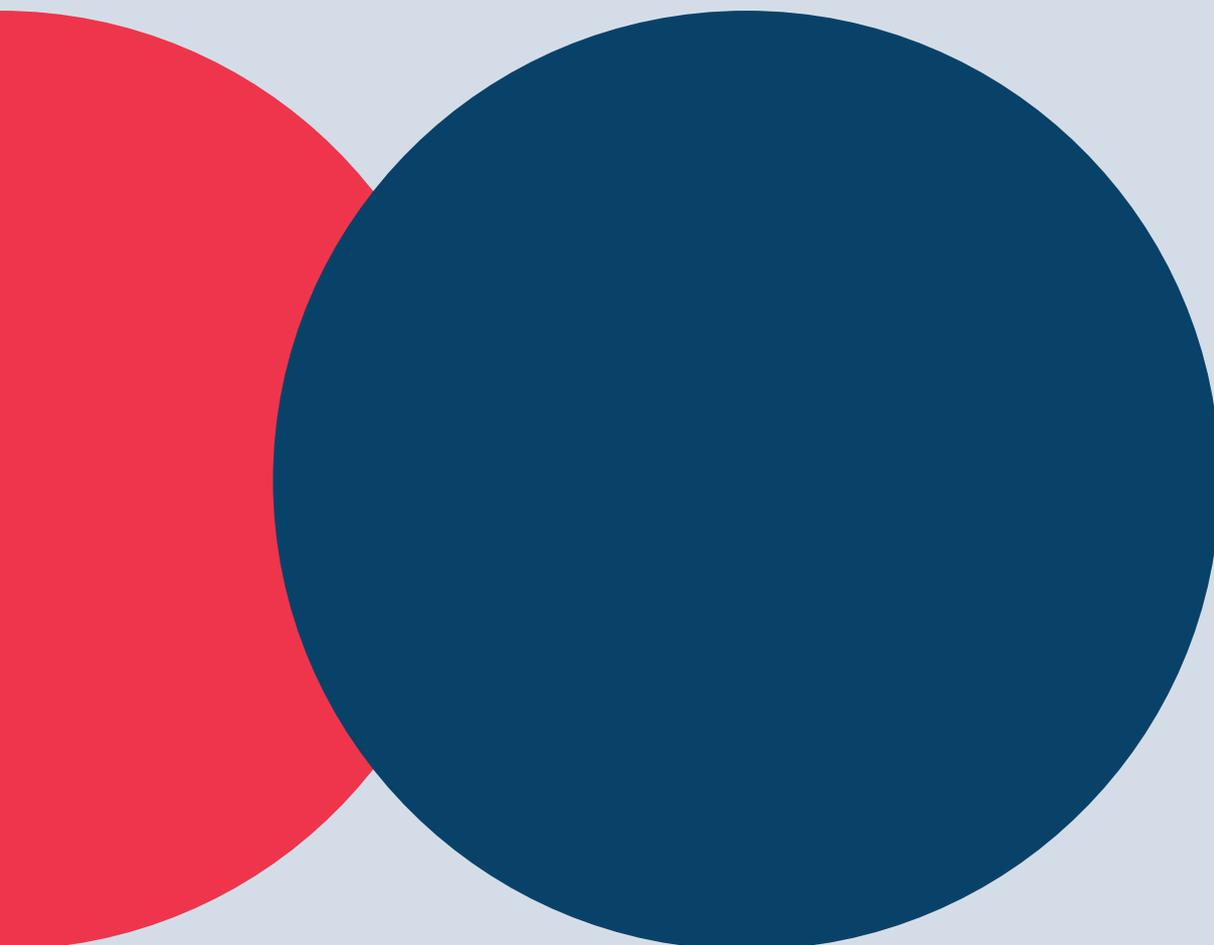


September 2017



CONSULTATION PAPER

CAPITAL RAISINGS BY LISTED ISSUERS



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HOW TO RESPOND TO THIS CONSULTATION PAPER

SEHK, a wholly owned subsidiary of HKEX, invite 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 **24 November 2017**. You may respond by completing the questionnaire which is available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017092q.docx>

Written comments may be sent:

By mail or hand delivery to: Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong
Re: Consultation Paper on Capital Raisings by Listed Issuers

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

Re: Consultation Paper on Capital Raisings by Listed Issuers

Our submission enquiry number is (852) 2840-3844.

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 **24 November 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

1. In recent periods, the Exchange and the Securities and Futures Commission (**SFC**) have noted market concerns about patterns of problematic corporate behaviours of some listed issuers. In light of these concerns the Exchange has been conducting a holistic review of its regulation relating to listed issuers' backdoor listings, continuing listing criteria and capital raising activities. This consultation paper discusses issues and proposals relating to capital raisings only. We plan to publish separate consultation papers in due course to set out our proposals relating to backdoor listings and continuing listing criteria.
2. Whilst capital raising activities by most listed issuers did not give rise to material regulatory issues, we have observed questionable structures or practices undertaken by a number of listed issuers that might not afford a fair treatment of minority shareholders or an orderly market for securities trading.
3. In the interest of ensuring fair and equal treatment for all shareholders and maintaining market quality, we propose Rule amendments to address the issues identified. We also take this opportunity to refine the Rule requirements in other specific areas. We summarise below our proposals:

Proposed restriction on highly dilutive rights issues, open offers and specific mandate placings (Chapter 2)

- We propose to disallow rights issues, open offers and specific mandate placings (individually or when aggregated within a rolling 12-month period) that would result in cumulative value dilution of 25% or more, unless there are exceptional circumstances, e.g. the issuer is in financial difficulty.

Proposed changes to specific requirements relating to other capital raising activities (Chapter 3)

- We propose Rule amendments relating to (A) rights issues and open offers; and (B) placings of warrants and convertible securities using general mandate to:
 - A(1) require minority shareholders' approval for all open offers except for those that are made under general mandate;
 - A(2) remove the mandatory requirements for all rights issues and open offers to be underwritten;

require underwriters (if any) for rights issues and open offers to be SFC licensed persons and independent from the issuers and their connected persons, except that controlling shareholders may act as underwriters, provided that compensatory arrangements are made available for the unsubscribed offer shares and the connected transaction Rules are complied with; and

remove the connected transaction exemption currently available to connected persons acting as underwriters;

- A(3) require issuers to adopt either excess application arrangement or compensatory arrangement for the disposal of unsubscribed shares in rights issues or open offers (currently, these arrangements are optional); and

require issuers to disregard any excess applications made by the controlling shareholders and their associates in excess of the offer size minus their pro rata entitlement;

- B(1) disallow the use of general mandate for placing of warrants; and

- B(2) restrict the use of general mandate to the placing of convertible securities with an initial conversion price that is no less than the market price of the shares at the time of placing;

Other proposed Rule amendments (Chapter 4)

- This paper sets out other Rule amendments to:
 - A enhance the disclosure of the use of proceeds from equity fundraisings in interim and annual reports, and
 - B disallow subdivisions or bonus issues of shares if the theoretical share price after the adjustment for the subdivision or bonus issue is less than HK\$1 or HK\$0.5.

CHAPTER 1: INTRODUCTION

4. The Exchange and the SFC have been working together on a number of initiatives with a view to maintaining the quality and reputation of the Hong Kong market. Our review of the capital raisings Rules forms part of an ongoing holistic review of our regulation of listed issuers' backdoor listings, continuing listing criteria and capital raising activities.

Background

5. In recent periods, the Exchange and the SFC have noted market concerns about patterns of problematic behaviours related to certain share issuance transactions, including deeply discounted fund raisings and share consolidations and subdivisions. These transactions materially dilute the voting rights and value of public shareholders' investments, and result in a transfer of value to the new subscribers. They may also increase share price volatility. They have received a great deal of publicity, for example, media profiled "scam" shares, referring to listed issuers conducting frequent large scale fund raisings at deeply discounted prices. Insiders are able to sell shares on the market and then subscribe new shares at very low prices¹. Commentators call this arrangement "downward share price manipulation".
6. In addition, we have noted that some capital raisings lacked commercial rationale, raising questions about the purpose of those transactions and whether they were for the benefit of the listed issuer and all its shareholders. For example, we have observed pre-emptive offers or other deeply discounted share issuances that resulted in a change of control of the issuer, without a control premium being paid. The terms of these transactions, while strictly compliant with the Listing Rules, raised questions about whether they were in the best interest of all shareholders. In other cases, our review of corporate actions of those issuers over a period indicated patterns of unusual activities. Market commentators have questioned, in specific cases, whether such new share issuances were conducted to "warehouse" shares for various ulterior purposes or to facilitate insiders in making gains. These transactions raised concerns whether the operation of the market is fair and orderly. Allowing these corporate actions to prevail may undermine investors' confidence and the reputation of our market.

¹ The media suggested these insiders would dispose shares at a gain and replenish their shares through new share issuances at low prices. The share price would increase again due to positive news or a demand supply imbalance, thereby facilitating further share disposal by those insiders. Public shareholders are either materially diluted, or lose their investments by selling as the share price declines.

7. In recent years, the Exchange has applied the Listing Rules to address these market concerns. For example, the Exchange has issued guidance materials on how it applies the Rules and their principles to transactions involving large scale share subscriptions to acquire control of a listed issuer; large scale bonus issues resulting in a shortage of liquidity which facilitates unfair share dealings and price volatility; issues of warrants under general mandate that have no demonstrable commercial rationale and dilute public shareholders' investments; and frequent share subdivisions and consolidations that have the effect of squeezing out public shareholders². The Exchange also issued a joint statement with the SFC in December 2016 on our close monitoring of highly dilutive rights issues and open offers, and a listing decision on the refusal to grant listing approval to a highly dilutive rights issue.
8. Under the general principles of the Listing Rules, the directors of listed issuers have a primary role in ensuring that all shareholders are treated fairly and equally, and that transactions are conducted in the interests of the listed issuer and all shareholders as a whole.
9. The purpose of this consultation is to consider whether we should make specific changes in the Rules to prohibit market practices that may jeopardize an orderly, fair and informed market for the trading and marketing of securities. We believe these activities should be regulated through an integrated approach; the SFC administers the Securities and Futures Ordinance (**SFO**) and the Securities and Futures (Stock Market Listing) Rules and regulates intermediaries and other market conduct, the Listing Rules support this by making specific provisions for the conduct of share issuances in a fair and orderly manner and the fair and equal treatment of all shareholders.

Recent capital raisings by listed issuers

10. From time to time we review listed issuers' capital raisings and the effectiveness of our capital raising Rules. We last conducted a review in 2013³, and have recently reviewed capital raisings between 2013 and 2016 (the **review period**). A summary of the breakdown of capital raisings is set out in Appendix II.

² See Listing Decision [LD90-2015](#) (placing of warrants under general mandate); Guidance Letter [GL84-15](#) (guidance on the application of cash company Rules on large scale share subscriptions); Guidance Letter [GL88-16](#) (bonus issue of shares); Listing Decision [LD102-2016](#) (highly dilutive pre-emptive offers); and Listing Decision [LD103-2016](#) (share subdivision and share consolidation).

³ See the [2013 Listing Committee Annual Report](#).

11. We reiterate that capital raising activities by most listed issuers examined did not give rise to material regulatory issues. We consider access to capital to be an important function of the market. Our proposals are intended to address those questionable structures or practices that might not afford fair treatment of minority shareholders, or an orderly market for securities trading. This would in turn help maintaining the reputation of our market and the ease of access to capital for Hong Kong listed issuers generally.

Purpose of this paper

12. Chapter 2 proposes Rule amendments to introduce targeted measures to address potential abuses related to large scale deeply discounted capital raisings through rights issues, open offers and specific mandate placings.
13. Chapter 3 proposes Rule amendments to address specific issues relating to the requirements for rights issues, open offers and general mandates. We consider practices in structuring pre-emptive offers that may not afford fair and equal treatment for all shareholders, including (1) non-renounceable subscription rights; (2) the lack of compensatory or excess application arrangements for the disposal of unsubscribed shares in pre-emptive offers; and (3) the potential abuse of underwriting arrangements that may not be in public shareholders' best interest. We also consider the dilution effect of placings of warrants and convertible securities pursuant to a general mandate.
14. Chapter 4 sets out other Rule amendments to enhance the disclosure on use of proceeds from equity fundraisings, and to impose an additional requirement for share subdivisions and bonus issues of shares to ensure an orderly market for trading securities.
15. Unless otherwise specified, the Rules cited in this paper refer to the Main Board Rules. The issues and proposals apply equally to the GEM Rules, unless otherwise stated. The drafts of the proposed amendments to the Main Board Rules and the GEM Rules are set out in Appendix I respectively.

CHAPTER 2: PROPOSED RULE AMENDMENTS RELATING TO HIGHLY DILUTIVE CAPITAL RAISINGS

16. This chapter sets out the issues relating to large scale deeply discounted capital raisings through rights issues, open offers and specific mandate placings, and proposes targeted measures to address potential abuses.

Current Rules

17. As a general principle, the Listing Rules require that all new issues of equity securities by a listed issuer must first be offered to existing shareholders, unless the listed issuer seeks a mandate from shareholders to issue new shares. This seeks to secure for minority shareholders equality of treatment that their legal position might not otherwise provide.
18. Share issuances such as placings to and subscriptions by persons selected by the issuer or an intermediary (collectively **placings**) generally require shareholders' approval. Existing shareholders generally are not offered an opportunity to subscribe for these shares and consequently, their ownership in the issuer is diluted by the share issuance. The Rules protect shareholders from this dilution by requiring issuers to seek from shareholders either i) a mandate specific to the proposed share issuance (**specific mandate**), or ii) a prior mandate for issuing securities, subject to the Rule limits of up to 20% on issue size and price discount (**general mandate**)⁴.
19. Rights issues and open offers (collectively **pre-emptive offers**) allow all existing shareholders to participate and as such, may generally be conducted without specific approval by shareholders. Shareholders that subscribe to the offer pro-rata to their existing shareholding would maintain their ownership in the issuer.
20. However, non-subscribing shareholders would have their ownership diluted by the issuance of new shares. This dilution increases with a larger number of new offer shares, relative to the existing number of shares in issue (i.e. higher offer ratio). The Rules require minority shareholders' approvals for any pre-emptive offer that would increase the issuer's number of issued shares or market capitalisation by more than 50% (on its own or when aggregated with any other rights issues and open offers in the previous 12 months)⁵. The issuer's controlling shareholder (or directors and chief executive if there is no controlling shareholder) and his/her/its associates must abstain from voting in favour of the resolution.

⁴ See Rule 13.36.

⁵ See Rules 7.19(6) and 7.24(5).

Highly dilutive pre-emptive offers

21. Where the listed issuer offers new shares at a discount to the market price, this price discount further dilutes the value of the non-subscribing shareholders' investment. The value dilution of a pre-emptive offer is a function of both the price discount of the offer shares and the offer ratio⁶. In a pre-emptive offer the value of the discount is transferred to the persons taking up the unsubscribed shares. In this paper, we describe these large scale pre-emptive offers at deep discount to market price as **highly dilutive pre-emptive offers**, and propose to define them as transactions resulting in value dilution of 25% or more⁷.
22. In December 2016, the Exchange and the SFC jointly issued a statement about our close monitoring of highly dilutive pre-emptive offers. There were concerns that highly dilutive pre-emptive offers were oppressive to public shareholders.
23. Some of these offers lacked demonstrable commercial rationale, given the listed issuers had no pressing funding needs to justify the high level of dilution. Market commentators suggested that these offers were conducted with the ulterior purpose of diluting minority shareholders' interests. They were structured in a way that was unattractive to minority shareholders so as to enable insiders to acquire a large number of unsubscribed shares at very low prices. Insiders would use these new shares to facilitate actions that may involve share price or market manipulation activities. They cited examples such as downward share price manipulation (where insiders sell shares on the market and then subscribe new shares at very low prices); placing of unsubscribed shares to insiders to facilitate "share warehousing" or price manipulation, or to influence voting results of future corporate actions at general meetings. While these transactions involved a small number of listed issuers, they undermine investors' confidence in our market.
24. In a number of cases, the offers were conducted simultaneously with, or shortly after share consolidations. They resulted in public shareholders holding odd lots (more than a pre-emptive offer alone) that were generally traded at prices lower than those in board lots. Shareholders holding smaller number of shares were particularly disadvantaged in these circumstances.

⁶ For example, if an issuer offers two new shares for every ten existing shares at a 50% price discount to the market price of HK\$10, the theoretical price of the shares after the offer is HK\$9.17. The theoretical ex-offer price is calculated as the average of ten existing shares at HK\$10 each and two new shares at HK\$5 each, or HK\$9.17 after the offer. The value dilution is 8.3% as a non-subscribing shareholder's share would be HK\$9.17.

⁷ See paragraphs 34 to 36.

25. While these highly dilutive pre-emptive offers were approved by minority shareholders, the turnout rates at the shareholders' meetings were very low. This, coupled with the low level of subscription by minority shareholders, indicated that the voting results might not fairly reflect minority shareholders' support of the offers.
26. In response, the Exchange has adopted a robust approach to the vetting of such pre-emptive offers, including making enquiries about the directors' views of the terms of the offer and whether they had discharged their obligations under the Rules⁸; requiring better disclosures in shareholders' circulars for shareholders' consideration; and in a few extreme cases, the Exchange withheld the listing approval for the dealing in the offer shares⁹.
27. Highly dilutive pre-emptive offers represented 3% and 5% of all funds raised (HK\$48 billion) and number of capital raising transactions (125) during the review period. As a result of our actions, the number of highly dilutive pre-emptive offers reduced. Of the 79 pre-emptive offers in 2016, 28 (35%) resulted in value dilution of 25% or more, of which 24 (86%) were conducted in the first half of 2016, and 4 (14%) in the second half of 2016.
28. Highly dilutive pre-emptive offers may also raise concerns under the Takeovers Code as underwriters (e.g. substantial / controlling shareholders or other persons) may acquire or consolidate control in listed issuers through the underwriting arrangements and seek whitewash waivers from the SFC's Executive under Note 1 on dispensations from Rule 26 of the Takeovers Code. The SFC's Executive would not normally grant a whitewash waiver if the SFC's Executive has concerns whether the offer is oppressive to the minority shareholders or otherwise contrary to the General Principles of the Takeovers Code. However, in cases where deeply discounted share issuances would have resulted in a change of control, withholding the whitewash waiver and requiring a general offer to be made to all shareholders on such a discounted basis would not necessarily address the regulatory concern.

⁸ Under Rule 3.08, the Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.

⁹ See Listing Decision [LD102-2016](#) published in December 2016 where the rationale for the Exchange's decision in refusing to grant listing approval, noting that the proposed rights issue, followed on from a recent similar fundraising exercise, was highly dilutive and would be detrimental to shareholders who did not participate in the rights issue.

Proposal on highly dilutive pre-emptive offers

29. We propose that an issuer may not undertake highly dilutive pre-emptive offers that would result in a material value dilution to non-subscribing shareholders, unless the issuer can satisfy the Exchange that there are exceptional circumstances.
30. Under the proposal, value dilution is measured as the theoretical value dilution calculated with reference to (i) the offer ratio and (ii) the discount of the offer price to the market price before the offer announcement¹⁰. An example is set out in footnote 6 to paragraph 21.
31. We have considered alternative proposals, such as applying limits on the offer ratio and the price discount. While they may be easier to understand and apply, we consider that the best measure of the potential loss of value to non-subscribing shareholders is the value dilution. Applying a value dilution restriction, while more complex, would also allow listed issuers more flexibility to determine the appropriate balance of offer prices and offer ratios.
32. We also considered, and decided not to amend the current Rule requirements to increase the minority shareholders' approval threshold (currently at 50%)¹¹. We have noted that in a vast majority of cases, the highly dilutive pre-emptive offers were approved by over 75% of shareholders that attended the general meetings, but the shareholders' turnouts were low.
33. Listed issuers may have legitimate reasons to devise terms that would be highly dilutive to existing shareholders. Under the proposal, the Exchange may exercise its discretion to waive the restriction in exceptional circumstances. An example is where the issuer is in financial difficulty.

Q1. Do you agree with the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances? If not, why not?

¹⁰ The price discount is determined by reference to the higher of (i) the closing price of shares on the date of agreement; and (ii) the average closing price in the 5 trading days immediately prior to the date of announcement, the date of agreement or the price determination date. This is consistent with the calculation of price discount under the existing general mandate Rules.

¹¹ Other markets have higher shareholders' approval threshold. For example, where approval is required for the issue of new shares, the UK requires shareholders' approval threshold of 75%.

Proposal to apply a 25% threshold for material value dilution

34. We propose to define the threshold for material value dilution at 25%. Value dilution of an offer is calculated by the following formula¹²:

$$\frac{\text{Number of new shares to be issued} \times \text{Percentage price discount}^{10}}{\text{Number of issued shares as enlarged by the offer}}$$

35. We believe that a value dilution of non-subscribing shareholders' interest by 25% (or more) is material. This threshold would restrict offers with a large offer ratio and price discount, for example:

- an offer ratio of 50% and a discount to market price of 75%;
- an offer ratio of 100% and a discount to market price of 50%; or
- an offer ratio of 500% and a discount to market price of 30%.

36. The table below illustrates different combinations of offer ratio and price discount subject to the proposed threshold:

Offer ratio	Price discount																			
	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	99%
50%	-1.7%	-3.3%	-5.0%	-6.7%	-8.3%	-10.0%	-11.7%	-13.3%	-15.0%	-16.7%	-18.3%	-20.0%	-21.7%	-23.3%	-25.0%	-26.7%	-28.3%	-30.0%	-31.7%	-33.0%
100%	-2.5%	-5.0%	-7.5%	-10.0%	-12.5%	-15.0%	-17.5%	-20.0%	-22.5%	-25.0%	-27.5%	-30.0%	-32.5%	-35.0%	-37.5%	-40.0%	-42.5%	-45.0%	-47.5%	-49.5%
150%	-3.0%	-6.0%	-9.0%	-12.0%	-15.0%	-18.0%	-21.0%	-24.0%	-27.0%	-30.0%	-33.0%	-36.0%	-39.0%	-42.0%	-45.0%	-48.0%	-51.0%	-54.0%	-57.0%	-59.4%
200%	-3.3%	-6.7%	-10.0%	-13.3%	-16.7%	-20.0%	-23.3%	-26.7%	-30.0%	-33.3%	-36.7%	-40.0%	-43.3%	-46.7%	-50.0%	-53.3%	-56.7%	-60.0%	-63.3%	-66.0%
250%	-3.6%	-7.1%	-10.7%	-14.3%	-17.9%	-21.4%	-25.0%	-28.6%	-32.1%	-35.7%	-39.3%	-42.9%	-46.4%	-50.0%	-53.6%	-57.1%	-60.7%	-64.3%	-67.9%	-70.7%
300%	-3.8%	-7.5%	-11.3%	-15.0%	-18.8%	-22.5%	-26.3%	-30.0%	-33.8%	-37.5%	-41.3%	-45.0%	-48.8%	-52.5%	-56.3%	-60.0%	-63.8%	-67.5%	-71.3%	-74.3%
350%	-3.9%	-7.8%	-11.7%	-15.6%	-19.4%	-23.3%	-27.2%	-31.1%	-35.0%	-38.9%	-42.8%	-46.7%	-50.6%	-54.4%	-58.3%	-62.2%	-66.1%	-70.0%	-73.9%	-77.0%
400%	-4.0%	-8.0%	-12.0%	-16.0%	-20.0%	-24.0%	-28.0%	-32.0%	-36.0%	-40.0%	-44.0%	-48.0%	-52.0%	-56.0%	-60.0%	-64.0%	-68.0%	-72.0%	-76.0%	-79.2%
450%	-4.1%	-8.2%	-12.3%	-16.4%	-20.5%	-24.5%	-28.6%	-32.7%	-36.8%	-40.9%	-45.0%	-49.1%	-53.2%	-57.3%	-61.4%	-65.5%	-69.5%	-73.6%	-77.7%	-81.0%
500%	-4.2%	-8.3%	-12.5%	-16.7%	-20.8%	-25.0%	-29.2%	-33.3%	-37.5%	-41.7%	-45.8%	-50.0%	-54.2%	-58.3%	-62.5%	-66.7%	-70.8%	-75.0%	-79.2%	-82.5%
550%	-4.2%	-8.5%	-12.7%	-16.9%	-21.2%	-25.4%	-29.6%	-33.8%	-38.1%	-42.3%	-46.5%	-50.8%	-55.0%	-59.2%	-63.5%	-67.7%	-71.9%	-76.2%	-80.4%	-83.8%
600%	-4.3%	-8.6%	-12.9%	-17.1%	-21.4%	-25.7%	-30.0%	-34.3%	-38.6%	-42.9%	-47.1%	-51.4%	-55.7%	-60.0%	-64.3%	-68.6%	-72.9%	-77.1%	-81.4%	-84.9%
650%	-4.3%	-8.7%	-13.0%	-17.3%	-21.7%	-26.0%	-30.3%	-34.7%	-39.0%	-43.3%	-47.7%	-52.0%	-56.3%	-60.7%	-65.0%	-69.3%	-73.7%	-78.0%	-82.3%	-85.8%
700%	-4.4%	-8.8%	-13.1%	-17.5%	-21.9%	-26.3%	-30.6%	-35.0%	-39.4%	-43.8%	-48.1%	-52.5%	-56.9%	-61.3%	-65.6%	-70.0%	-74.4%	-78.8%	-83.1%	-86.6%
750%	-4.4%	-8.8%	-13.2%	-17.6%	-22.1%	-26.5%	-30.9%	-35.3%	-39.7%	-44.1%	-48.5%	-52.9%	-57.4%	-61.8%	-66.2%	-70.6%	-75.0%	-79.4%	-83.8%	-87.4%
800%	-4.4%	-8.9%	-13.3%	-17.8%	-22.2%	-26.7%	-31.1%	-35.6%	-40.0%	-44.4%	-48.9%	-53.3%	-57.8%	-62.2%	-66.7%	-71.1%	-75.6%	-80.0%	-84.4%	-88.0%
850%	-4.5%	-8.9%	-13.4%	-17.9%	-22.4%	-26.8%	-31.3%	-35.8%	-40.3%	-44.7%	-49.2%	-53.7%	-58.2%	-62.6%	-67.1%	-71.6%	-76.1%	-80.5%	-85.0%	-88.6%
900%	-4.5%	-9.0%	-13.5%	-18.0%	-22.5%	-27.0%	-31.5%	-36.0%	-40.5%	-45.0%	-49.5%	-54.0%	-58.5%	-63.0%	-67.5%	-72.0%	-76.5%	-81.0%	-85.5%	-89.1%
950%	-4.5%	-9.0%	-13.6%	-18.1%	-22.6%	-27.1%	-31.7%	-36.2%	-40.7%	-45.2%	-49.8%	-54.3%	-58.8%	-63.3%	-67.9%	-72.4%	-76.9%	-81.4%	-86.0%	-89.6%
1000%	-4.5%	-9.1%	-13.6%	-18.2%	-22.7%	-27.3%	-31.8%	-36.4%	-40.9%	-45.5%	-50.0%	-54.5%	-59.1%	-63.6%	-68.2%	-72.7%	-77.3%	-81.8%	-86.4%	-90.0%

	Subject to independent shareholder approval under the existing rules
	Value dilution of 25% or more
	Value dilution of 30% or more
	Value dilution of 35% or more
	Value dilution of 40% or more

¹² This does not take into account the value of nil-paid rights in a rights issue.

37. Based on our review of capital raising activities undertaken by issuers during the review period, about 65% of the pre-emptive offers had value dilution effect below the 25% threshold. In each year between 2013 and 2016, there were 18, 36, 36 and 23 pre-emptive offers with theoretical value dilution exceeding 25% (excluding pre-emptive offers that formed part of the rescue proposals of long suspended companies).
38. For the avoidance of doubt, the proposed Rules would also clarify that the Exchange retains the discretion to withhold approval for, or impose additional requirements on fundraising where the offer ratio or price discount appeared unfair to shareholders and the listed issuer (e.g. where the terms or structures of the fundraisings are oppressive to or unfairly prejudicial to the minority shareholders). The Exchange would only exercise this discretion where the terms of the offer are clearly egregious.

Q2. Do you agree with the proposed 25% threshold on value dilution? If not, what is the appropriate percentage threshold and the reasons for this threshold?

Proposal on highly dilutive specific mandate placings

39. We propose that the restriction on highly dilutive pre-emptive offers also applies to specific mandate placings, in other words, an issuer may not place new shares under specific mandate that would result in value dilution of 25% or more, unless the issuers can satisfy the Exchange that there are exceptional circumstances.
40. We consider this proposal necessary to address concerns about transactions that i) do not have clear commercial rationale and may not be structured for the benefit of the listed issuer and all its shareholders; and ii) may result in a value dilution to existing shareholders and a transfer of value to the new subscribers. Further, this proposal would address potential regulatory arbitrage.
41. During the review period, there were 541 specific mandate placings which raised HK\$781 billion, representing 43% of funds raised by listed companies and 21% of capital raising transactions. Of the above, only 69 specific mandate placings¹³ were highly dilutive (value dilution of 25% or more) to shareholders (10, 14, 32 and 13 cases in each year between 2013 and 2016), representing about 4% of funds raised and 3% of all capital raising transactions.

¹³ Excluding 13 specific mandate placings that formed part of the rescue proposals of long suspended companies.

42. Some highly dilutive specific mandate placings involved transactions that did not have clear commercial rationale for the listed issuers, but resulted in the introduction of new controlling or substantial shareholders. This raised questions on whether the transactions were for the purposes of facilitating other activities, rather than to meet the listed issuer's capital requirements. In a vast majority of these cases there was no pressing funding needs to justify such a high level of value dilution, and the directors could not clearly explain how the high value dilution was in the interest of the shareholders.
43. Further, as these placings were conducted at deep price discounts, there were significant transfers of value to the new subscribers at the costs of existing shareholders.
44. Since 2015, the Exchange applied the cash company Rules¹⁴ to reject extreme cases of large scale share subscriptions where the transaction resulted in the issuers' assets comprising substantially of cash, and where the transaction appeared to be a circumvention of the new listing requirements. However, the guidance letter on cash company Rules does not address the less egregious cases and practices that might not afford fair treatment of minority shareholders and an orderly market for trading.
45. This proposal would also avoid potential regulatory arbitrage as a result of imposing tighter requirements on pre-emptive offers.

Q3. Do you agree that the proposed requirements should also apply to share issuance under a specific mandate? If not, why not?

Proposal to aggregate fund raisings over a rolling 12-month period

46. To discourage issuers from circumventing our proposal by breaking up a highly dilutive fundraising into a number of smaller transactions, we propose to aggregate all pre-emptive offers and specific mandate placings undertaken by an issuer over a 12-month period immediately prior to the date of the currently proposed share offer. The limit on value dilution of 25% would be calculated on a cumulative basis.

¹⁴ See Guidance Letter [GL84-15](#).

Aggregation period

47. The proposed aggregation period of 12 months is in line with current requirements restricting ownership dilution in large scale pre-emptive offers. Current Rules¹⁵ require minority shareholders' approval if the proposed pre-emptive offer would increase the number of issued shares or market capitalization by more than 50%, taking into accounts previous offers over a 12-month period.
48. Based on our review of capital raisings, only 7 additional issuers¹⁶ would exceed the proposed 25% cumulative value dilution limit and be subject to the new proposal as a result of aggregation, representing 0.4% of funds raised and 0.1% of transactions during the review period.

Cumulative value dilution

49. For the purpose of aggregation, we propose that the cumulative value dilution be calculated by reference to (i) the aggregate number of shares issued during the 12-month period, compared to the number of issued shares immediately prior to the first offer or placing; and (ii) the weighted average of the price discounts (each price discount is measured against the market price of shares at the time of the offer). An example is set out in Appendix III.

Q4. Do you agree with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period? If not, why not?

Q5. Do you agree with the proposed method of calculating cumulative value dilution? If not, what is the appropriate method?

¹⁵ Rules 7.19(6) and 7.24(5).

¹⁶ This does not include issuers that have conducted repeated fund raisings over a 12-month period where such fundraisings would not exceed the cumulative value dilution limit of 25%, or those that would exceed the proposed value dilution limit by virtue of one pre-emptive offer or placing only.

CHAPTER 3: PROPOSED RULE AMENDMENTS RELATING TO OTHER CAPITAL RAISING ACTIVITIES

50. In this chapter, we propose Rule amendments to address specific issues relating to the structure of rights issues and open offers, and placings of warrants and convertible securities under general mandates. We consider practices in structuring pre-emptive offers that may not afford fair and equal treatment for all shareholders, including (1) non-renounceable subscription rights; (2) the lack of compensatory or excess application arrangements for the disposal of unsubscribed shares in pre-emptive offers; and (3) the potential abuse of underwriting arrangements that may not be in the best interests of all shareholders. We also consider the dilution effect of placings of warrants and convertible securities pursuant to general mandates.

A. Rights Issues and Open Offers

(1) Open offers

Current Rules

51. The Rules governing rights issues and open offers are similar except for the following two differences:
- In a rights issue, an issuer must offer new shares to shareholders in proportion to their existing shareholding. In an open offer¹⁷, an issuer may offer shares to existing shareholders not in proportion to the existing shareholders holdings, provided that the open offer is either approved by shareholders, or offered under the authority of a general mandate.
 - An open offer is non-renounceable, which means that shareholders cannot dispose their rights to subscribe (i.e. nil-paid rights). In a rights issue shareholders who do not wish to subscribe for the new shares may sell their nil-paid rights on the Exchange, thereby recouping some value dilution. In an open offer, shareholders who do not subscribe for new shares will have their investment diluted.

¹⁷ See Rule 7.26.

Issue

52. Open offers provide less protection to shareholders compared to rights issues. Given the non-renounceable feature, non-subscribing shareholders under open offers would lose the value of the subscription rights. As a result, those that do not want to suffer value dilution loss would be forced to sell their shares. Where the terms of the open offer are highly dilutive, shareholders' losses may be exacerbated as many minority shareholders may want to do the same, further depressing the share price.
53. Open offers are more conducive to arrangements that would facilitate the transfer of ownership interests as the level of unsubscribed shares is normally higher, compared to rights issues. Unlike rights issues, the investing public cannot subscribe for the new shares through buying the nil-paid rights. Further, in practice a majority of open offers do not provide excess application arrangements for existing shareholders¹⁸. Consequently, the proportion of unsubscribed shares that would be taken up by the underwriter would normally be higher than rights issues. A controlling shareholder, acting as underwriter, can increase his shareholdings by taking up the unsubscribed shares. Where the open offer is highly dilutive, he/she/it would subscribe these new shares at low costs.
54. Our concerns about the effect of open offers in transferring ownerships are supported by our review of capital raisings from 2013 to 2016. Compared to rights issues, the subscription rate of open offers was lower at an average of 57% (rights issue: 69%). Further, the availability of excess application arrangements in open offers (34%) was lower than rights issues (84%).

Proposal

55. We propose to require minority shareholders' approvals for all open offers, unless the new shares are to be issued under the authority of an existing general mandate. Controlling shareholders (or where there are no controlling shareholders, directors and chief executive) cannot vote in favour of the resolution¹⁹. Similar to current Rules, an independent financial adviser would be required to opine on the terms of the offer.
56. We consider this proposal would discourage market practices that may not promote an orderly, informed and efficient market, and promote better corporate governance practices in listed issuers.

¹⁸ Excess application arrangement allows existing shareholders to apply for shares that remain unsubscribed after the offer period ends. The underwriter would only take up unsubscribed shares after accounting for the pro-rata subscription and the subscription under excess application by existing shareholders.

¹⁹ This is consistent with the current voting restrictions in Rule 7.19(6)(a) / 7.24(5)(a) applicable to large scale rights issues and open offers respectively.

57. In assessing the impact of this proposal, we note that during the review period, 89 open offers that raised in total HK\$17 billion (40% of funds raised from all open offers) did not require shareholders' approval under current Rules. Under the proposal, these open offers would require minority shareholders' approval, or alternatively, issuers would need to make renounceable offers (i.e. rights issue).
58. We have considered whether our proposal would adversely impact the fund raising ability of small issuers²⁰. In our discussion with market practitioners and listed issuers, the reasons given by issuers for not conducting rights issues were usually the additional transaction costs for making nil-paid rights trading arrangements and/or the lack of liquid market for trading nil-paid rights. However, we consider the costs to be outweighed by the benefits of better safeguards in the Rules.
59. We note that overseas exchanges also impose more stringent requirements on open offers, compared to rights issues. For example, the listing rules in the UK and Singapore restrict open offers (and not rights issues) with a price discount of 10% or more²¹. Australia prohibits open offers with issue size of more than 100% but allows rights issue of similar or larger size to proceed²². Our proposal to apply stricter requirements on open offers would be in line with those in overseas markets.

Q6. Do you agree with the proposal to extend the minority shareholder approval requirement to all open offers (unless the new securities are issued under the general mandate)? If not, why not?

²⁰ During the review period, the average market capitalization of issuers raising funds through open offers was HK\$814 million. 81% of the issuers had market capitalisation less than HK\$1 billion, and 17% of the issuers had market capitalisation between HK\$1 billion and HK\$5 billion.

²¹ Open offers with price discounts of 10% or more must be specifically approved by shareholders – see SGX listing rule 816(2)(a)(ii) and UK listing rule 9.5.10

²² ASX listing rule 7.11.3

(2) Underwriting of rights issues and open offers

Current Rules

60. Under current Rules²³, all rights issues and open offers must be fully underwritten in normal circumstances. This is because underwriting provides a degree of certainty to an issuer and enables it to plan on the basis of assured funds. Where an independent professional underwriter is engaged, it also means that the terms of the issue are negotiated at arm's length, and an independent professional party manages the issue. This requirement applies to Main Board listed issuers only, as there is no equivalent requirement for GEM listed issuers.
61. Under Rule 14A.92(2)(b), a connected person taking up any securities in a rights issue or open offer in his/her/its capacity as an underwriter or sub-underwriter is fully exempt from the connected transaction Rules if the issuer has adopted excess application arrangement or compensatory arrangement in the offer.

Proposal to remove compulsory underwriting requirement

62. We propose to remove the Rules which require underwriting of all rights issues and open offers for Main Board listed issuers.
63. We consider the decision to engage an underwriter is a commercial matter for the directors to decide. While underwriting can provide certainty of funds, it also increases the costs to issuers, particularly in cases where issuers find it costly or difficult to engage underwriters on terms that their directors consider to be reasonable.
64. Where the issuer decides not to arrange underwriting for the offer, it should disclose the risks to the shareholders, and the proposed allocation of funds to the proposed uses in the event the offer is under subscribed.
65. Our proposal will better align our requirements with other major markets. The UK, Australia and Singapore do not have compulsory underwriting requirement.

Q7. Do you agree with the proposal to remove the underwriting requirement for pre-emptive offers? If not, why not?

²³ See Rules 7.19(1) and 7.24(1).

Underwriters

66. As discussed above, our review has suggested that some pre-emptive offers were conducted absent demonstrable commercial rationale. There are concerns that the underwriter (a non-licensed person) could acquire new shares through the underwriting arrangement, to acquire or consolidate control or for other ulterior purposes. Where the controlling or substantial shareholder underwrites the offer, a conflict of interest exists as he/she/it may be driven by personal motives, raising questions whether the terms of the offer are in the interest of the issuer and all shareholders as a whole.
67. These cases also have implications under the Takeovers Code as they relate to the acquisition or consolidation of control in listed issuers through the underwriting arrangements. As set out in paragraph 28 above, the SFC's Executive would not normally grant a whitewash waiver if the SFC's Executive has concerns whether the pre-emptive offer is oppressive to the minority shareholders or otherwise contrary to the General Principles of the Takeovers Code.
68. During the review period, 90 (25%) pre-emptive offers were underwritten by non-licensed persons, including 81 offers (22%) by controlling or substantial shareholders or directors, and 9 offers (3%) by other independent persons.

Proposals to require an underwriter (if one is engaged) to be an independent licensed person

69. Accordingly, we propose that if issuers choose to engage underwriters to underwrite the pre-emptive offers, they should be persons licensed by the SFC²⁴, and be independent from the issuers and their connected persons. This would discourage using pre-emptive offers to gain or consolidate control of the issuers.
70. The proposed requirement would ensure that, where an underwriter is engaged, the offering process is managed by an independent professional. As a SFC licensed person, the underwriter is subject to the SFC Code of Conduct which requires licensed intermediaries to act fairly, honestly, with due skill and diligence and in compliance with relevant regulatory requirements so as to promote the best interest of the issuer and the integrity of the market. Further, these persons are subject to supervision by the SFC, enabling an integrated approach to the regulation of capital raising activities.

²⁴ This would include persons licensed to carry out with type 1 regulated activities under the SFO.

71. We note that in practice, it is common for underwriters in a pre-emptive offer to enter into sub-underwriting agreements to place any residual shares not taken up in the offering. Subject to the connected transaction requirements (see paragraph 77 for proposal to remove exemption from connected transaction requirements for underwriting or sub-underwriting by connected persons), controlling shareholders may still take up all or most of the unsubscribed shares in pre-emptive offers.
72. We believe that the involvement of an independent, licensed underwriter will introduce greater discipline in the pricing and allocation of such offerings. Nevertheless, we would also allow controlling shareholders to continue to act as underwriters, subject to mandatory compensatory arrangements (see paragraph 79 for definition) for the unsubscribed shares. There may be legitimate reasons for controlling shareholders to underwrite pre-emptive offers. Some listed issuers may prefer the certainty of underwriting, but are unable to find independent licensed persons to underwrite their offers, or may find it undesirable to pay a high underwriting fee to commercial underwriters. There is also a concern cited by listed issuers that commercial underwriters would generally dispose of the underwritten shares quickly after the completion of the offer, leading to significant price volatility after the offer, whereas there would be an alignment of interest where a controlling shareholder acts as underwriter.
73. There are views that issuers should also be given the flexibility to engage substantial (but not controlling) shareholders to underwrite pre-emptive offers for reasons similar to those described above. However, there are concerns that this arrangement is more likely to be abused as it provides an opportunity for substantial shareholders to acquire control of the issuers at a discount or without paying a control premium. We therefore seek market views whether substantial shareholders should also be allowed to act as underwriters subject to mandatory compensatory arrangements for the unsubscribed shares.
74. Where controlling or substantial shareholders are allowed to act as underwriters, we consider mandatory compensatory arrangements provide an additional safeguard to address the concern that controlling or substantial shareholders may deliberately price the offer shares at an artificially discounted price and increase their stakes at low cost. If compensatory arrangements are required, unsubscribed shares must first be offered to independent investors at market price, which may be at a premium to the offer price. This premium would be paid to the non-subscribing shareholders.
75. Additionally, we also propose to remove the connected transaction exemption for underwriting and sub-underwriting of pre-emptive offers by connected persons. Consequently, independent shareholders' approval would be required if controlling or substantial shareholders propose to act as an underwriter (see paragraph 77 below).

76. While it is uncommon for non-licensed independent persons to be underwriters, this arrangement could be used as a means to acquire control of the issuers at a low price. We propose to disallow these underwriting arrangements.

Q8. Do you agree with our proposal to require underwriters to be licensed persons independent from the issuers and their connected persons?

Q9. In view of paragraphs 72 and 73:

(a) do you agree that controlling shareholders should be allowed to act as underwriters? If so, why?

(b) do you think that substantial (but not controlling) shareholders should be allowed to act as underwriters? If so, why?

Q10. Do you agree that compensatory arrangements should be mandatory when pre-emptive offers are underwritten by connected persons?

Proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons

77. We also propose to remove the exemption under the current connected transaction Rules for underwriting (including sub-underwriting) of pre-emptive offers by connected persons (see paragraph 61).

78. This proposal would subject the underwriting or sub-underwriting arrangement by connected persons to the connected transaction requirements. This means that, among others, the underwriting or sub-underwriting arrangement would be subject to independent shareholders' approval and the issuer would be required to appoint an independent financial adviser to opine on the terms of the underwriting or sub-underwriting arrangement.

Q11. Do you agree with the proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons? If not, why not?

(3) Arrangements for the disposal of unsubscribed shares in pre-emptive offers

Current Rules

79. The current Rules²⁵ describe two types of arrangements for the disposal of any new shares that are not taken up by shareholders during the subscription period of a pre-emptive offer:
- (a) the issuer may make arrangements to allow shareholders to apply for the unsubscribed shares in excess of their pro rata entitlement (“**excess application arrangement**”). Under the Rules, issuers are required to allocate the unsubscribed shares to the applicants on a fair basis; or
 - (b) it may sell the unsubscribed shares in the market and return any premium to the non-subscribing shareholders (“**compensatory arrangement**”).
80. Under a compensatory arrangement, shareholders who do nothing (i.e. neither subscribe for the offer shares, nor sell their nil-paid rights in the market) may still be compensated through a distribution of funds raised from the sale of unsubscribed shares in excess of the offer price. Under an excess application arrangement, existing shareholders may apply for the unsubscribed shares in excess of their assured entitlements and benefit from the price discount of offer shares not subscribed by other shareholders.

Issue

81. The above arrangements are in the interests of existing shareholders, but they are not mandatory under the current Rules.
82. During the review period, 61% of pre-emptive offers included excess application arrangements, and only one issuer adopted the compensatory arrangement in its rights issue²⁶. In the absence of the compensatory or excess application arrangements, the value of price discount of the unsubscribed shares would be transferred to the underwriters.

²⁵ See Rules 7.21 and 7.26A.

²⁶ This issuer is also listed in the London Stock Exchange where compensatory arrangements are mandatory in the UK.

83. There are also market comments that controlling shareholders are in a position to take advantage of the excess application arrangement. Through their knowledge of the level of subscription, they can make very large excess applications to squeeze out other shareholders' excess applications²⁷ in the event the offer is under-subscribed, thereby increasing the portion of excess shares allocated to them.

Proposals to require mandatory arrangements for the disposal of unsubscribed offer shares

84. We propose to require that issuers must adopt either the excess application arrangement or the compensatory arrangement in pre-emptive offers.
85. While a compensatory arrangement is perceived to be "fairer" to all shareholders, we propose that the issuer should be given the option to decide whether to provide excess application arrangement or compensatory arrangement. For a compensatory arrangement to be effective, the underlying shares of the issuer must have sufficient liquidity relative to the unsubscribed shares. In the absence of such liquidity, the sale of unsubscribed shares under a compensatory arrangement may be disruptive to the share price, whereas an excess application arrangement (with the proposed requirement set out in paragraph 86 below) may allow long-term shareholders to take up the unsubscribed shares with less price disruption and benefit all shareholders.
86. We further propose to require that an issuer should disregard the excess applications made by the controlling shareholder and its associates in excess of the offer size minus their pro rata entitlement. The issuer would be required to take steps to identify the excess applications by the controlling shareholder and his/her/its associates, whether in their own names or through nominees. This proposal aims to remove the perceived advantage available to the controlling shareholder when making the excess application.

²⁷ In practice, it is common for issuers to allocate excess shares proportionate to the size of the excess application by each shareholder, thus making a larger application would increase the probability of a larger allocation. At the same time, shareholders are required to pay the subscription monies in advance at the time they make an application for the excess shares, thus knowledge of the subscription levels would allow the controlling shareholders to determine the optimal size of the excess application while minimizing costs.

Q12. Do you agree with the proposal to make it mandatory for issuers to adopt either the excess application arrangement or the compensatory arrangement in rights issues and open offers? If not, why not?

Q13. Do you agree with the proposal to limit the excess applications by a controlling shareholder and his/her/its associates to a maximum number equivalent to the offer shares minus their pro rata entitlements? If not, why not?

B. Placing of Warrants and Convertible Securities under the authority of a General Mandate

Current Rules

87. Under Rule 13.36, an issuer may seek a general mandate from its shareholders for the issue of new securities up to 20% of the number of issued shares as at the date of the shareholders' approval of the mandate²⁸.
88. The Rule also imposes a 20% discount limit on the issue price for the placing of securities for cash consideration, benchmarked against (referred to below as the **benchmark price**) the higher of i) the closing price on the date of the agreement, and ii) the average closing price in the 5 previous trading days.
89. The general mandate Rules provide issuers with the flexibility to raise funds quickly from the market. The 20% price discount limit under Rule 13.36 protects existing shareholders from a diminution in value by ensuring that shares are issued at values not substantially different from the prevailing market price, thus limiting the effect of the value dilution from the new issue of securities.

Issue

90. In a placing of securities that involves the issue of warrants, options or convertible securities, the subscribers benefit from the time value of the conversion options. The general mandate Rules may not properly protect shareholders as the benchmarked price does not take this into account.

²⁸ Where an issuer conducted share repurchases, it may also issue the number of securities repurchased by the issuer since the grant of the general mandate (up to a maximum of 10% of the number of issued shares as at the date of the shareholders' approval of the mandate).

91. Some listed issuers argued that the placings would be within the general mandate Rules if the combined placing price of the warrants and the exercise price (or the conversion price of a convertible security), after deducting the value of the conversion option (calculated based on option pricing models) was within the 20% discount limit to the benchmarked price. However, in our experience these option pricing models do not properly “price” these options, and generally result in an over-estimation of the value²⁹.
92. In 2008, the Exchange consulted the market about the use of general mandates for the placing of warrants and convertible securities and decided not to amend the Rules at the time, in view of the then environment. In recent years, we have observed placings of warrants that were materially dilutive. In those cases, the warrants were placed at a nominal price (e.g. HK\$0.01 per warrant) and the exercise prices were at par with the prevailing market price at the time of the placing. In our review of the valuations provided by the issuers to support that the warrants were fairly priced, we noted a wide range of “fair values”, depending on the assumptions adopted by the valuers.
93. In May 2015, we published a listing decision ([LD90-2015](#)) and adopted a purposive approach in applying the general mandate Rules. We considered that a placing of warrants may be conducted under general mandate only if the issuer could demonstrate that the warrants are issued at, or approximate their fair value. Since May 2015, all issuers conducted placings of warrants under the authority of specific mandates. Shareholders would have an opportunity to review the terms of the issues and understand the basis and the directors’ view, and decide whether to approve the placing.

Proposals

(1) Placing of warrants or options using general mandate

94. We propose to amend the Rules to disallow the use of general mandates for placing of warrants or options for cash. This means that issuers would be required to obtain specific mandates for these placings.

²⁹ This is because these models are based on certain assumptions which are not suitable for valuing such options, and might result in an over-estimation of the value. These assumptions normally include, for example, a liquid market in the options and the underlying securities, that there is no arbitrage opportunity and holders can borrow and lend at the risk free rate.

95. In recent years, in addition to issues about pricing, we have observed other concerns about abuse of general mandates when applied to warrant issues. In 2014, there were 39 placings of warrants under general mandate. We noted that in a vast majority of these placings, issuers explained that the main reasons were to broaden their shareholder base and to raise capital. Those reasons appeared contrary, as the placings were generally made to a small number of subscribers which limited the opportunities to broaden the shareholder base, and given the low warrant subscription price, it did not generate significant, if any, proceeds after the transaction costs. The issuers also had no control over the exercise of the warrants and any proceeds therefrom.
96. Conversely, the warrant holders benefited as they would not need to exercise the warrants unless there is a clear gain. The warrant issues appeared to be for the benefit of the subscribers, rather than the listed issuers.
97. Our proposal codifies the existing practice set out in our listing decision.

Q14. Do you agree with our proposal to disallow the use of general mandate for placing of warrants and options for cash consideration? If not, why not?

(2) Placing of convertible securities under the authority of a general mandate

98. We propose to restrict the use of general mandates to placings of convertible securities where the initial conversion price is no less than the benchmarked price of the underlying shares at the time of the placing. Outside this a specific mandate must be sought.
99. A convertible security is a debt instrument with an option to convert into shares at the conversion price. We consider the concerns about the pricing terms described in paragraphs 90 to 92 above are equally applicable. We have, however, not observed abusive practice similar to that for placings of warrants described above. Furthermore, unlike warrants, issuers would receive funds immediately when the securities are placed.
100. During the review period, there were 368 general mandate issues of convertible securities. Of these issues, 268 (73%) involved initial conversion prices at or above the benchmarked price at the time of issue, and 100 (27%) involved initial conversion prices within 20% below the benchmarked price.

101. We do not consider it necessary to apply the same approach for placings of warrants to the placings of convertible securities. Nevertheless, to account for the value of the conversion option and to improve shareholder protection against material dilution in these placings, there should be a restriction on the discount of the conversion price under the general mandate Rules.
102. The following markets also have rules or guidelines to restrict the discount of conversion price in general mandate placings:
- In the UK, the industry guidelines provide that the initial conversion price of convertible securities issued under general mandate should not be lower than the market price of the underlying shares at the time of the placing (except contingent convertible bonds issued by financial institutions for regulatory purposes).
 - In the US, the NYSE listing rules provide that shareholders' approval is not required for a sale of shares (or convertible securities) at a price (or conversion price) not less than the book value and market price of the issuer's shares.
 - In Singapore, the SGX listing rules provide that the 10% price discount limit for placing of shares under general mandate also applies to the conversion price of convertible securities.
103. In the event that the proposal is not implemented, we would nevertheless amend the general mandate Rules to clarify that the 20% price discount limit also applies to the initial conversion price of convertible securities at the time of placing.

Q15. Do you agree with the proposal to disallow any price discount of the initial conversion price of convertible securities to be placed under general mandate? If not, why not?

CHAPTER 4: OTHER PROPOSED RULE AMENDMENTS

104. Chapter 4 sets out other Rule amendments to enhance issuers' disclosure on their use of proceeds from equity fundraisings, and to impose a minimum price requirement for share subdivisions (or bonus issues) with a view to maintaining an orderly market for securities trading.

A. Disclosure of use of proceeds from equity fundraisings in issuers' interim and annual reports

Current Rules

105. Paragraph 11 of Appendix 16 to the Rules requires listed issuers to disclose in their annual reports information relating to equity issues using general mandate, including the use of proceeds. Where an issuer has sought a general mandate to issue securities from shareholders, it is required to announce the terms of the new issue and the proposed use of the proceeds at the time of fund raising, and provide shareholders with an account for the actual use of the proceeds in the annual reports.

106. Where listed issuer seeks a specific mandate from shareholders to raise fund, it is required to seek shareholders' approval for the share issuance, and would disclose in the shareholders' circular significantly more details about the terms of the fund raising, the intended use of the proceeds, etc. Under Paragraph 32 of Appendix 16 to the Rules, a listed issuer should discuss in its annual report its significant events during the financial years. Listed issuers generally would make disclosures about these fund raisings, including whether the proceeds had been applied in accordance with the specific uses described in the circulars.

Issue and proposal

107. Equity fundraisings are significant events and listed issuers should be accountable to their shareholders about their uses of funds raised.

108. We propose to amend the Rules to require disclosure on the details of the use of proceeds from all equity fundraisings in interim and annual reports. This would include (i) a detailed breakdown and description of the use of proceeds for different purposes during the financial year or period; (ii) if there is unutilized amount, a detailed breakdown (by different purposes) and description of the intended use of the proceeds and the expected timeline; and (iii) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reason for any material change or delay in the use of proceeds.

109. In the last five years, we conducted annual reviews of listed issuers' disclosure about the use of proceeds³⁰. The above disclosures are consistent with our recommendations. We propose to codify this requirement.

Q16. Do you agree with the proposal to require disclosure of the use of proceeds from all equity fundraisings in interim and annual reports? If not, why not?

B. Subdivisions or Bonus Issues of Shares

Current Rules and practices

110. Rule 13.64 states that the Exchange has the right to require an issuer to change the trading method or to proceed with a consolidation or splitting of its securities when the market price of the securities approaches the extremities of HK\$0.01 or HK\$9,995, being the trading price limits on the electronic stock trading system AMS/3³¹.
111. Issuers may effect share consolidation, subdivision or issue bonus shares to change the number of their shares in issue, resulting in a corresponding increase or decrease in the market price per share. While these corporate actions do not change shareholders' proportionate interests in an issuer, they may serve to facilitate trading activities and improve market efficiency. At the same time, these actions involve costs and they would result in existing shareholders holding odd lots or fractional shares, which are usually traded at prices lower than those in full board lots.
112. In recent periods we have noted cases involving listed issuers conducting repeated corporate actions that have offsetting effect within a relatively short time span (e.g. share consolidation followed by share subdivision, or vice versa). We have also noted issuers conducting share subdivision with resulting theoretical share price at very low levels. Low price securities are likely to be more volatile, and their pricing is less efficient as each price tick represents a wider percentage price spread.

Issue and proposal

113. We propose to disallow subdivisions or bonus issues of shares if the theoretical share price, after adjustment for the subdivision or bonus issue, is less than HK\$1 or HK\$0.5.

³⁰ Please refer to our reports on [Review of Disclosure in Issuer's Annual Report to Monitor Rule Compliance](#) for details of findings from the Exchange's review.

³¹ As described in the "[Guide on Trading Arrangements for Selected Types of Corporate Actions](#)", the Exchange considers trading price below HK\$0.1 as approaching the trading extremity and would generally require the issuer to consolidate its shares.

114. The proposal is intended to promote an orderly market for securities trading. Of the share subdivisions and bonus issues of shares announced between 2014 and 2016, 54% and 29% resulted in a theoretical adjusted share price of less than HK\$1 and HK\$0.5 respectively.
115. The proposal would require a demonstration period of six months to ensure that a high share trading price is not temporary and a proposed share subdivision is justified. We suggest six months based on experience in past share subdivisions and the historical price volatilities in those cases.
116. We note that there are similar restrictions on share subdivisions in other markets. For example, under the listing rules in Australia, Singapore and Malaysia, listed companies are not allowed to undertake share subdivisions (or bonus issues) that would result in their share price falling below the minimum price prescribed in the listing rules, which are equivalent to around HK\$1 or above³². Singapore and Malaysia require demonstration periods of 1 month and 3 months respectively. Markets like the US and Singapore have more stringent rules which require listed companies to take remedial actions if their shares trade below a minimum price over a period³³.
117. For the avoidance of doubt, the above proposal would only restrict share subdivisions and bonus issues. We do not propose to introduce any minimum share price as a continuing listing requirement.

Q17. Do you agree with the proposal to impose a minimum price requirement on subdivision or bonus issue of shares? If not, why not?

Q18. Do you agree with the proposed minimum adjusted price of HK\$1? If not, what is the threshold you consider appropriate: (a) HK\$0.5; or (b) other?

Q19. Do you support a demonstration period of six months? If not, please specify the period you consider appropriate.

³² Australia: AUD0.2 (about HK\$1.2); Singapore: SGD0.5 (about HK\$2.8); Malaysia: RM0.5 (about HK\$0.9)

³³ The US: US\$1 (about HK\$7.8); Singapore: SGD0.2 (about HK\$1.1)

APPENDIX I: DRAFT AMENDMENTS TO THE LISTING RULES

A. Proposed Amendments to Main Board Rules

Chapter 7

EQUITY SECURITIES

METHODS OF LISTING

...

Placing

7.09 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.

...

7.12A Placings of securities by a listed issuer will be allowed only in the following circumstances:—

(1) where such placing falls within any general mandate given to the directors of the applicant by the shareholders in accordance with rule 13.36(2); or

(2) where the placing is specifically authorised by the shareholders of the applicant in general meeting (“specific mandate placing”).

Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.

Proposal-
Ch2

...

Rights Issue

7.18 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings.

7.19 (1) Rights issues need not be underwritten. Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:

(a) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or

(b) the underwriters are the controlling or substantial shareholders of the issuers.

Proposal
A(2)-Ch3

In normal circumstances, all rights issues must be fully underwritten.

~~Notes: (1) Underwriting provides a degree of certainty to an issuer through the commitment of sound financial institutions. It also enables an issuer to plan on the basis of assured funds. Where an independent professional underwriter is used it also means that the issue is managed and reviewed by an independent professional party. However, there may be circumstances in which it is appropriate for an issuer to proceed without underwriting. This may occur where (by way of example and without limitation):—~~

~~(a) underwriting can only be obtained subject to a force majeure clause (or other similar terms and conditions) which is unacceptable to the directors; or~~

~~(b) the issuer has specific intended uses for the proceeds and can show that the additional costs of underwriting the issue are not justified in the particular circumstances; or~~

~~(c) an underwriting commitments has been terminated by the underwriter upon the occurrence of an event of force majeure (other than an event which also constitutes a breach of warrant by the issuer), after the offer has opened. In such circumstances, the issuer must have ensured that the conditions of the issue are structured in a manner which permits the issue to proceed on a non-underwritten basis, with the consent of the Exchange.~~

~~In appropriate circumstances, the Exchange will be prepared to permit an issue which is not fully underwritten to proceed, subject to the additional disclosure requirements set out in rule 7.19(3) below. In all such cases the issuer should contact the Exchange to seek informal and confidential guidance as to the requirements which will apply to an issue at the earliest opportunity.~~

~~(2) In order to facilitate fund raising by very substantial companies the Exchange will normally allow such companies to proceed with a rights issue on a non-underwritten basis, subject to prior notification of the Exchange. Even with very substantial companies the Exchange may still insist that a rights issue is fully underwritten in exceptional circumstances (e.g. if the issue is to raise funds for "general corporate purposes"). Companies will be considered as very substantial if they have:—~~

~~(a) a public shareholding with a market capitalisation at the time of the proposed issue of more than HK\$500 million; and~~

~~(b) made profits in each of the last two financial years.~~

(2) If a rights issue is underwritten and the underwriter is entitled to terminate that underwriting upon the occurrence of any event of force majeure after dealings in the rights in nil-paid form have commenced, then the rights issue listing document must contain full disclosure of that fact. Such disclosure must:—

(a) appear on the front cover of the listing document and in a prominent position at the front of the document;

- (b) include a summary of the force majeure clause(s) and explain when its provisions cease to be exercisable;
 - (c) state that there are consequential risks in dealing in such rights; and
 - (d) be in a form approved by the Exchange.
- (3) If a rights issue is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:—
- (a) appear on the front cover of the listing document and in a prominent position at the front of the document; and
 - (b) be in a form approved by the Exchange.

In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.

- (4) If a rights issue is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.
- (5) If a rights issue is not fully underwritten:—
- (a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and
 - (b) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

Note: In the circumstances set out in rule 7.19(5)(b), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.

- 7.19A (16) A proposed rights issue must be made conditional on minority shareholders' approval in the manner set out in rule 7.27A if ~~if~~ the proposed rights issue would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers).

<p>Drafting changes to move the detailed requirements relating to minority shareholders' approval to new rule 7.27A</p>

~~(a) the rights issue must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders;~~

~~(b) the issuer shall set out in the circular to shareholders the purpose of the proposed rights issue, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.; and~~

~~(c) the Exchange reserves the right to require the rights issue to be fully underwritten.~~

Proposal
A(2)-Ch3

~~(27) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any rights issue, unless it is made conditional on minority shareholders' approval in the manner set out in rule 7.27A the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

Drafting
changes to
move the
detailed
requirements
relating to
minority
shareholders'
approval to
new rule
7.27A

~~(8) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:~~

~~(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board and their associates; or~~

~~(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their respective associates.~~

~~The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

~~(9) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.~~

~~Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.~~

Proposal -
Ch2

7.20 Offers of securities by way of rights are normally required to be conveyed by renounceable provisional letters of allotment or other negotiable instrument,

- 7.21 (1) In every rights issue the issuer ~~must~~ may make arrangements to:—
- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
 - (b) dispose of securities not subscribed by allottees under provisional letters of allotment ~~in the market~~, if possible, for the benefit of the persons to whom they were offered by way of rights.

The arrangements described in rule 7.21(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

- (2) Where the issuer's controlling or substantial shareholder acts as an underwriter of the rights issue, the issuer must make the arrangement described in rule 7.21(1)(b).

- (3) Where arrangements described in rule 7.21(1)(a) are made:

(a) The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular; and-

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.

- ~~(2) If no arrangements or arrangements other than those described in rule 7.21(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renounees and the rights issue is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

- 7.22 A rights issue must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Open Offer

- 7.23 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings.

- 7.24 (1) In relation to underwriting of open offers, the requirements under rules 7.19(1), (3), (4) and (5) apply in their entirety to open offers with the term "rights issue" replaced by "open offer".

Proposal
A(2) -Ch3

~~In normal circumstances, all open offers must be fully underwritten.~~

~~Note: See Notes (1) and (2) to rule 7.19(1) which shall apply in their entirety to open offers with the following amendments:~~

~~(a) the term "rights issue" shall be replaced by the term "open offer"; and~~

~~(b) the reference to rule "7.19(3)" shall be replaced by "7.24(2)"~~

- ~~(2) If an open offer is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:~~

~~(a) appear on the front cover of the listing document and in a prominent position at the front of the document; and~~

~~(b) be in a form approved by the Exchange.~~

~~In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.~~

- ~~(3) If an open offer is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.~~

- ~~(4) If an open offer is not fully underwritten:—~~

~~(a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and~~

~~(b) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeover Code, unless a waiver from the Executive (as defined in the Takeover Code) has been obtained.~~

~~Note: In the circumstances set out in sub-paragraph 7.24(4)(b), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.~~

Drafting
changes
(requiremen
ts of
existing
rules 7.24
(2), (3) and
(4) are
covered by
proposed
rule 7.24(1))

- 7.24A (1) A proposed open offer must be made conditional on minority shareholders' approval as set out in rule 7.27A unless the securities will be issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 13.36(2).

Proposal
A(1) - Ch3

~~(5) If the proposed open offer would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—~~

~~(a) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders;~~

~~(c) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and~~

~~(c) the Exchange reserves the rights to require the open offer to be fully underwritten.~~

Proposal
A(2) -Ch3

~~(26) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any open offer, unless it is made conditional on minority shareholders' approval as set out in rule 7.27A the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

Drafting
changes to
move the
detailed
requirements
relating to
minority
shareholders'
approval to
new rule
7.27A

~~(7) Where shareholders' approval is required under rules 7.24(5) or 7.24(6), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:~~

~~(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or~~

~~(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.~~

~~The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

~~(8) Where shareholders' approval is required under rules 7.24(5) or 7.24(6), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.~~

Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.

Proposal -
Ch2

7.25 Offers of securities by way of an open offer must remain open for acceptance for a minimum period of 10 business days. ...

7.26 ~~[Repealed [●]]If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities will be issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 13.36(2), an open offer requires the prior approval of the shareholders in general meeting.~~

Proposal
A(1)-Ch3

7.26A (1) In every open offer the issuer must ~~may~~ make arrangements to:-

(a) dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or

(b) dispose of securities not validly applied for by shareholders, if possible, for the benefit of those shareholders.

Proposal
A(3)-Ch3

The arrangements described in rule 7.26A(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.

(2) Where the issuer's controlling or substantial shareholder acts as an underwriter of the open offer, the issuer must make the arrangement described in rule 7.26A(1)(b).

(3) Where arrangements described in rule 7.26A(1)(a) are made:

(a) The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular; and-

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements;.

~~(2) If no arrangements or arrangements other than those described in rule 7.26A(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

7.27 An open offer must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

7.27A Where minority shareholders' approval is required for a rights issue or open offer under rule 7.19A or 7.24A:

(1) The rights issue or open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour.

(2) The Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue or open offer was made or approved by the board, and their associates; or

(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue or open offer was made or approved by the board, and their respective associates.

(3) The issuer must set out in the circular to shareholders:

(a) the purpose of the proposed rights issue or open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue or open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and

(b) the information required under rule 2.17 in the circular to shareholders.

(4) The issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.

Drafting changes to move the detailed requirements relating to minority shareholders' approval to new rule 7.27A

Restrictions on rights issues, open offers and specific mandate placings

Proposal
- Ch2

7.27B A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues, open offers and/or specific mandate placings), unless the issuer can satisfy the Exchange that there are exceptional circumstances (for example, the issuer is in financial difficulty and the proposed issue forms part of the rescue proposal).

Notes: 1. *Theoretical dilution effect of an issue refers to the discount of the “theoretical diluted price” to the “benchmark price” of shares.*

(a) The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (as defined in rule 14.07(4)) immediately before the issue and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.

(b) The “benchmark price” means the higher of:

*(i) the closing price on the date of the agreement involving the issue;
and*

(ii) the average closing price in the 5 trading days immediately prior to the earlier of:

(1) the date of announcement of the issue;

(2) the date of the agreement involving the issue;

(3) the date on which the issue price is fixed.

(c) Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the issues were made at the time of the first issue.

For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).

2. *Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 7.27B.*

7.27C The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 7.27B if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.03, having regard to its terms (for example, a very large issue size or price discount).

...

Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

...

Pre-emptive rights

- 13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—
- (i) shares;
 - (ii) securities convertible into shares; or
 - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

...

- (2) No consent as is referred to in rule 13.36(1)(a) shall be required:-
- (a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer ... pro rata (apart from fractional entitlements) to their existing holdings; or

Notes: 1. ...

2. ...

3. The exemption for the shareholders' approval requirement under rule 13.36(2)(a) does not apply to the allotment, issue or grant of securities under an open offer.

Proposal
A(1)-Ch3

(b) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

...

...

(5) In the case of a placing or open offer of securities for cash consideration, the issuer may not issue any securities pursuant to a general mandate given under rule 13.36(2)(b) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

Proposal
A(1)-Ch3

(a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(b) the average closing price in the 5 trading days immediately prior to the earlier of:

(i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;

(ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(iii) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

(6) The issuer may not issue the following securities for cash consideration pursuant to a general mandate given under rule 13.36(2)(b):

Proposal B
- Ch3

- (a) warrants, options or similar rights to subscribe for any new shares of the issuer or any securities convertible into new shares of the issuer, or
- (b) securities convertible into new shares of the issuer, unless the initial conversion price is not lower than the benchmarked price (as defined in rule 13.36(5)) of the shares at the time of the placing.

...

Trading limits

13.64 Where the market price of the securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

13.64A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK\$1 based on the daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

Proposal B
- Ch4

...

Chapter 14A

EQUITY SECURITIES

CONNECTED TRANSACTIONS

...

Issues of new securities by the listed issuer or its subsidiary

14A.92 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
 - (a) through excess application (see rule 7.21(1) or 7.26A(1)); or
 - (b) ~~[repealed [●]]-in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and rule 7.21 or 7.26A (arrangements to dispose of any excess securities) has been complied with. In this case, the listing document must contain the terms and conditions of the underwriting arrangement;~~

Proposal
A(2)-Ch3

Note: Any commission and fees payable by the listed issuer's group to the connected person for the underwriting arrangement are not exempt under this exemption.

...

...

Appendix 16

DISCLOSURE OF FINANCIAL INFORMATION

...

Information in annual reports

...

11. In the case of any issue for cash of equity securities (including securities convertible into equity securities) ~~made otherwise than shareholdings in proportion to their shareholdings and which has not been specifically authorised by the shareholders,~~ a listed issuer shall disclose:-

Proposal A
- Ch4

(1) ...

...

~~(8) — the use of proceeds.~~

(8) the total funds raised from the issue and details of the use of proceeds including

(a) a detailed breakdown and description of the proceeds used for different purposes during the financial year;

(b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for different purposes and the expected timeline; and

(c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reason for any material change or delay in the use of proceeds.

Note: Issuers are recommended to present the above information in tabular format to show separately the amounts used and to be used for different purposes, and compare each of the actual or intended uses against the intention and expected timeframe previously disclosed by the issuer.

...

- 11A. To the extent that there are proceeds brought forward from any issue of equity securities (including securities convertible into equity securities) made in previous financial year(s), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in paragraph 11(8).

...

- 41A. A listed issuer shall include in its interim report the information in relation to any issue for cash of equity securities (including securities convertible into equity securities) during the interim period as set out in paragraph 11, and where applicable, the information required under paragraph 11A.

...

B. Proposed Amendments to GEM Rules

Chapter 10

EQUITY SECURITIES

METHODS OF LISTING

...

Placing

10.11 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.

...

10.13 Placings of securities by a listed issuer will be allowed only in the following circumstances:—

- (1) where such placing falls within any general mandate given to the directors of the applicant by the shareholders in accordance with rule 17.41(2); or
- (2) where the placing is specifically authorised by the shareholders of the applicant in general meeting ("specific mandate placing").

10.14 Placings by a listed issuer made in either of the circumstances set out in rule 10.13 are required to comply with the requirements of rule 10.12 (excluding sub-paragraphs (2), (3), (6) and (7) in the case of a placing of securities of a class already listed). Specific mandate placings are also required to comply with rule 10.44A.

Proposal
- Ch2

...

Rights issue

10.23 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings. Rights issue need not be underwritten.

10.24 A rights issue must be made conditional on shareholders' approval in the circumstances set out in rules 10.29 and 10.31(2).

Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.

Proposal
- Ch2

10.24A Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:

- (1) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or

Proposal
A(2)-Ch3

(2) the underwriters are the controlling or substantial shareholders of the issuers.

10.25 If a rights issue is not fully underwritten the listing document must contain full disclosure of the fact that ...

...

10.31 (1) In every rights issue, the issuer ~~must~~ ~~may~~ make arrangements to:—

- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
- (b) dispose of securities not subscribed by allottees under provisional letters of allotment ~~in the market~~, if possible, for the benefit of the persons to whom they were offered by way of rights.

Proposal
A(3)-Ch3

The arrangements described in rule 10.31(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

(2) Where the issuer's controlling or substantial shareholder acts as an underwriter of the rights issue, the issuer must make the arrangement described in rule 10.31(1)(b).

(3) Where arrangements described in rule 10.31(1)(a) are made:

- (a) ~~The offer of such securities and~~ the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular; ~~and-~~
- (b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.

~~(2) If no arrangements or arrangements other than those described in rule 10.31(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renounees and the rights issue is wholly or partly underwritten or subunderwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and / or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

...

Open offer

10.34 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings. Open offers need not be underwritten.

10.35 An open offer must be made conditional on shareholders' approval in the circumstances set out in rules 10.39, 10.41 and 10.42(2).

Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.

Proposal
- Ch2

10.36 ~~In relation to underwriting of open offers, the requirements under rules 10.24A, 10.25, 10.26 and 10.28 apply in their entirety to open offers with the term "rights issue" replaced by open offers. If an open offer is not fully underwritten the listing document must contain full disclosure of the fact that it is not fully underwritten and all other relevant circumstances and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must appear on the front cover of the listing document and in a prominent position at the front of the document and be in a form approved by the Exchange.~~

Proposal
A(2)-Ch3

~~In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.~~

Drafting
changes
(requirements
of
Existing
rules 10.36,
10.37, 10.38
are covered
by proposed
rule 10.36

10.37 ~~[Repealed [●]] If an open offer is not fully underwritten:—~~

~~(1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and~~

~~(2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.~~

~~*Note: In the circumstances set out above in rule 10.37(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.*~~

10.38 ~~[Repealed [●]] If an open offer is underwritten (whether in whole or in part) by a person or persons whose ordinary business does not include underwriting, the listing document must contain full disclosure of that fact.~~

10.39 ~~A proposed open offer must be made conditional on minority shareholders' approval in the manner set out in paragraphs (1) and (2) below, unless the securities will be issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 17.42B. If the proposed open offer would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—~~

- (1) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.39A Where shareholders' approval is required under rule 10.39, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent nonexecutive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.39B Where shareholders' approval is required under rule 10.39, the issuer must comply with the requirements under rules 17.47(6) and 17.47(7) and rules 17.47A, 17.47B and 17.47C.

...

10.41 ~~[Repealed [●]]If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities are to be allotted by the directors under the authority of a general mandate granted in accordance with rule 17.41(2), an open offer requires the prior approval of the shareholders in general meeting.~~

10.42 (1) In every open offer the issuer ~~must~~ may make arrangements to:-

~~(a) dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities and the basis of allocation of the securities available for excess applications must be available for subscription by all shareholders and allocated on a fair basis;~~
or

~~(b) dispose of securities not validly applied for by shareholders, if possible, for the benefit of the persons to whom they were offered by way of rights.~~

The arrangements described in rule 10.42(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.

~~(2) Where the issuer's controlling or substantial shareholder acts as an underwriter of the open offer, the issuer must make the arrangement described in rule 10.42(1)(b).~~

~~(3) Where arrangements described in rule 10.42(1)(a) are made:~~

~~(a) The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular; and-~~

~~(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications if the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements,~~

~~(2) If no arrangements or arrangements other than those described in rule 10.42(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

...

Restrictions on rights issues, open offers and specific mandate placings

Proposal
- Ch2

10.44A A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues, open offers and/or specific mandate placings), unless the issuer can satisfy the Exchange that there are exceptional circumstances (for example, the issuer is in financial difficulty and the proposed issue forms part of the rescue proposal).

Notes: 1. Theoretical dilution effect of an issue refers to the discount of the “theoretical diluted price” to the “benchmarked price” of shares.

(a) The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (as defined in rule 19.07(4)) immediately before the issue and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.

(b) The “benchmarked price” means the higher of:

(i) the closing price on the date of the agreement involving the issue;
and

(ii) the average closing price in the 5 trading days immediately prior to the earlier of:

(1) the date of announcement of the issue;

(2) the date of the agreement involving the issue;

(3) the date on which the issue price is fixed.

(c) Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the issues were made at the time of the first issue.

For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).

2. Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 10.44A.

10.44B. The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 10.44A if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.06, having regard to its terms (for example, a very large issue size or price discount).

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Chapter 17

EQUITY SECURITIES

CONTINUING OBLIGATIONS

...

Pre-emptive rights

17.39 Except in the circumstances mentioned in rule 17.41, the directors of an issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—

- (1) shares;
- (2) securities convertible into shares; or
- (3) options, warrants or similar rights to subscribe for any shares or such convertible securities.

...

...

17.41 No such consent as is referred to in rule 17.39 shall be required:—

- (1) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings but subject to rule 10.29; or

Notes: 1 ...

2 ...

3 The exemption for the shareholders' approval requirement under rule 17.41(1) does not apply to the allotment, issue or grant of securities under an open offer.

- (2) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer,

...

Proposal A(1)-Ch3

17.42B In the case of a placing or open offer of securities for cash consideration, an issuer may not issue any securities pursuant to a general mandate given under rule 17.41(2) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

Proposal
A(1)-Ch3

- (1) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (2) the average closing price in the 5 trading days immediately prior to the earlier of:
 - (a) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
 - (b) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
 - (c) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

17.42C The issuer may not issue the following securities for cash consideration pursuant to a general mandate given under rule 17.41(2):

Proposal B
- Ch3

- (1) warrants, options or similar rights to subscribe for any new shares of the issuer or any securities convertible into new shares of the issuer,
- (2) securities convertible into new shares of the issuer, unless the initial conversion price is not lower than the benchmark price (as defined in rule 17.42B) of the shares at the time of the placing.

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Trading limits

17.76 Where the market price of the securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

17.76A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK\$1 based on the daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

Proposal B
- Ch4

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Chapter 18
EQUITY SECURITIES
FINANCIAL INFORMATION

...

Annual reports

...

Information to accompany directors' report and annual financial statements

...

18.32 In the case of any issue for cash of equity securities (including securities convertible into equity securities) ~~made otherwise than to the listed issuer's shareholders in proportion to their shareholdings and which has not been specifically authorized by the listed issuer's shareholders:—~~

Proposal A - Ch4

(1) ...

...

~~(8) the use of the proceeds.~~

(8) the total funds raised from the issue and details of the use of proceeds including

(a) a detailed breakdown and description of the proceeds used for different purposes during the financial year;

(b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for different purposes and the expected timeline; and

(c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reason for any material change or delay in the use of proceeds.

Note: Issuers are recommended to present the above information in tabular format to show separately the amounts used and to be used for different purposes, and compare each of the actual or intended uses against the intention and expected timeframe previously disclosed by the issuer.

18.32A To the extent that there are proceeds brought forward from any issue of equity securities (including securities convertible into equity securities) made in previous financial year(s), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in rule 18.32.

...

18.55A. A listed issuer shall include in its interim report the information in relation to any issue for cash of equity securities (including securities convertible into equity securities) during the interim period as set out in rule 18.32, and where applicable, the information required under rule 18.32A.

...

Chapter 20

EQUITY SECURITIES

CONNECTED TRANSACTIONS

...

Issues of new securities by the listed issuer or its subsidiary

20.90 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
 - (a) through excess application (see rule 10.31(1) or 10.42(1)); or

- (b) ~~[repealed [●]] in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and rule 10.31 or 10.42 (arrangements to dispose of any excess securities) has been complied with. In this case, the listing document must contain the terms and conditions of the underwriting arrangement;~~

Proposal
A(2)-Ch3

Note: Any commission and fees payable by the listed issuer's group to the connected person for the underwriting arrangement are not exempt under this exemption.

...

...

APPENDIX II: SUMMARY OF EXCHANGE'S FINDINGS ON CAPITAL RAISING ACTIVITIES BY LISTED ISSUERS FROM 2013 TO 2016

This appendix summarises a review of all capital raising transactions (covering both equity securities and convertible securities) announced by 901 listed issuers between 2013 and 2016 (“**Review Period**”). The information was extracted from relevant announcements, circulars and listing documents published on the Exchange websites¹.

Exhibit 1: Breakdown of funds raised by method of capital raising

HK\$ billion	2013		2014		2015		2016	
Rights issues	33	16%	74	13%	106	15%	45	15%
Open offers	6	3%	9	2%	19	3%	9	3%
Specific mandate placings	46	23%	233	40%	350	49%	151	50%
General mandate placings	118	58%	263	45%	246	34%	99	33%
Total	203	100%	579	100%	721	100%	304	100%

Exhibit 2: Breakdown of number of transactions by method of capital raising

	2013		2014		2015		2016	
Rights issues	41	9%	56	9%	47	6%	50	8%
Open offers	26	6%	51	8%	60	7%	29	5%
Specific mandate placings	105	22%	123	19%	180	22%	133	22%
General mandate placings	299	63%	405	64%	531	65%	388	65%
Total	471	100%	635	100%	818	100%	600	100%

Exhibit 3: Comparison of capital raising transactions in 2016 by issuers of different sizes

	Large cap (>HK\$50 billion)	Medium cap (HK\$5–50 billion)	Small cap (<HK\$5 billion)
No. of issuers	9	49	339
No. of capital raising transactions	12	65	523
<i>General mandate placings</i>	7 (58%)	42 (65%)	339 (65%)
<i>Specific mandate placings</i>	5 (42%)	15 (23%)	113 (22%)
<i>Rights issue</i>	-	7 (10%)	43 (8%)
<i>Open offer</i>	-	1 (2%)	28 (5%)
Fund raised (HK\$ million)	102	104	98
<i>General mandate placings</i>	34 (33%)	31 (30%)	34 (35%)
<i>Specific mandate placings</i>	68 (67%)	45 (43%)	38 (39%)
<i>Rights issue</i>	-	25 (24%)	20 (20%)
<i>Open offer</i>	-	3 (3%)	6 (6%)

¹ The statistics set out in herein cover both share and convertible securities issuances, and the time series data are classified by reference to the announcement date. This is different from other HKEX's public documents (e.g. HKEX Factbooks), which covers primarily share issuances and the time series data are classified by reference to completion date.

APPENDIX III: EXAMPLE ON CALCULATION OF CUMULATIVE VALUE DILUTION

The cumulative value dilution is calculated by reference to (i) the aggregate number of shares issued during the 12-month period, compared to the number of issued shares immediately prior to the first offer or placing; and (ii) the weighted average of the price discounts (each price discount is measured against the market price of shares at the time of the offer). (see paragraph 49 of the Consultation Paper)

Company A conducted the following capital raisings:

- (i) a 1-for-2 rights issue with offer price at a price discount of 25%;
- (ii) a 1-for-1 rights issue with offer price at a price discount of 40%; and
- (iii) a specific mandate placing of 50% of existing issued shares at a price discount of 70%.

		Rights issue January 2017	Rights issue May 2017	Placing September 2017
Theoretical value dilution of each pre-emptive offer / placing				
No. of issued shares before capital raising	A	100	150	300
Issue size	B	50%	100%	50%
Number of offer/placing shares to be issued (= A x B)	C	50	150	150
Benchmarked price ¹	X	HK\$1.0	HK\$0.92	HK\$0.73
Price discount	Y	25%	40%	70%
Offer / placing price (= X x (1- Y))	Z	HK\$0.75	HK\$0.55	HK\$0.22
Shareholding value before rights issue / placing = A x X	J	HK\$100.00	HK\$137.50	HK\$220.00
Subscription amount = C x Z	K	HK\$37.50	HK\$82.50	HK\$33.00
No. of enlarged issued shares = A + C	L	150	300	450
Theoretical ex-price = (J + K) / L	TEP	HK\$0.92	HK\$0.73	HK\$0.56
Theoretical value dilution (TD) = (TEP - X) / X	TD	-8.3%	-20.0%	-23.3%

¹ The benchmarked price is the higher of: (a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities; and (b) the average closing price in the 5 trading days immediately prior to the earlier of: (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities; (ii) the date of the placing agreement or other agreement involving the proposed issue of securities; and (iii) the date on which the placing or subscription price is fixed.

		Rights issue January 2017	Rights issue May 2017	Placing September 2017
Cumulative theoretical value dilution				
Share in issue immediately before 12-month period	<i>Sh</i>	100	100	100
Benchmarked price immediately before 12-month period	<i>Pr</i>	HK\$1.00	HK\$1.00	HK\$1.00
Number of offer/placing shares to be issued	<i>C</i>	50	150	150
Aggregated number of offer/placing shares (i.e. Sum of C)	<i>D</i>	50	200	350
Price discount	<i>Y</i>	25%	40%	70%
Average price discount (i.e. weighted average of Y by reference to C)	<i>R</i>	25%	36%	51%
Shareholding value before 1st rights issue = <i>Sh</i> x <i>Pr</i>	<i>M</i>	HK\$100.00	HK\$100.00	HK\$100.00
Cumulative subscription amount = <i>D</i> x [<i>Pr</i> x (1 - <i>R</i>)]	<i>N</i>	HK\$37.50	HK\$128.00	HK\$171.50
No. of enlarged issued shares	<i>L</i>	150	300	450
Cumulative theoretical ex-price = (<i>M</i> + <i>N</i>) / <i>L</i>	<i>CTEP</i>	HK\$0.92	HK\$0.76	HK\$0.60
Cumulative theoretical value dilution = (CTEP - <i>Pr</i>) / <i>Pr</i>	<i>CTD</i>	-8.3%	-24.3%	-39.7%

The cumulative value dilution can also be calculated by the following formula:

$$\frac{(C_1 \times Y_1) + (C_2 \times Y_2) + \dots + (C_n \times Y_n)}{Sh + C_1 + C_2 + \dots + C_n}$$

Sh = Number of issued shares immediately before the 1st offer or placing

*C*₁ = Number of shares to be issued in the 1st offer or placing

*C*₂ = Number of shares to be issued in the 2nd offer or placing

*C*_{*n*} = Number of shares to be issued in the *n*th offer or placing

*Y*₁ = Price discount of the 1st offer or placing

*Y*₂ = Price discount of the 2th offer or placing

*Y*_{*n*} = Price discount of the *n*th offer or placing

APPENDIX IV: PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY

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
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:

pdpo@hkex.com.hk

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