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.

Please see Additional Sheet

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 _____)

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

We do not agree to set up any threshold for open offers and rights issues but agree to the proposed 25% threshold for specific mandate placing as per our submission on Q.3.

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.

Specific mandate placings are a fast and efficient way for companies to rasie funds. They are important means especially for companies in dire financial siutation and in bad need to inject funds in order to stay afloat. To put too much restraints on companies' ability to do this could bankrupt them, which would be a far worse scenrio for minority sharehoders.

In analysing wherther specific mandate placings are deeply dilutive or not, the consultation paper cited cases where the placings were conducted at deep discounts from the current trading price. While this may be true, it may be due to the special circumstances the company is in. For example, a company is in talks with a "white knight" to salvage it from bankruptcy. In such cases, the price the white knight is willing to offer for the shares would not necessrily be based on the current share price but more on the net asset value. In case the share price is at a premium to the NAV, the deep price discount may arise. Therefore, the Exchange should not only look at the value dilution and prohibit a placing by imposing a threshold but need to look at the company's situation on a case-by-case basis.

On the other hand, we do recognise that in terms of minority shareholders' rights, specific mandate placings are different from rights issues and open offers in that minority shareholders are entitled to participate in rights issues and open offers should they wish to maintain their level of shareholdings and not to be diluted. And for shareholders who do not have the financial resources to do so, under the newly proposed compensatory arrangements, which we support, they would receive cash in compensation and their interests would be protected. Yet, in special mandate placings, since the issuers can elect to place the newly issued shares to an outside third party, minority shareholders do not have the chance to participate, nor is there any compensatroy mechanisms. That leaves them in a very passive position only to be diluted. It is reasonable that the minority sharehoders be protected from having their interests overly diluted. In this sense, we agree to imposing a 25% threshold on value dilution but urge the Exchange to take a practical approach and give exemptions to placings where the companies are to be found in dire financial troubles and the placings are part of a corporate rescue attempt.

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.

We do not agree to having a threshold for rights issues and open offers, so a roling 12-month period does not apply. We, however, agree to having a threshold for placings subject to our answer to Q.3. In that case, a rolling 12-month period for the purpose of calculating the threshold is appropriate.

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.

subject to answer to Q3 and 4

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.

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.

Yes, we agree removing the underwriting requirements as it reduces costs for the issuers and expedites the offer process. It is important that issuers clearly inform the market of the absence of underwriting and that the offer may not go ahead. This will prevent the investing public from incurring losses due to share price movements in case the offers are teminated.

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.

In addition to the reasons cited in the consultation paper, controlling shareholders acting as underwriters also signify confidence in the company which is a positive factor to the success of the offer.

(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.

There are cases where a company does not have a controlling shareholder. In those cases, substantial shareholders should be allowed to act as underwriters, for reasons similar to our answer to Q.9. We agree to the concerns raised in paragraph 73 of the consultation paper, and therefore suggest susbstantial shareholders' underwriting commitment be capped at 30% of the offered shares so that they would not end up having effective control of the company through underwriting or the substantial shareholders undertake to make a mandatroy offer under the Takeover Code.

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.

Listed issuers are encouraged to adopt both arrangements so as to offer the maximum protection to the minority shareholders.

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.

Our principle is not to have unnecessary restrictions to issuers in their fund raising methods. Issuers should be allowed to choose what instruments to use that best suit their financial situations and needs. If the concern here is the difficulty in calculating the fair value of the warrants, it is unwarranted, as the calculation of the value of warrants and other derivatives using common pricing models is widely accepted.

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 $0.1)

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

We believe $0.1 is appropriate. To set the threshold at $0.5 would be too restictive to companies currently trading at low price level.

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 ***1 month***)

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

We believe one month is more appropriate. Six months is a rather long period especially in volatile market conditions.

- End -

Consultation Paper on Capital Raising by Listed Issuers

Supplementary Sheet to Q.1

Before answering this question and the subsequent ones, the Chamber is of the view that market intervention by the Stock Exchange and other regulators should be kept to a minimum. Listed issuers should be allowed to operate as freely and as efficiently as possible so long as they work within the realm of laws and applicable listing rules and regulations. That said, we respect the right and responsibility of the Exchange in reviewing the listing rules from time to time and amend its rules to perform its regulatory functions.

We understand the objective of the Exchange in suggesting this amendment is to protect minority shareholders' interests from abusive fund raising behaviours, such as the highly dilutive pre-emptive offers. But at the same time, one must realize rights issues and open offers are legitimate fund raising means.

As paragraph 27 of the consultative paper pointed out, the highly dilutive pre-emptive offers represented only 3% and 5% of all funds raised and number of capital raising transactions (125) between 2013 and 2016, and as a result of Stock Exchange's actions, the number of highly dilutive pre-emptive offers has dropped. This proves that the problems are i) not prevalent and hence its negative impact to the market is confined and ii) the Exchange has existing means to address the problem. That begs a question whether we should sacrifice market efficiency for rare occurrences of abusive behaviours by a small number of issuers and in so doing, deprive companies who may have the genuine need to raise funds in a ratio they deem necessary.

The consultative document also pointed out that in most of the cases, the highly dilutive pre-emptive offers were approved by over 75% of shareholders that attended the general meetings. In principle, the ultimate decision makers of a company's affairs are the shareholders themselves. If a resolution is passed at the shareholders' meeting, the decision is to be respected. The Exchange may question the low turnout of shareholders but that does not breach any rule. Perhaps rather than adopting an interventionist approach, the Exchange shall work with the SFC to educate shareholders that they should fully exercise their right and responsibilities of attending shareholders' meeting and decide on their own company's affairs.

In light of this, we do not agree to create a threshold that would limit the flexibility of issuers and which would restrict issuers' right to raise funds for their corporate purposes. (Please note that our disagreement is related to preemptive offers, treatment of placings will be discussed subsequently.)

We note that the consultation paper has also suggested a range of protective measures for minority shareholders, such as excess application and compensatory arrangements. With these measures in place, the minority shareholders' interests would be protected even if they choose not to participate in the rights or open offer. For example, in a rights issue, the minority shareholders may vote against the resolution proposing a highly dilutive rights issue that is not in their interest or may sell their nil-paid rights if they do not want to participate in the rights issue. In an open offer and after implementation of the proposals by the Exchange in this consultation, the minority shareholders may vote against the resolution proposing a highly dilutive open offer or may apply for additional shares or failing all of which the minority shareholders will be compensated under the compensatory arrangement as herein proposed. By reasons of the matters aforesaid, we therefore think it is not necessary to have a threshold.

Instead of prohibiting pre-emptive rights above certain threshold and giving permission on a discretionary basis, the Exchange should instead leave the rules unchanged but hold the right to reject any offers that it deems abusive on good grounds. For example, listing approval for the proposed rights issue was not granted by the Exchange under LD 102-2016 and a share subdivision proposal was also not approved by the Exchange under LD 103-2016. If so, the Exchange has the relevant power and authority to stamp out any abusive rights issues and open offers under the existing Listing Rules.