



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

**Sent via email**

15 December 2017

Dear Sirs

**Re: Consultation Paper on Capital Raisings by Listed Issuers (September 2017)**

We write further to the Consultation Paper on Capital Raising By Listed Issuers (the “**Capital Raising Consultation Paper**”) dated September 2017 issued by The Stock Exchange of Hong Kong Limited (the “**SEHK**”) and inviting written comments on the matters discussed in the Capital Raising Consultation Paper.

We are grateful to the SEHK for the opportunity to provide written commentary on the matters presented in the Capital Raising Consultation Paper and for the SEHK’s willingness to address, in the Capital Raising Consultation Paper issues raised during previous discussions. The purpose of this letter is to outline in general terms our members’ views regarding the proposals, as opposed to providing detailed response to all of the questions set out in Part B of the Questionnaire on Capital Raising By Listed Issuers (“**Questionnaire**”) attached to the Capital Raising Consultation Paper.

**Overview**

AIMA is desirous of supporting all initiatives which are intended to promote the ongoing development and success of the capital market ecosystem in Hong Kong, including those initiatives which enhance investor protection. This includes ensuring, so far as is possible, the fair treatment of minority shareholders within listed companies.

AIMA commends the work undertaken by both the SEHK and the Hong Kong Securities and Futures Commission (“**SFC**”) with respect to the monitoring and market analysis conducted alongside the preparation of the Capital Raising Consultation Paper. The results of this market analysis, referenced throughout the Capital Raising Consultation Paper, provide clear justification that SEHK’s proposals are indeed necessary in order to limit the potential for abusive practices by majority shareholders in Hong Kong listed companies.

**Proposed Rule Amendments Re. Dilutive Pre-Emptive Offers**

AIMA is broadly in favour of extending restrictions on highly dilutive pre-emptive offers, so that the existing regime covering “open offers” also covers “specific mandate placings”.

AIMA agrees with the imposition of a value dilution threshold on the placement of new shares through a “specific mandate”. AIMA believes that the implementation of such a threshold would go some way to achieving the desired result of precluding those pre-emptive offers which do not have a clear commercial rationale and might not be structured for the benefit of the listed company and all of its shareholders.

In terms of the level of the proposed threshold, the SEHK might wish to consider a threshold lower than that proposed in the Consultation Paper (i.e. 25% threshold on value dilution). AIMA considers that a threshold in the 10–15% range would be preferable, as this would serve to better protect value for minority shareholders, whilst still ensuring that listed companies are not unduly restricted with regard to capital raising activities through new issuances of shares.

AIMA also agrees with SEHK’s proposal to provide for a waiver to the threshold requirement for placements through a “specific mandate”, but only in exceptional circumstances, such as when a listed company is suffering significant financial hardship. Notwithstanding the need to tighten up the existing regime on placements, it is appropriate to ensure that sufficient flexibility is retained so that listed companies are not unduly limited in terms of the capital raising options available to them in exceptional circumstances.

### **Proposed Rule Amendments Re. Open Offers**

AIMA agrees with SEHK’s proposal to require minority shareholders’ approval for all open offers, unless the new shares are to be issued under the authority of any existing general mandate.

AIMA considers that the imposition of a prohibition on voting by controlling shareholders (or where appropriate, the directors and the chief executive) is an important step in ensuring that all open offers are approved by minority shareholders.

In connection with the new requirement, the SEHK should also consider a “minimum quorum” requirement for any such vote, to ensure that the approval cannot be given by a mere handful of minority shareholders whose votes might be subject to undue influence and might not be representative of minority shareholders generally.

### **Proposed Rule Amendments Re. Underwriting of Rights Issues and Open Offers**

AIMA also agrees with SEHK’s proposals to:

- (i) remove the compulsory underwriting requirement for rights issues and open offers for Main Board listed companies; and
- (ii) require that an underwriter for a pre-emptive offer is a person licensed by the SFC.

AIMA considers that both of these measures will help to prevent abusive practices by way of underwriting arrangements.

### **Proposed Rule Amendments Re. Disposal of Unsubscribed Shares**

AIMA notes that a strengthened requirement for minority shareholders’ approval for open offers (even if coupled with a minimum quorum requirement), and amendments to the underwriting requirements for rights issues and open offers, will not eliminate unfair treatment of minority shareholders. Protection of minority shareholders’ interests in pre-emptive offers can only be properly assured with renounceable subscription rights with compensatory arrangements for unsubscribed shares.

A requirement that issuers must adopt an excess application arrangement or a compensatory arrangement in pre-emptive offers would provide some further protection to minority shareholders. However, issuers should only be permitted to adopt an excess application arrangement (instead of a compensatory arrangement) where they have made a reasonable determination that the underlying shares of the issuer have insufficient liquidity relative to the unsubscribed shares for a compensatory arrangement to be effective.

Further, AIMA supports SEHK’s proposal to disregard excess applications made by the controlling shareholder and its associates in excess of the offer size minus their pro-rata entitlement.

### **Proposed Rule Amendments Re. General Mandates for Warrants, Options and Convertible Securities**

AIMA agrees with the SEHK’s proposal to disallow the use of general mandates for the placing of warrants or options for cash, and to instead require a listed company to obtain a specific mandate for each such offering.

AIMA also agrees with the proposal to limit the use of general mandates for placings of convertible securities solely to those placings in which the initial conversion price is not less than the benchmarked price of the underlying shares (at the time of the placing).

**Conclusion**

We hope that the SEHK will find the points set out above helpful. We would be very happy to further discuss the responses provided in this letter if needed.

Yours faithfully



Kher Sheng Lee  
Managing Director  
Co-Head of APAC  
Deputy Global Head of Government Affairs