

24 Nov 2017

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

Submitted via email to: response@hkex.com.hk

RE: Concept Paper on Capital Raising

Dear Sir/Madam,

BlackRock¹ is pleased to have the opportunity to respond to the “Consultation Paper on Capital Raising by Listed Issuers” (the Consultation Paper), issued by the Hong Kong Exchanges and Clearing Limited (HKEX).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by this Concept Paper and will continue to contribute to the thinking of the Hong Kong Exchanges and Clearing Limited on any issues that may assist in the final outcome.

Executive summary

BlackRock welcomes the HKEX taking solid steps to address the issue of large scale deeply discounted placement, which has been one of the major concerns for investors in the Hong Kong capital market. We think the consultation includes a number of well-intended proposals but needs to go further to make proposed measures more effective. Our key suggestions include:

- Lower the threshold on value dilution from the proposed 25% to 10%. The proposed threshold is overly lenient in our opinion. A 10% threshold would still enable companies to conduct a large offering with an offer ratio up to ten-for-one as long as the price discount is capped below 10%. This effectively contains the price discount, which is the most concerning factor in the value dilution equation from an investor’s perspective.
- Introduce a quorum for approving pre-emptive offers (including open offers) as a temporary measure to make the minority shareholder approval requirement meaningful. In the long term we believe the HKEX should take the necessary steps such as the adoption of e-voting and the removal of the nominee system to improve the ease of voting for shareholders particularly retail shareholders to ensure that voting, as one of the most important rights for shareholders to protect the value of their investments, can be effectively utilized.
- While we agree with the proposal to disallow the use of general mandate for placing of warrants and options for cash consideration, we would like to see more restrictions on the use of general mandate. Specifically, we find the current maximum size and price

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

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discount allowed for shares issued under the general mandate to be overly generous. As such, the general mandate, once approved by shareholders in its standard form, poses a significant dilutive risk to existing shareholders given its non-pre-emptive nature.

We welcome further discussion on any of the points that we have raised.

Yours faithfully,

Pru Bennett
Head of Investment Stewardship APAC



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:

<https://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 dilutive pre-emptive offers unless there are exceptional circumstances?

- Yes
 No

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

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: 10%)

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

We strongly believe that the proposed 25% threshold on value dilution is too lenient. It would still allow offers that we consider massively dilutive. For example, an offer with 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% would be right on the line.

We think the threshold should be set at 10%, which would still allow offers with an offer ratio up to ten for one as long as the price discount is restricted to 10%. This effectively contains the price discount, which is the most concerning factor in the value dilution equation from an investor's perspective.

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.

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.

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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 percentage 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

We welcome the proposal as it seeks to provide more protection for minority shareholders against dilutive open offers that do not have any clear commercial rationale. However, we are concerned with the effectiveness of this protection. As it is pointed out in paragraph 32 of the Consultation Paper 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". Clearly, the minority shareholder approval requirement has not worked effectively in terms of deterring highly dilutive pre-emptive offers. We believe in the short term the introduction of a quorum for approving pre-emptive offers (including open offers) should be considered in order to make the minority shareholder approval requirement meaningful. In the long term we believe the HKEX should take the necessary steps such as the adoption of e-voting and the removal of the nominee system to improve the ease of voting for shareholders particularly retail shareholders to ensure that voting, as one of the most important rights for shareholders to protect the value of their investments, can be effectively utilized.

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.

(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.

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.

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.

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While we agree with the proposal to disallow the use of general mandate for placing of warrants and options for cash consideration, we would like to see more restrictions on the use of general mandate. Specifically, we find the current maximum size and price discount allowed for shares issued under the general mandate to be overly generous. As such, the general mandate, once approved by shareholders in its standard form, poses a significant dilutive risk to existing shareholders given its non-pre-emptive nature.

We understand that companies need the flexibility to raise capital and sometimes to raise capital quickly. However, we question the necessity of a general mandate of the current scale. The UK market only allows companies to request for a general mandate by way of a special resolution (where 75% or more shares need to vote in favour of the resolution) to issue new shares up to 5% of the issued capital in a year and 7.5% over a three-year rolling period. The maximum discount allowed is capped at 5% as opposed to the 20% allowed in Hong Kong. Singapore, while also capping the size of the general mandate at 20%, restricts the maximum discount at 10%. We believe the HKEX should consider reducing the size of the general mandate to afford shareholders better protection against dilutive non-pre-emptive placings without real commercial benefits.

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 your 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.

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Yes

No

(Please specify the appropriate demonstration period _____)

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

Conclusion

We appreciate the opportunity to address and comment on the issues raised by the Concept Paper on Capital Raising by Listed Issuers and will continue to work with HKEX on any specific issues which may assist in the discussion of weighted voting rights.