

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.

As mentioned in the consultation paper, one of the reasons for making specific provisions in the Listing Rules to prohibit certain capital raising activities which currently require minority shareholders' approvals for doing so is because of the very low turnout rates at shareholders' meetings, which makes the Exchange believe that voting results might not fairly reflect minority shareholders' support of such activities. To address this situation, we recommend that the Exchange should consider also stepping up its work in relation to investor education.

We note that at the moment, there is no requirement for intermediaries (e.g., brokers, CCASS, etc.) to disseminate shareholders' meetings information to their clients, and they are also not obliged to obtain voting instructions from shareholders and cast votes at shareholders' meetings. We suggest the Exchange look further into this matter and consider working with the Securities and Futures Commission to impose rules requiring the intermediaries to actively disseminate company information to shareholders and seek voting instructions from them to cast votes at shareholders' meetings. We believe that the above measures would, to certain extent, encourage shareholders/investors more actively exercise their rights through the casting of votes at shareholders' meetings.

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.

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 we appreciate that the purpose of the Stock Exchange introducing the proposed requirements is to ensure that share issuances are conducted in a fair and orderly manner and structured for the benefit of the listed issuer and all its shareholders, we consider that there should be appropriate balance between shareholder protection and listed issuers' genuine capital needs. Too restrictive rules on secondary market fund raising activities would not be good to the development of the Hong Kong capital market.

With sufficient information and better disclosures in shareholders' circulars, including clearly explained commercial rationale as well as the justification for the need of a specific mandate placing to meet the issuer's capital need, for shareholders to make an informed decision in exercising their voting rights, we believe that shareholders' interest would be safeguarded.

In the case that the Exchange considers that a share issuance activity of a listed issuer is very highly dilutive and lacks demonstrable commercial rationale which would be detrimental to shareholders, it may still withhold the granting of listing approval for dealing in the new shares.

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.

Referring to our response to Q3 above, we consider that the rolling 12-month period should be applied to aggregate rights issues and open offers (i.e., exclude specific mandate placings).

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.

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.

As mentioned in paragraph 72 of the consultation paper, there may be legitimate reasons for controlling shareholders to underwrite pre-emptive offers. For example, 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.

Also, commercial underwriters might 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 shareholders' interest in general where a controlling shareholder acts as the underwriter.

(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.

We are of the view that listed issuers should be given the flexibility to engage substantial shareholders to underwrite pre-emptive offers for reasons similar to those described in Q9(a) above.

As regards the concerns that the underwriting arrangement may provide an opportunity for substantial shareholders to acquire or consolidate control of the issuers at a discount or without paying a control premium, it is noted that the change in control issue may raise the concerns of the Securities and Futures Commission under the Takeovers Code, and is governed by the "Whitewash procedure" of the Takeovers Code. The substantial shareholders concerned would have to seek whitewash waivers from the SFC's Executive under Note 1 on dispensations from Rule 26 of the Takeovers Code.

From the shareholder protection perspective, the SFC's Executive would not normally grant a whitewash waiver if the SFC's Executive has concerns that the arrangement is oppressive to the minority shareholders or otherwise contrary to the General Principles of the Takeovers Code. This could serve as a check against the potential abuse.

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.

We do not agree to make compensatory arrangements a mandatory requirement.

As compensatory arrangements require unsubscribed shares first be offered to independent investors at market price (in the situation when the market price is at a premium to the offer price) and the premium will be paid to the non-subscribing shareholders, we are concerned that such offer of shares to the market might affect the share price. This arrangement to compensate non-subscribing shareholders would be at the expense of the shareholders who have subscribed for the shares in the pre-emptive offers, which is not desirable.

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.

Under the general principles of the existing Listing Rules (rule 2.03(4)) that all holders of listed securities are treated fairly and equally, we are of the view that the proposal to limit the excess applications to a maximum number equivalent to the offer shares minus their pro rata entitlements should be applied to all shareholders and their associates.

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.

We consider that it is not desirable to rule out the possibility of genuine commercial need for placing of warrants and options under general mandate. Therefore, instead of a strict prohibition, we suggest that consideration should be given to allow a certain percentage, for example, not more than 25%, of the general mandate used for placing of warrants and options for cash consideration.

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.

The initial conversion price of convertible securities should be allowed to be determined by the parties concerned at arm's length, taking into account many relevant factors such as the capital market condition and the interest rate trend. Also, the proposed clarification to the general mandate rules set out in paragraph 103 of the consultation paper would deal with the price discount issue.

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.

No strong view on this proposal.

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.

No strong view on this proposal.

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 3
months)

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

Our proposed demonstration period of 3 months is benchmarked against the equivalent requirement in Singapore, which is a potential competitor to Hong Kong among the Asian exchanges.

Singapore requires a demonstration period of only 1 month. Our proposed 3-month period is already three folds of the period adopted by Singapore, as we have taken into consideration that Singapore has more stringent rules which require listed companies to take remedial actions if their shares trade below a minimum price of SG\$0.5 over a period.

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