

24 November 2017

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Hong Kong

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Dear Sir/Madam,

**RE: CONSULTATION PAPER ON CAPITAL RAISINGS BY LISTED  
ISSUERS AND DELISTING AND OTHER RULE AMENDMENTS**

As a market participant in the Hong Kong securities market with more than 20 years experiences, [REDACTED] would like to reply to the captioned papers as below:

1. **We think highly dilutive pre-emptive offers could be allowed if the listed companies have genuine capital needs with concrete business plan that is in relation to its principal line of business, and this should be included in the exceptional circumstances in the proposal.**

We respect the right and responsibility of the Exchange in reviewing the listing rules and amend the rules when needed so as to better perform its regulatory functions and ensure that the Hong Kong securities market operates efficiently and remains healthy. Meanwhile, it is also important for the Exchange to work with SFC to educate shareholders that they should fully understand and exercise their right and responsibilities of attending shareholders' meetings as well as voting on the company's affairs.

According to the Consultation Paper, about 65% of the pre-emptive offers had value dilution effect below the 25% threshold during 2013 to 2016, which means around 35% of the pre-emptive offers had the value dilution effect above 25%. It is proposed in the Paper that an issuer may not undertake highly dilutive pre-emptive offers that would result in a material value dilution to non-subscribing shareholders, unless the issuer can satisfy the Exchange that there are

exceptional circumstances. According to point 33 in the proposal, the Exchange may exercise its discretion to waive the restriction in exceptional circumstances. An example is where the issuer is in financial difficulty.

However, we consider that apart from financial difficulty, listed companies might have genuine capital needs to expand or strengthen its business. In this case, we hope that such capital raising activities should not be disallowed as long as the listed companies can provide concrete business plans which are in relation to its principal line of business. Besides, as these highly dilutive pre-emptive offers would need to be approved by minority shareholders, it is important for listed companies to disclose and strictly follow the use of proceeds. Whenever there is any change on the use of proceeds, the listed companies could be required to need to obtain approval again from regulatory authorities as well as the shareholders.

Additionally, setting a bright line cap of 25% dilution may be restrictive to the free market model of the current market. It is very difficult to set an overarching protectionist rule without jeopardizing the freedom for capital raising by companies. We believe the regulators should conduct an in-depth research on this issue before deciding the cap. Besides, since pre-emptive offers need to be voted on by all shareholders, any approved offer can be deemed to be the will of the majority. The Exchange can instead place greater emphasis on educating minority investors on the topic, to ensure that turnout at shareholders meetings represent an accurate indication of the will of all company shareholders.

2. **We agree with the proposal to require underwriters to be licensed persons independent from the issuers and their connected persons. We also agree that controlling shareholders and substantial shareholders should be allowed to act as underwriters. Compensatory arrangements should be mandatory when pre-emptive offers are underwritten by connected persons.**

We agree with the proposal that if issuers choose to engage underwriters to underwrite the pre-emptive offers, they should be corporations licensed by the SFC, and they should be independent from the issuers and their connected persons. The involvement of an independent, licensed underwriter will introduce greater discipline in the pricing and allocation of such offerings.

Meanwhile, it is also reasonable to allow controlling shareholders to continue to act as underwriters, subject to mandatory compensatory arrangements for the unsubscribed shares. Where controlling or substantial shareholders are allowed to act as underwriters, mandatory compensatory arrangements would provide an additional safeguard to address the concern that controlling or substantial shareholders may deliberately price the offer shares at an artificially discounted price and increase their stakes at low cost.

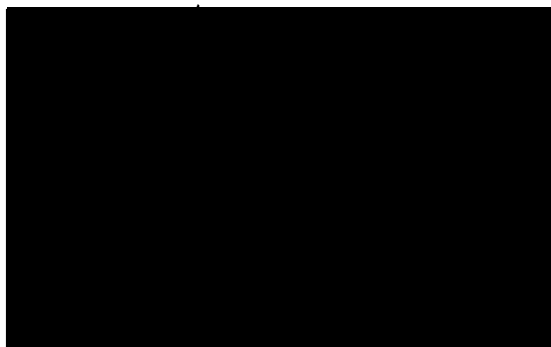
**3. We agree with the proposed Main Board Rule amendment to add a fixed period delisting criterion, and we think 36 months is the appropriate period under the fixed period delisting criterion.**

Sufficient time is required for issuers to rectify concerned issues (e.g. negotiating with creditors in financial crisis cases, restructuring group's business to attain operation sufficiency for the purpose of listing rules). In most cases, the preparation work for rectifying issues and demonstration of rectification by showing a full financial year record takes around 36 months in general.

92% of the long suspended issuers resumed trading within 36 months of their initial suspensions between 2012 and 2016. This period may seem reasonably long enough for issuers to remedy the suspension issues while providing an incentive for early resumption. This could apply to both Main Board and GEM Board.

We hope that the above opinions could be helpful for the Stock Exchange of Hong Kong to improve the relevant listing rules and regulations. We have trust and confidence in your guidance, and we look forward to having a more competitive investment environment in Hong Kong.

Yours faithfully,



## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017091.pdf>

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

1. Do you agree with our proposed MB Rule amendment to add a fixed period delisting criterion?

☒ Yes

☐ No

If your answer is "No", please explain why.

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2. Do you think the appropriate period under the fixed period delisting criterion should be:

☐ 12 months

☐ 18 months

☐ 24 months

☒ Other 36 months (please state)

Please also explain why.

Tightening the time allowed for suspended issuers to rectify matters might be necessary but regulators need to consider the minority shareholders' interest. Sufficient time is required for issuers to rectify concerned issues (e.g. negotiating with creditors in financial crisis cases, restructuring group's business to attain operation sufficiency for the purpose of listing rules). In most cases, the preparation work for rectifying issues and demonstration of rectification by showing a full financial year record takes around 36 months in general.
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3. Do you agree with our proposed MB Rule amendment to allow the Exchange to delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately, or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting?

☐ Yes

☒ No

If your answer is "No", please explain why.

Should give issuer a period of time to remedy the relevant issues as no one (including the minority shareholders) would benefit from delisting.

4. Do you agree with our proposal to remove Practice Note 17 and to delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01?

☒ Yes

☐ No

If your answer is "No", please explain why.

This would encourage the listed issuer to act promptly in rectifying the issues .

5. Do you agree with our proposal to add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24?

☒ Yes

☐ No

If your answer is "No", please explain why.

6. Do you agree with our proposal to remove MB Rule 6.01(1)?

☒ Yes

☐ No

If your answer is "No", please explain why.

7. Do you agree with our proposal to clarify in MB Rule 2B.07(5) the applicable procedures for reviewing decisions to suspend or cancel a listing under MB Rule 6.01?

☒ Yes

☐ No

If your answer is "No", please explain why.

8. Do you agree with our proposed MB Rule amendment to require suspended issuers to announce quarterly updates?

☒ Yes

☐ No

If your answer is "No", please explain why.

The listed issuer should keep its shareholders posted of the latest development.

9. Do you agree with the proposed transitional arrangements described in paragraph 52 of the consultation paper, and the proposed commencement dates of the fixed period under different situations?

☒ Yes

☐ No

If your answer is "No", please explain why.

10. Do you agree with our proposed GEM Rule amendment to add a fixed period delisting criterion?

☒ Yes

☐ No

If your answer is "No", please explain why.

Should align with main board listing rules.

11. Do you think the appropriate period under the fixed period delisting criterion should be:

☐ 6 months

☐ 12 months

☒ Other 36 months (please state)

Please also explain why.

Same as our reply to Q2.

12. Do you agree with the proposed transitional arrangement described in paragraph 59 of the consultation paper?

☒ Yes

☐ No

If your answer is "No", please explain why.

13. Do you agree with our proposal to align the wording of GEM Rule 9.15 with MB Rule 6.10?

☒ Yes

☐ No

If your answer is "No", please explain why.

14. Do you agree with our proposal to remove GEM Rule 9.04(5)?

☒ Yes

☐ No

If your answer is "No", please explain why.



15. Do you agree with our proposal to clarify in GEM Rule 4.07(6) the applicable procedures for reviewing decisions to suspend or cancel a listing under Chapter 9 of the GEM Rules?

☒ Yes

☐ No

If your answer is "No", please explain why.

16. Do you agree with our proposed GEM Rule amendment to require suspended issuers to announce quarterly updates?

☒ Yes

☐ No

If your answer is "No", please explain why.

The listed issuer should keep its shareholders posted of the latest development.

17. Do you agree with our proposal to remove MB Rule 14.37(1) / GEM Rule 19.37(1)?

☒ Yes

☐ No

If your answer is "No", please explain why.

18. Do you agree with our proposal to remove MB Rule 14.37(2) / GEM Rule 19.37(2)?

☒ Yes

☐ No

If your answer is "No", please explain why.

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19. Do you agree with our proposed MB / GEM Rule amendment to delegate authority to the Listing Department to direct resumption of trading and to provide for an accelerated review procedure?

☒ Yes

☐ No

If your answer is "No", please explain why.

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