

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017092.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances?

Yes

No

If your answer is “No”, please give reasons for your views.

I only agree with the proposal to the extent that only pre-emptive offers not subject to shareholders' approval are restricted. Low turnout rates and low level of subscription by minority shareholders, as observed by the Exchange, provide no justification to defeat or compromise the majority of the owners of a company being entitled to decide on corporate actions. With the proposed 25% threshold on value dilution, it effectively imposes a blanket disallowance on highly dilutive pre-emptive offers, as the Exchange is only prepared to grant permission in very exceptional circumstances such as financial difficulty. In my opinion, the present requirement of shareholders' approval where the pre-emptive offer would increase either 50% of the number of issued shares or market capitalisation of listed issuers already provides sufficient safeguard, let alone the Exchange always holds the ultimate discretion on whether to grant a listing approval.

2. 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?

Yes

No
(Please specify the appropriate percentage threshold 30%)

If your answer is “No”, please give reasons for your views.

I would have been more inclined to agree with the proposal to disallow highly dilutive pre-emptive offers but for the 25% threshold on value dilution. Putting aside highly dilutive offers without clear commercial value as observed by the Exchange, in a more common situation of 1 offer share for 1 existing share, with reference to the table illustrated in paragraph 36 of the Exchange's consultation paper, 30% threshold on value dilution would at least allow an offer at half-price discount (around 50% to 55%), subject to shareholders' approval. While in another more common situation of 2 offer shares for 1 existing share, with 30% threshold on value dilution, half-price discount would be disallowed. I believe that the need to restrict highly dilutive pre-emptive offers has to be balanced with the genuine fund raising need of certain listed issuers, the already in place requirement of shareholders' approval where the pre-emptive offer would increase either 50% of the number of issued shares or market capitalisation, and the Exchange's ultimate discretion on whether to grant a listing approval.

3. Do you agree that the proposed requirements should also apply to share issuance under a specific mandate?

Yes

No

If your answer is "No", please give reasons for your views.

While I am of the opinion that the Exchange's statistics on the number of fund raising activities which would have been affected (as discussed in paragraphs 37 and 41 of the Exchange's consultation paper) had the new proposals been in place are of limited indicative value, as fund raising activities in recent years have already been very much hindered by the general market economy, the more stringent comments received by listed issuers from the Exchange and the increasing unwillingness of the Exchange in granting listing approval, judging by the Exchange's statistics, even with the proposed 25% threshold on value dilution, only 69 specific mandate placings over the review period would have been caught under the proposed new rule (over 541 specific mandate placings in total). While I would be more inclined to agree to restrict share issuance under a specific mandate as compared to open offers or rights issues, as such issue is not for the benefit of all shareholders in view of unilateral shareholding dilution, the effect of applying the proposed requirement to share issuance under a specific mandate seems to be rather limited. Not to mention that all share issuance under specific mandates already require shareholders' approval.

4. Do you agree with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period?

Yes

No

If your answer is "No", please give reasons for your views.

I agree in general with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period. Yet, in view of the other proposals put forward by the Exchange which are expected to result in more fund raising activities being subject to shareholders' approval, and even a fast-paced rights issue which requires shareholders' approval may take around three months to close, I urge the Exchange to reconsider the second part of the new proposal, i.e. rolling in rights issues, open offers and/or specific mandate placings prior to the 12-month period where dealing in respect of the shares issued pursuant thereto commenced within the 12-month period, which in effect further extends the rolling period.

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

Yes

No

(Please specify the appropriate method _____)

If your answer is "No", please give reasons for your views.

6. 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)?

Yes

No

If your answer is "No", please give reasons for your views.

Given that in recent years the Exchange has delivered much clearer message to listed issuers that the Exchange welcomes rights issues over open offers, for which tradings of nil-paid rights are available, I believe the number of listed issuer choosing open offer has been much reduced. To further restrict open offer by requiring minority shareholder approval unless general mandate is used (i.e. issue of shares not more than 20% of the number of issued shares and with a price discount of less than 20%), together with other proposals including the 25% threshold of value dilution within a rolling 12-months period and the removal of the connected transaction exemption for underwriting by connected transaction, I take the Exchange's proposal effectively as an abolishment of open offer.

7. Do you agree with the proposal to remove the underwriting requirement for pre-emptive offers?

Yes

No

If your answer is "No", please give reasons for your views.

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

Yes

No

If your answer is "No", please give reasons for your views.

9. In view of paragraphs 72 and 73 of the Consultation Paper:

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

Yes

No

If your answer is “Yes”, please give reasons for your views.

I noted and agree with the Exchange's observation that allowing controlling shareholders to act as underwriters would provide degree of certainty of underwriting, where existing shareholders would already know who they are, and taking up of underwritten shares by them would either maintain or simply further their control over the listed issuer. I believe the degree of certainty it provides outweighs the expected increase in the possibility of controlling shareholders acting as underwriter charging underwriting commissions (as a result of the removal of the connected person exemption (if enforced)) on the one hand, and the possible triggering of offer obligation under the Takeovers Code (given that the SFC would generally agree to grant a whitewash waiver under normal circumstances).

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

Yes

No

If your answer is “Yes”, please give reasons for your views.

I would have disagreed with substantial (but not controlling) shareholders being allowed to act as underwriters but for the Exchange's proposal to remove the connected transaction exemption for underwriting of pre-emptive offers by connected persons. With the exemption removed, any pre-emptive offers proposed to be underwritten by substantial shareholders would be subject to shareholders' approval. I agree with the Exchange's observation that allowing substantial (but not controlling) shareholders to act as underwriters tends to provide opportunities for substantial shareholders to acquire control at a discount or without paying a control premium. As such, with the new proposal of removing the relevant connected transaction exemption, I am of the opinion that substantial shareholders should be allowed to act as underwriters provided that shareholders agree so having taken into account the potential change in control.

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

Yes

No

If your answer is "No", please give reasons for your views.

11. Do you agree with the proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons?

Yes

No

If your answer is "No", please give reasons for your views.

I agree to the proposal to the extent that controlling shareholders would still be exempted subject to the existing rules that underwriting commissions would not be exempted and excess application be arranged. Further to my comment given under Questions 9 and 10 above, as compared to allowing substantial (but not controlling) shareholders to act as underwriter which will provide opportunities for them to acquire control at a discount or without paying a control premium, I believe the concern is lesser in the case of controlling shareholders, as they are already in control of the listed issuer. Giving the connected transaction exemption for underwriting by controlling shareholder tends to reduce reliance on third party underwriters, provides certainty on control over the listed issuer and reduces amount of possible commission payable.

12. 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?

Yes

No

If your answer is "No", please give reasons for your views.

13. 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?

Yes

No

If your answer is "No", please give reasons for your views.

14. Do you agree with our proposal to disallow the use of general mandate for placing of warrants and options for cash consideration?

Yes

No

If your answer is "No", please give reasons for your views.

15. 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?

Yes

No

If your answer is "No", please give reasons for your views.

16. Do you agree with the proposal to require disclosure of the use of proceeds from all equity fundraisings in interim and annual reports?

Yes

No

If your answer is "No", please give reasons for your views.

17. Do you agree with the proposal to impose a minimum price requirement on subdivision or bonus issue of shares?

Yes

No

If your answer is "No", please give reasons for your views.

18. 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?

HK\$1

HK\$0.5

Other (Please specify the appropriate threshold _____)

If you answer is "Other", please give reasons for your views.

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

Yes

No

(Please specify the appropriate demonstration period _____)

If your answer is "No", please give reasons for your views.

- End -