

COMBINED CONSULTATION PAPER
ON PROPOSED CHANGES TO THE
LISTING RULES

January 2008



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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CHAPTER 1 INTRODUCTION

Purpose of the Paper

- A. The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx) reviews the Rules from time to time to ensure that they address developments in the market and international best practice and also represent acceptable standards which help to ensure that investors have and can maintain confidence in the market.
- B. By this consultation paper, the Exchange seeks comments from the market regarding a number of substantive policy issues as well as some minor amendments to the Main Board Listing Rules and the Growth Enterprise Market (GEM) Listing Rules. (The purpose of including the minor amendments is discussed at paragraph E below.)
- C. In an effort to maximise the efficiency with which we consult the market, the Exchange has set out in this paper a number of different policy issues on which we seek market input. The substantive policy issues addressed in this paper are set out in **Chapter 2**. The issues are arranged in the order of the relevant Listing Rules.
- D. In some cases, the issues are raised for discussion only. That is, the Exchange has an open mind about the policy direction and therefore does not propose a preferred position. In other cases, the Exchange will be guided by the market's views but, to assist the market to consider the issue, we propose certain specific Rule amendments.
- E. Also set out in **Chapter 3** of this paper are a number of proposed minor Rule amendments. The policy direction for these issues is not in question. There is intended to be no change in existing policy. The Exchange simply invites comments on the draft amendments with a view to ensuring that there are no unintended consequences (including ambiguities) arising from the manner in which the Rule amendments have been drafted and to identify ambiguities within the draft text.

How to Respond to this Consultation Paper

- F. The Exchange invites market users and other interested parties to submit written comments on the matters discussed in this paper no later than **7 April 2008**. Responses to the paper should, if possible, be made by completing and returning the questionnaire booklet which is available at <http://www.hkex.com.hk/consul/paper/consultpaper.htm>, by one of the following methods:

By mail or hand delivery to: Corporate Communications Department
Re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

By fax to: (852) 2524-0149

By email to: cvw@hkex.com.hk

- G. HKEx's submission enquiry number is (852) 2840-3844.
H. HKEx's policy on handling personal data is set out in Appendix 20.

Next Step

- I. The Exchange will consider the comments received and, if appropriate, develop (or further progress) Rule amendments to implement the final agreed conclusions. As usual the Exchange will work with the Securities and Futures Commission (SFC) in developing the consultation conclusions and any relevant Rule amendments.

CHAPTER 2 DISCUSSION OF SUBSTANTIVE POLICY ISSUES

Issue 1: Use of websites for communication with shareholders

Background

- 1.1 Use of electronic communications has become increasingly widespread in recent years amid, among other things, concerns about costs and the environment.
- 1.2 Annual reports, in particular, can be quite voluminous and tend to be sent out at certain peak times of the year. Currently, the Rules require annual reports, and other corporate communications required under the Rules, to be distributed in physical form. However, the Rules do permit a listed issuer, subject to applicable laws and regulations and the listed issuer's own constitutional documents and provided the shareholder specifically consents, to make available corporate communications to the shareholder using electronic means.
- 1.3 The Exchange proposes amendments to the Rules which would facilitate the greater use of listed issuers' websites for making available to shareholders corporate communications required under the Rules including, but not limited to, annual reports.

Current requirements

Hong Kong law

- 1.4 In Hong Kong, Table A of the Companies Ordinance permits written communications between the company and its members (except appointments of proxy) to be given in the form of an electronic record if the recipient consents to it being given to him in that form. The Electronic Transactions Ordinance also permits any information that is required by law to be given in writing to be sent in electronic form by electronic means if the recipient so agrees.
- 1.5 The Exchange understands that amendments to the Companies Ordinance are currently being considered to facilitate the greater use of electronic communications, including the use of websites for communication by companies with its shareholders, but that the proposals have yet to be finalised.

Issuers incorporated outside Hong Kong

- 1.6 There are no provisions under the companies legislation of Bermuda, the Cayman Islands or the Mainland expressly permitting or preventing companies incorporated in those respective jurisdictions to send corporate communications to their shareholders by means of electronic communications.
- 1.7 Many listed issuers incorporated outside Hong Kong have availed themselves of the current provisions of the Rules (see paragraphs 1.9 to 1.12 below) to make available only the electronic versions of corporate communications to consenting shareholders.
- 1.8 Main Board Rule 2.07A(1) and GEM Rule 16.04A(1) require all listed issuers, irrespective of their place of incorporation, to comply with a standard which is no less onerous than that imposed on a Hong Kong incorporated company under Hong Kong law.

The existing Rules

- 1.9 The Rules permit a listed issuer to communicate with its shareholders by electronic means subject to all applicable laws and regulations and its own constitutional documents (Main Board Rule 2.07A(1) and GEM Rule 16.04A(1)).
- 1.10 As mentioned in paragraph 1.8 above, Main Board Rule 2.07A(1) and GEM Rule 16.04A(1) require all listed issuers, irrespective of their place of incorporation, to comply with a standard which is no less onerous than that imposed on a Hong Kong incorporated company under Hong Kong law.
- 1.11 Main Board Rule 2.07A(2) and GEM Rule 16.04A(2) provide that a corporate communication may be sent to a shareholder using electronic means only where the listed issuer has previously received from that holder an express, positive confirmation in writing that the shareholder wishes to receive the corporate communication by the means and in the manner proposed by the listed issuer.
- 1.12 Though not expressly stated, communication with shareholders by means of a website is also contemplated and permitted under the Rules since it constitutes communication by electronic means. This is reflected in Main Board Rule 2.07A(4) and GEM Rule 16.04A(4) which require a listed issuer that has made available a corporate communication to its shareholders by publication on its website to ensure that such corporate communication remains available on its website on a continuous basis for at least 5 years from the date of first publication.

Overseas law and regulation

United Kingdom

- 1.13 In the United Kingdom, the recently amended Companies Act 2006 allows a company to send a document or information in electronic form to a person who has agreed (either generally for all communications or specifically for a particular document or piece of information) and where such person has not revoked that agreement.
- 1.14 The Act allows a company to pass a shareholders' resolution or make provision in its articles about publication of documents or information on a website. If it has done so, shareholders are taken to have agreed to receiving information from the company via a website if they have also been asked individually for their acceptance and have either agreed or not responded within 28 days of the company's request. Where a member has not agreed to communications in this way, the company may not ask the member again within a period of 12 months. In addition, the Act gives a shareholder the right to request a hard copy of the communication.

United States

- 1.15 In the United States, section 1.41 of the Model Business Corporation Act provides that a notice under the Act must be in writing, and notice by electronic means is written notice.
- 1.16 Under the Delaware General Corporation Law, the only general provision on shareholder communications is section 232 which sets out the general requirements with regard to notice by electronic transmission. It provides that any notice to stockholders given by a corporation under any provision of the Delaware General Corporation Law, under any provision of the certificate of incorporation or under any provision of the bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder by written notice to the corporation.

- 1.17 In July 2007, the Securities and Exchange Commission's voluntary "notice-and-access" system came into effect, providing a new method for the delivery of proxy materials to shareholders of public companies. This allows companies and other soliciting persons to satisfy proxy delivery requirements by posting proxy materials on an Internet website and sending shareholders notice of the availability of the materials. Shareholders must be provided with paper or email copies of the materials upon request. The Securities and Exchange Commission stated in a release dated 26 July 2007 that the revised rules in this regard would become mandatory for certain filers on 1 January 2008 and others on 1 January 2009 and be extended to include shareholder reports and prospectuses.

Australia

- 1.18 In Australia, the Corporations Act 2001 was recently amended such that shareholders of public companies and members of registered managed investment schemes (i.e. collective investment schemes) will now have to request a hard copy of the entity's annual report. The entities will be required only to post a copy of the annual report on their website. (There are also a couple of other compliance requirements including, most relevantly, notification to shareholders/members of the change and shareholders/members still being able to choose to receive a hard copy free of charge.)

Consultation proposals

- 1.19 Currently, a listed issuer, wherever incorporated, cannot simply refer a shareholder to the copy of its annual report (or any other corporate communication required to be sent to its shareholders) published on its website. It must send to each shareholder a hard copy of the corporate communication. This is because, under Hong Kong law and the Rules, the express consent of each shareholder concerned is required. Without the consent of the shareholder, the listed issuer is required to provide that shareholder with a hard copy.
- 1.20 The Exchange proposes to amend Main Board Rule 2.07A and GEM Rule 16.04A as follows:
- (a) to remove from Main Board Rule 2.07A and GEM Rule 16.04A the requirement for a listed issuer incorporated outside Hong Kong to comply with a standard which is no less onerous than that imposed on a Hong Kong incorporated company under Hong Kong law (Main Board Rule 2.07A(1); GEM Rule 16.04A(1)). It is not yet certain if or when the Companies Ordinance will be amended to facilitate the greater use of electronic communications with shareholders. This requirement prevents listed issuers incorporated outside Hong Kong from benefiting from amendments to the Rules in this area unless and until amendments are made to the Companies Ordinance; and
 - (b) to relax the requirement in Main Board Rule 2.07A(2) and GEM Rule 16.04A(2) for express, positive confirmation from the shareholder with regard to the use of a listed issuer's own website for communication with shareholders. We propose to allow a procedure which, if complied with, would be an acceptable alternative to express, positive confirmation under the Listing Rules. This procedure is modelled closely on that provided in the UK Companies Act with regard to the use of websites for communication with shareholders mentioned in paragraph 1.14 above. To the extent that the shareholders of the listed issuer have resolved in general meeting that the listed issuer may send or supply corporate communications to shareholders by making them available on the listed issuer's own website or the listed issuer's constitutional documents contain provision to that effect, a holder of the listed issuer's securities in relation to whom the following conditions are met would be taken to have agreed that the listed issuer may send or supply corporate communications to him in that manner if:

- the holder has been asked individually by the listed issuer to agree that the listed issuer may send or supply corporate communications generally, or the corporate communication in question, to him by means of the listed issuer’s own website; and
- the listed issuer has not received a response within the period of 28 days beginning with the date on which the listed issuer’s request was sent.

A holder would not be taken to have so agreed if the listed issuer’s request did not state clearly what the effect of a failure to respond would be or was sent less than 12 months after a previous request made to him in respect of the same or a similar class of corporate communications. The listed issuer would be required to notify the intended recipient of the presence of the corporate communication on the website, the address of the website, the place on the website where it may be accessed and how to access the corporate communication. (Such notification would need to be by whatever method the listed issuer is required to send corporate communications to the individual shareholder in question under the Rules, applicable laws and the listed issuer’s own constitutional documents. For example, if the shareholder has never expressly consented to receiving a corporate communication by electronic means, the listed issuer would need to send the notification to the shareholder using non-electronic means (e.g. by post)).

- 1.21 This relaxation of Main Board Rule 2.07A(2) and GEM Rule 16.04A(2) would be in line with the Rule amendments which came into effect on 25 June 2007 under the Exchange’s Electronic Disclosure Project which from 25 June 2008 will require, among other things, all listed issuers to have their own websites on which they must publish all corporate communications required under the Listing Rules. Where the proposed prescribed procedure has been complied with, the listed issuer will no longer need to send a hard copy or copy in electronic format of the document to shareholders (except for those who have expressly asked to be sent a copy).
- 1.22 The proposed amendments would apply not only to annual reports but to all corporate communications required under the Rules. The proposed Rule amendments are set out at Appendix 1.
- 1.23 The amendments also include:
- (a) a consequential amendment to the Note to Main Board Rule 2.07A and GEM Rule 16.04A to remove the cross-reference to the requirement under Main Board Rule 2.07A(1) or GEM Rule 16.04A(1) for a listed issuer incorporated outside Hong Kong to comply with a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong;
 - (b) an amendment to Main Board Rule 2.07A(2) and GEM Rule 16.04A(2) to make it clear that the requirement for express, positive confirmation applies both to the use of electronic means (e.g. emailing a corporate communication to a shareholder) and the use of an electronic format in place of the printed version (e.g. sending a corporate communication to a shareholder on a CD). (The requirement for express, positive confirmation would not apply where the listed issuer avails itself of the proposed new procedure relating to the use of the listed issuer’s own website described in paragraph 1.20 (b) above);
 - (c) consequential amendments to the wording of Main Board Rule 2.07A(3) and GEM Rule 16.04A(3) to refer to deemed choice on the part of a shareholder. No change is proposed to be made to a shareholder’s substantive right under this Rule always to receive a hard copy free of charge;

- (d) the listed issuer would be required to provide holders of its securities with the option of notifying the listed issuer by email of any change in their choice as to whether they wish to receive corporate communications in printed form or using electronic means or of any request to receive the corporate communication in printed form. The listed issuer must provide holders of its securities with an email address for this purpose; and
- (e) a housekeeping amendment to Main Board Rule 2.07A(4) and GEM Rule 16.04A(4) to remove the provision requiring retention of a corporate communication on the listed issuer's own website on a continuous basis for at least 5 years from the date of first publication since such a requirement is already contained in Main Board Rule 2.07C and GEM Rule 16.19.

1.24 The proposed relaxation to the Rules would only be available to listed issuers where it does not contravene the law of its place of incorporation. As mentioned in paragraph 1.4 above, Hong Kong law currently requires a company incorporated in Hong Kong to obtain the consent of the shareholder to any electronic communication to be sent to him. Therefore, the proposed amendments to the Rules would not confer any immediate benefit on a Hong Kong listed issuer. The proposed amendments would enable it to avail itself of future changes to the law in Hong Kong in this area. Unless and until the law in Hong Kong is relaxed in this regard, listed issuers incorporated outside Hong Kong might be regarded as having an advantage over listed issuers incorporated in Hong Kong.

1.25 As mentioned in paragraph 1.23(b) above, express, positive confirmation from a shareholder would still be required for the sending of a corporate communication by a listed issuer to the shareholder on a CD. There are comments in the market that this requirement should be removed. However, we note that in the United Kingdom, for example, consent from a shareholder would still be required for this.

Consultation questions

1.26 *Question 1.1:* Do you agree that the Rules should be amended so as to remove the requirement that all listed issuers must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong with regard to how they make corporate communications available to shareholders (as proposed in paragraph 1.20(a))? Please provide reasons for your views.

1.27 *Question 1.2:* Do you agree that the Rules should be amended so as to allow a listed issuer to avail itself of a prescribed procedure for deeming consent from a shareholder to the listed issuer sending or supplying corporate communications to him by making them available on its website? Please provide reasons for your views.

1.28 *Question 1.3:* In order for a listed issuer under our proposal to be allowed to send or supply corporate communications to its shareholders by making them available on its website, its shareholders must first have resolved in general meeting that it may do so or its constitutional documents must contain provision to that effect. Do you concur that, as in the UK, the listed issuer should also be required to have asked each shareholder individually to agree that the listed issuer may send corporate communications generally, or the corporate communications in question, to him by means of the listed issuer's website and to have waited for a specified period of time before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer's website? Please provide reasons for your views.

1.29 *Question 1.4:* If your answer to *Question 1.3* is “yes”, do you agree that:

- (a) the specified period of time for which the listed issuer should be required to have waited before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer’s website should be 28 days;
- (b) where a shareholder has refused to a corporate communication being made available to him solely on the listed issuer’s website, the listed issuer should be precluded from seeking his consent again for a certain period of time; and
- (c) if your answer to (b) is “yes”, should the period be 12 months?

Do you have any other comments you consider necessary to supplement your reply to this *Question 1.4*?

1.30 *Question 1.5:* Do you consider that the Rules should be amended to remove the requirement for express, positive confirmation from a shareholder for the sending of a corporate communication by a listed issuer to the shareholder on a CD? Please provide reasons for your views.

1.31 *Question 1.6:* Do you agree that the draft Rules at Appendix 1 will implement the proposals set out above? Please provide reasons for your views.

Issue 2: Information gathering powers

- 2.1 In order to ensure the smooth operation of the market, and for the Exchange to carry out effectively its regulatory functions, the Exchange needs to have general powers to gather information from listed issuers.
- 2.2 From time to time it is necessary for the Exchange to make enquiries of listed issuers. The ability to obtain prompt and accurate responses to these enquiries is essential to the Exchange in carrying out the task of eliminating uncertainties created by press speculation and rumours in the market. Such enquiries are often made prior to any unusual price and/or volume movements in the issuer’s shares.
- 2.3 The Exchange’s enquiries of an issuer may also be significant for the purpose of verifying compliance with the Rules.
- 2.4 The Rules currently contain some general provisions (e.g. Main Board Rule 13.10) which empower the Exchange to make enquiries of listed issuers. In addition, the Director’s Undertaking also provides some assurance that the directors will use their best endeavours to procure an issuer’s compliance with the Rules and to cooperate in any investigation conducted by the Listing Division.
- 2.5 However, the Exchange is of the view that the current Rules fall short of providing an express and unambiguous basis upon which the Exchange may exercise general powers to request information.
- 2.6 The Exchange notes that other jurisdictions such as the United Kingdom, Australia and Singapore have, in their respective rules, express provisions that enable their exchange regulators to gather information from their listed issuers.
- 2.7 In practice, the absence of such an express provision in the Rules has not inhibited enquiries from being made of listed issuers by the Listing Division. Most issuers have been happy to assist the Exchange with its enquiries. Only in a small number of cases has the Exchange experienced difficulties.

- 2.8 Nevertheless, the Exchange considers that this aspect of the Rules is so fundamental to the Exchange's ability to perform its statutory duty of maintaining an orderly, informed and fair market that it should be drafted in such a way that it is both distinct and readily understood. An express provision in the Rules would promote clarity and certainty, thereby aiding effective regulation.
- 2.9 The proposed Main Board Rule amendments are set out at Appendix 2. The Exchange proposes to make equivalent amendments to the GEM Rules.

Consultation questions

- 2.10 *Question 2.1:* Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information?
- 2.11 *Question 2.2:* Do you agree that the draft Main Board Rule 2.12A at Appendix 2 will implement the proposal set out in *Question 2.1* above?

Issue 3: Qualified accountants

Background

- 3.1. Rule 3.24 of the Main Board Rules (Rule 5.15 of the GEM Rules) requires a listed issuer to employ a qualified accountant at all times on a full time basis.
- 3.2. The Rule requires that the qualified accountant must satisfy two conditions:-
- (a) he/she must be a member of senior management of the listed issuer (preferably an executive director); and
 - (b) the person must be a member of the Hong Kong Institute of Certified Public Accountants (HKICPA) or a similar body of accountants recognised by the HKICPA for the purpose of granting exemptions from the examination requirement for membership of HKICPA.
- 3.3. The underlying purpose of the Rule is to ensure that a listed issuer has at its disposal a competent individual to assist it in fulfilling its continuing financial reporting obligations and in developing and maintaining effective internal controls for proper financial reporting. The Rule was first introduced to the GEM market in 1999. In March 2004 the Exchange introduced a similar requirement to the Main Board Rules as part of its overall initiatives to strengthen the corporate governance of issuers. The then existing GEM Rule was amended to align with the proposed Main Board Rule.
- 3.4. Since its introduction in 2004, the requirement for a qualified accountant, in its current formulation, has been the subject of various criticisms. Issuers have raised concerns about costs, the practicality of including a person with the prescribed qualification in their senior management, discrimination against accountants with alternative accounting qualifications and the difficulty for Mainland companies to identify and retain a suitably qualified accountant who is a member of HKICPA.
- 3.5. Given the concerns raised, and in light of changes in the market and developments in financial reporting standards since 2004, the Exchange considers it appropriate to review the Rules relating to the requirements concerning the appointment of a qualified accountant.

- 3.6. Under the Rules, financial reports must be prepared in compliance with either Hong Kong Financial Reporting Standards (HKFRSs) or International Financial Reporting Standards (IFRSs) issued by the International Accounting Standards Board (IASB). When the Rule was introduced in 1999 for GEM issuers, it was felt that a member of HKICPA or a member of an accounting body recognised by it would have the requisite skills to monitor and ensure compliance with HKFRSs or IFRSs.
- 3.7. Over the past several years an increasing number of countries and jurisdictions have adopted or are in the process of adopting IFRSs as their national accounting standards. HKFRSs became fully converged with IFRSs as from 1 January 2005 and the IASB's website indicates that as at 30 September 2007 nearly 100 countries require, permit the use of or have a policy of convergence with IFRSs. These countries include the world's major stock markets in Europe, the United Kingdom, Australia and the United States.
- 3.8. In 2004 when the Rule was introduced for Main Board issuers, accounting standards in the Mainland were substantially different from HKFRSs and IFRSs. However, in February 2006, the Ministry of Finance announced the implementation of new Mainland accounting standards that brought substantial convergence between Mainland accounting standards and IFRSs. With effect from 1 January 2007, all companies incorporated and listed in the Mainland must apply the new Mainland accounting standards. Moreover, on 6 December 2007, the China Accounting Standards Committee and the HKICPA signed a joint declaration on the convergence of China Accounting Standards for Business Enterprises (ASBEs) and HKFRSs. The two parties declared their commitment to eliminate differences and to maintain the convergence of ASBEs and HKFRSs on an ongoing basis.
- 3.9. As accounting bodies in many jurisdictions including Hong Kong have adopted or are converging with IFRSs, the premise that only accountants with a specified qualification, such as membership to HKICPA, are likely to have the necessary knowledge and skill has become much less valid. Moreover, a new Hong Kong statutory regulator, the Financial Reporting Council (FRC), has been established to help ensure the proper observance of standards on financial reporting by listed companies in Hong Kong. The FRC is an independent body with statutory authority to investigate into financial statements of companies listed in Hong Kong. The FRC's major tasks include enforcing any necessary changes to a company's financial statements where it considers appropriate and investigating into the conduct and the work carried out by auditors. There is, therefore, a heightened awareness of the need to present high quality financial statements in compliance with the Rules and relevant accounting standards.
- 3.10. When the Rule was introduced in 2004 for Main Board issuers and the then existing GEM Rule was amended, corporate governance practices were generally less developed than at present and the Exchange considered, for the reasons noted above, that it was necessary that an accountant with specific qualifications should be appointed to senior management. However, since the introduction in January 2005 of the Code on Corporate Governance Practices and the requirements to publish Corporate Governance Reports and establish an Audit Committee, listed issuers have now a greater appreciation of the importance of good financial reporting which is an integral part of good corporate governance.
- 3.11. The board of directors of a listed issuer is primarily responsible for an issuer's periodic financial statements pursuant to Main Board Rule 13.04 and C.1.3 of the Code on Corporate Governance Practices and GEM Rule 17.03 and C.1.3 of the Code on Corporate Governance Practices. The board is also primarily responsible for maintaining sound and effective internal controls over financial reporting to ensure Rules compliance.

- 3.12. To assist the directors in their collective responsibility of monitoring compliance with financial reporting matters, there are additional checks and balances under the Rules which are set out as follows:-
- (a) Prior to listing, sponsors are required to provide a declaration that the new applicant has established procedures, systems and controls which are adequate to enable the directors to comply with the Rules and to make a proper assessment of the financial position and prospects of the issuer and its subsidiaries, both before and after listing. (*Main Board Rule 3A.15(5); GEM Rule 6A.15(5)*)
 - (b) The listed issuers' Audit Committee has an oversight role on financial reporting and internal control matters, and is responsible for liaison with external auditors on accounting and auditing issues. (*Main Board Rules 3.21 to 3.23 and Code on Corporate Governance Practices C.3.3 and GEM Rules 5.28 to 5.33 and Code on Corporate Governance Practices C.3.3*)
 - (c) External auditors provide independent external advice and verification that financial reporting standards and compliance matters are properly dealt with. They are responsible for carrying out an independent audit on a listed issuer's annual financial statements (*Main Board Rules 19.20 & 19A.31; GEM Rules 24.13 & 25.25*). They may also be engaged to assist in the review of other periodic financial reports or provide ad hoc advice on accounting related matters.
- 3.13. In view of these developments the Exchange has concluded that it would be appropriate to remove the requirement for a qualified accountant from both the Main Board and GEM Rules. These amendments will provide greater flexibility to listed issuers to determine how to meet the listed issuer's specific needs and to maintain effective internal controls for proper financial reporting.
- 3.14. The Exchange expects that qualified professional accountants will continue to play an important role in meeting these needs. Issuers are reminded of the importance of the integrity of internal controls over their financial reporting systems and are expected to employ accountants with appropriate qualifications to meet their specific needs.

Consultation proposals

- 3.15. For the reasons stated in paragraphs 3.4 to 3.14 above, the Exchange proposes to remove from the Rules the requirement for a qualified accountant for both Main Board and GEM issuers.

Consultation questions

- 3.16. *Question 3.1:* Do you agree that the requirement in the Main Board Rules for a qualified accountant should be removed? Please provide reasons for your views.
- 3.17. *Question 3.2:* Do you agree that the requirement in the GEM Rules for a qualified accountant should be removed? Please provide reasons for your views.

Issue 4: Review of sponsor's independence

The existing Rules

- 4.1 Main Board Rule 3A.07 states that at least one sponsor of a new applicant must be independent from the new applicant. Main Board Rule 3A.07 further states that a sponsor is not independent if any of the specified circumstances set out in Sub-rules (1) to (10) exist as at the time of making the declaration pursuant to Main Board Rule 3A.13.
- 4.2 Under Main Board Rule 3A.13, a sponsor must submit to the Exchange a declaration relating to its due diligence work in a prescribed form "as soon as practicable after the hearing of the new applicant's listing application by the Listing Committee but on or before the date of issue of the listing document".
- 4.3 Strict adherence to Main Board Rule 3A.07 could lead to an anomalous result, in that a sponsor who is not independent during the whole application process and only becomes independent on the date the declaration is required to be submitted under Main Board Rule 3A.13 could still claim to be an independent sponsor because the circumstances that affect the sponsor's independence have "ceased to exist" on the date the declaration is made pursuant to Main Board Rule 3A.13.
- 4.4 The Main Board Rules and the GEM Rules as regards sponsors are couched in the same language. The present discussion of the Main Board Rules is equally applicable to the GEM Rules, unless otherwise stated.

Consultation proposal

- 4.5 To address the anomaly which might arise under the Rules, the Exchange proposes to amend Main Board Rule 3A.07 to clarify that a sponsor's independence is assessed throughout the entire listing process, that is, from the earlier of the date when the sponsor agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of stabilisation period, whichever is the later.
- 4.6 The proposed amendments to the Main Board Rules are set out at Appendix 4. The Exchange proposes to make equivalent amendments to the GEM Rules.

Consultation questions

- 4.7 *Question 4.1:* Do you agree that the Rules regarding sponsor's independence should be amended such that a sponsor is required to demonstrate independence at any time from the earlier of the date when the sponsor agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of stabilisation period, whichever is the later? Please provide reasons for your views.
- 4.8 *Question 4.2:* Do you agree that the draft Rules at Appendix 4 will implement the proposals set out above? Please provide reasons for your views.

Issue 5: Public float

Issue 5A: Minimum level of public float

Background

- 5.1 As set out in the Consultation Paper on Proposed Amendments to the Listing Rules relating to Initial Listing and Continuing Listing Eligibility and Cancellation of Listing Procedures published in July 2002 (the 2002 Consultation), apart from acting as an indicator of the level of the public's interest in an issuer's shares, the public float requirement seeks to ensure, among other things, an open market in the securities for which listing is sought.
- 5.2 To provide an open, fair and orderly market for the investing public, it is essential to maintain a certain level of public float with a view to ensuring the availability of a minimum level of shares for trading and minimising the possibility of market manipulation. In this regard, the Main Board Rules require, among other things, a minimum public float of 25% of the issuer's total issued share capital. This percentage can be lowered at the discretion of the Exchange if the issuer's market capitalisation exceeds a certain threshold.
- 5.3 Pursuant to the amendments to the Rules effective on 31 March 2004 following the 2002 Consultation, the floor with regard to the minimum percentage of public float that the Exchange may at its discretion grant was raised from 10% to 15%. This lower percentage of public float may only be accepted if the issuer's market capitalisation at the time of listing exceeds HK\$10 billion, instead of HK\$4 billion prior to the rule change in March 2004.
- 5.4 It has been our current practice to allow the minimum public float as the higher of the prescribed minimum according to the Rules and that held by the public immediately after completion of the offering and upon exercise of the over-allotment option.
- 5.5 In recent years there has been a shift in the size of IPO issuers towards larger market capitalisation. Certain sponsors and overseas issuers have also indicated certain difficulties in complying with the public float requirement because of specific capital-related requirements in their home jurisdictions. This calls for the need to review the current Rules with a view to giving prospective applicants with large market capitalisation more flexibility to determine their capital structure, while ensuring an open market for the securities concerned and adequate protection to investors.

The existing Rules

- 5.6 Rule 8.08 of the Main Board Rules states that there must be an open market in the securities for which listing is sought.
- 5.7 Rule 8.08(1)(a) provides that at least 25% of the issuer's total issued share capital must at all times be held by the public.

- 5.8 Rule 8.08(1)(d) states that the Exchange may, at its discretion, accept a lower percentage of public float between 15% and 25% in the case of issuers with an expected market capitalisation at the time of listing of over HK\$10 billion, where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market to operate properly with a lower percentage, among other things.
- 5.9 Note(1) of Rule 8.08(1)(b) provides, among other things, that the Exchange will normally require suspension of trading in an issuer's securities where the percentage of its public float falls below 15% (or 10% in the case of an issuer that has been granted a public float waiver under Rule 8.08(1)(d) at the time of listing).

Consultation proposal and rationale

- 5.10 The proposed amendments to Rule 8.08(1)(d) in respect of the minimum public float requirement for the Main Board issuers is set out at Appendix 5 and summarised as follows:

Market capitalisation	Proposed minimum public float
Not exceeding HK\$10 billion	25%
Over HK\$10 billion but not exceeding HK\$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$2.5 billion (determined as at the time of listing); and (ii) 15%
Over HK\$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$6 billion (determined as at the time of listing); and (ii) 10%

- 5.11 While the threshold for 15% public float is set at HK\$10 billion, a public float of 10% is proposed for companies with market capitalisation of over HK\$40 billion.
- 5.12 The 10% public float is proposed in light of the need to ensure the presence of a meaningful level of shares available for trading and an open market for the securities concerned, thus reducing the possibility of market manipulation. Reference has been made to the similar requirement in other relevant jurisdictions and none has a minimum public float in percentage terms of less than 10%. A threshold of HK\$40 billion in market capitalisation is set taking into account the recent increase in the size of IPOs. As a percentage of the total newly listed companies of the year, those with market capitalisation of over HK\$40 billion in the period of 2005 up to early December 2007 have increased from approximately 5% to 10%.
- 5.13 Pursuant to the current Rules, an issuer with market capitalisation marginally exceeding the prescribed threshold may be subject to a minimum public float of a lower absolute value than that required of companies with smaller market capitalisation. For example, the minimum public float possible for an issuer with market capitalisation of HK\$10.1 billion is HK\$1.5 billion, while that for an issuer with market capitalisation of HK\$9.9 billion is approximately HK\$2.5 billion. To rectify this situation, the minimum public float for companies with market capitalisation above the threshold is proposed to be set at the maximum public float required of companies with market capitalisation below the threshold.

- 5.14 The present formulation of Rule 8.08(1)(d) is worded as a discretion. For enhanced regulatory clarity and certainty, the above proposal will be applicable to all issuers so long as they meet the relevant market capitalisation thresholds, hence removing the need for applying for waivers from the Exchange. Issuers will also be allowed to go with the minimum public float as prescribed in the proposed Rule regardless of their actual public float attained immediately upon listing or upon exercise of the over-allotment option, as the case may be. This is intended to give issuers with public float at the time of listing above the prescribed minimum more flexibility in their future fund-raising activities.
- 5.15 No change is proposed to the suspension arrangement set out in Note(1) of Rule 8.08(1)(b) as it is not inconsistent with our proposed minimum public float requirement.
- 5.16 For the avoidance of doubt, the expected issue price of the securities to be listed on the Exchange will be used as a basis for determining the market value of all issued share capital, including that of the other class(es) of securities that are unlisted, or listed on other regulated markets.
- 5.17 Should the above be adopted, it is proposed that the revised Rule 8.08(1)(d) will become effective immediately when amendments of the Rule are made without retrospective effect. This date will be made known to the market with advance notice.

Consultation questions

- 5.18 *Question 5.1:* Do you agree that the existing Rule 8.08(1)(d) should be amended?
- 5.19 *Question 5.2:* If your answer to *Question 5.1* is “yes”, do you agree that the existing Rule should be amended as proposed at Appendix 5? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.
- 5.20 *Question 5.3:* Do you have any other comments on the issue of public float? Please be specific in your views.

Issue 5B: Constituents of “the public”

Background

- 5.21 To assess an issuer’s compliance with Rule 8.08, it has been our practice to assess whether a shareholder should be regarded as a member of “the public” pursuant to Rule 8.24.
- 5.22 Rule 8.24 states that the Exchange will not regard any connected person of the issuer as a member of “the public” or shares held by a connected person as being “in public hands.” In addition, the Exchange will not recognise as a member of “the public”:-
- (a) any person whose acquisition of securities has been financed directly or indirectly by a connected person;
 - (b) any person who is accustomed to take instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.

- 5.23 As defined in the Listing Rules, connected persons include, among others, a promoter (for PRC issuers), a director, chief executive or substantial shareholder (i.e. holding 10% or more of shares) of a listing applicant.
- 5.24 In recent years, the Exchange has seen a significant increase in the number of listing applications where strategic, and/ or what are commonly referred to as “cornerstone” investors are introduced before or during the IPO process.
- 5.25 Based on the Exchange’s experience in vetting these listing applications, it is not uncommon for the Exchange to come across situations where a shareholder with less than 10% (but usually more than 5%) interest in an issuer being in a position to exert considerable influence over the issuer e.g. having board representation, active implementation of cooperation plan etc.
- 5.26 While upon plain reading of Rule 8.24 such shareholders may not be considered “non-public”, their close relationship with the issuer or its connected persons may give rise to concerns as to the genuineness of their “public” status.
- 5.27 One way to account for these situations is to take a qualitative approach to consider all facts and circumstances of each application and determine whether a shareholder is a member of “the public” on a case-by-case basis. This may, however, run contrary to the need to provide regulatory clarity and certainty. Accordingly, there is the need to examine the possibility of introducing certain other objective criteria to determine the constituents of “the public” in light of the market developments.

The existing Rule

- 5.28 Rule 8.24 states that:

“The Exchange will not regard any connected person of the issuer as a member of ‘the public’ or shares held by a connected person as being ‘in public hands’. In addition the Exchange will not recognize as a member of ‘the public’:-

- (1) any person whose acquisition of securities has been financed directly or indirectly by a connected person;*
- (2) any person who is accustomed to take instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.”*

Consultation proposal and rationale

- 5.29 Rule 8.24 is proposed to be amended to include any person who is entitled to exercise, or controls the exercise of, 5% or more of the voting power at any general meeting of the issuer, regardless of such person’s involvement in the business of the issuer or relationship with the issuer and/ or its connected persons.

5.30 The proposed revised formulation of Rule 8.24 is at Appendix 5 with (1) therein being the quantitative criterion introduced.

5.31 It is noted that in accordance with Part XV of the Securities and Futures Ordinance, individuals and corporations who are interested in 5% or more of any class of voting shares in a listed corporation, among others, must disclose their interests, and short positions, in voting shares of the listed corporation. Accordingly, there will be publicly available information to facilitate the administering of the revised Rule 8.24 should the proposed amendment be adopted.

Consultation questions

5.32 *Question 5.4:* Do you agree that the existing Rule 8.24 should be amended?

5.33 *Question 5.5:* If your answer to *Question 5.4* is “yes”, do you agree that the existing Rule should be amended as proposed at Appendix 5? Alternatively, do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

Issue 5C: Market float

Background

5.34 Rule 8.08 seeks to ensure the maintenance of an open market in the securities for which listing is sought. Nevertheless, it may not necessarily reflect the liquidity of shares in the market as often a portion of the shares counted as part of the public float are subject to a lock up following the listing.

5.35 Recently, we have seen a growing number of listing applications with strategic and/ or “cornerstone” investors introduced before or during the IPO process. The shares so involved are typically subject to lock up, ranging from six months to three years. In cases where a large portion of shares offered are allocated to these strategic and/or “cornerstone” investors and that they are subject to lock up, the true liquidity of the shares post listing may be significantly constrained or distorted. It may also increase the potential risk of market manipulation as a result of the limited liquidity.

5.36 For the purpose of ensuring the availability of readily tradable securities in the market, the introduction of the concept of market float to the Listing Rules can, therefore, be considered.

Consultation proposal and rationale

5.37 Market float is a sub-set of the public float and indicates the availability of tradable securities in the market as determined at the time of listing. A minimum level of market float is proposed to be set, and issuers are required to meet that minimum level at the time of listing.

5.38 In light of the different lengths of lock up period of shares and the need to differentiate them in this regard, it is suggested that shares subject to lock up of more than six months should not be counted as part of the market float.

- 5.39 To afford investors with sufficient information on the market float, we propose that there should be appropriate disclosure in the initial listing document of the attained level of market float and the lock up arrangements with the “non-public” shareholders pursuant to the amended Rule 8.24 proposed at Appendix 5, the sponsor, the underwriter and/or the issuer.

Consultation questions

- 5.40 *Question 5.6:* Do you consider that there is the need to regulate the level of market float?
- 5.41 *Question 5.7:* If your answer to *Question 5.6* is “yes,” do you have suggestions as to how it should be regulated, e.g. in terms of percentage or value, or a combination of both? Please provide reasons for your views.

Issue 6: Bonus issues of a class of securities new to listing

- 6.1 To ensure an open, fair and orderly market in the securities for which listing is sought, the Main Board Rules relating to the spread of holders of securities were amended in March 2004 to require, in the case of a class of securities new to listing, a minimum of 300 holders and not more than 50% of the securities in public hands to be beneficially owned by the three largest public shareholders under Main Board Rules 8.08(2) and 8.08(3) respectively.
- 6.2 The GEM Rules have similar requirements on the spread of holders of securities at the time of listing. However, pursuant to GEM Rule 11.23(3)(b)(ii), the requirement for at least 100 public holders is disapplied for a new class of securities involving options, warrants, or similar rights to subscribe or purchase shares where the new securities are offered to existing holders of the issuer’s securities by way of bonus issue.
- 6.3 The Exchange recognises that, where a new class of securities (normally options, warrants or similar rights to subscribe or purchase securities) is distributed to existing shareholders as a bonus issue, there are practical difficulties in assessing whether the minimum spread of holders requirement described above can be met due to practical difficulties faced by issuers in determining its beneficial shareholders after listing.

Consultation proposals

- 6.4 The Exchange proposes to disapply the requirement for a minimum spread of securities holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) in the event of a bonus issue of a new class of securities involving options, warrants, or similar rights to subscribe or purchase shares. This proposal would align the requirements for Main Board issuers with the current GEM Rules requirements.
- 6.5 The above proposal operates on the basis that there is an open market in the listed shares, and since the new class of securities is distributed as a bonus issue pro rata to existing shareholders, there would be an open market in the new class of securities to be listed. However, where the Exchange has reason to believe that the shares of an issuer may be concentrated in the hands of a few shareholders, the proposed exemption should not be available.

- 6.6 The Exchange proposes to make reference to announcements on high concentration of shareholding made by listed issuers pursuant to Main Board Rule 13.34(a) or public information, for example, press releases issued by the SFC in this connection. We consider it appropriate from a practical point of view to establish a time limit on the applicability of the relevant information. In this regard, we suggest a high concentration announcement made within the five years preceding the date of the announcement on the proposed bonus issue would be a reasonable case to indicate concern with high concentration of shareholding.
- 6.7 The proposed Rule amendments are set out at Appendix 6.

Consultation questions

- 6.8 *Question 6.1:* Do you agree that the requirement for a minimum spread of securities holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) should be disapplied in the event of a bonus issue of a class of securities new to listing? Please provide reasons for your views.
- 6.9 *Question 6.2:* Do you consider it appropriate that the proposed exemption should not be available where the listed shares of the issuer may be concentrated in the hands of a few shareholders? If so, do you consider the five-year time limit to be appropriate. Please provide reasons for your views.
- 6.10 *Question 6.3:* Do you agree that the draft Rules at Appendix 6 will implement the proposals set out above? Please provide reasons for your views.

Issue 7: Review of the Exchange's approach to pre-vetting public documents of listed issuers

- 7.1 The Exchange proposes to amend the Rules and its administrative practice in respect of the vetting of disclosure materials of listed issuers. The objective of the proposed changes is to further shift the Exchange's regulatory focus from pre-vetting towards post-vetting, monitoring and enforcement.
- 7.2 In summary, the Exchange proposes the following changes:
- (a) Announcements
- The Exchange's intention is to cease pre-vetting all announcements of listed issuers as a routine matter within one year following the Rules being amended. To facilitate compliance and a smooth transition to the new approach, the changes are proposed to be implemented in two phases.

Commencing with the introduction of the first phase, only the following announcements will be pre-vetted:

- (i) announcements for transactions or arrangements that require shareholders' approval under the notifiable transaction requirements in the Rules; and
- (ii) almost all connected transactions.

Commencing with the introduction of phase 2, the Exchange will no longer pre-vet any announcements although listed issuers may consult the Exchange on compliance issues before publishing an announcement.

(b) Circulars

The Exchange's intention is to reduce pre-vetting of circulars of listed issuers by focusing the Exchange's resources on transactions or matters that pose a higher risk to Rule compliance. Consequently, the Exchange proposes to amend the Rules to:

- (i) codify the Exchange's current practice in relation to pre-vetting circulars for significant transactions or arrangements; and
- (ii) remove from the Rules pre-vetting requirements in respect of circulars for matters of a routine nature that normally do not raise material regulatory concerns, including:
 - circulars for proposed amendments to listed issuers' Memorandum and Articles of Association; and
 - explanatory statements relating to listed issuers purchasing their own shares on a stock exchange.

Proposals in relation to announcements

Background

7.3 Currently, the Rules require listed issuers to submit drafts of their announcements for certain matters and/or transactions to the Exchange for review and comment before the announcements are issued.

7.4 Set out below (Table 7A) is a summary of the pre-vetting requirements applicable to listed issuers' announcements, which are currently in the Rules, as well as a brief description of the matters and/or transactions to which such documents relate.

Table 7A: Summary of current pre-vetting requirements applicable to announcements

	Matter/transaction	Pre-vetting requirements	
		Main Board Rules	GEM Rules
1.	Proposed amendments to issuer’s Memorandum or Articles of Association or equivalent documents	13.52(3)	17.53(3)
2.	Share option schemes under Main Board Chapter 17/GEM Chapter 23	17.06	23.06
3.	Pledging or charging of interests in issuer’s securities by initial management shareholder or significant shareholder	N/A	17.53(4)
4.	Trading arrangements	13.52(1), PN 11 – Para 4	17.53(1)
5.	Issue of new or further securities (other than pursuant to capitalisation issue or a scrip dividend scheme)	13.52(1)	17.53(1)
6.	Takeovers, mergers or offers	13.52(2), 14.79	17.53(2), 19.79
7.	Transactions under Main Board Chapter 14/GEM Chapter 19	14.03, 14.34(2)	19.03, 19.34(2)
8.	Connected transactions	14A.47(2)	20.47(2)

7.5 In addition to the specified circumstances referred to in Table 7A above, the Exchange may request that it reviews, prior to publication, an announcement that is not strictly subject to pre-vetting requirements under the Rules. The Exchange may indicate that such announcements must not be issued until the Exchange has confirmed to the issuer that it has no further comments. Typically, this may be the case where:

- (a) the announcement is made in relation to enquiries and concerns about compliance with applicable laws and regulations or the Rules;
- (b) the announcement involves unusual or novel issues; or
- (c) the listed issuer is seeking guidance from the Exchange on, or making a request for modification of or dispensation with, certain Rules.

7.6 Since August 2006, the Exchange has augmented the guidance contained in the Rules with the “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements”¹ published on the Exchange and GEM websites. The Guide is intended to assist listed issuers to meet certain of their continuing obligations under the Rules. It aims to identify whether particular announcements require pre-vetting and provides cross-references to the relevant Rule requirements.

7.7 The responsibility for disclosure of information and compliance with Rule requirements rests firmly with the listed issuers and their directors. The pre-vetting requirements allow the Exchange to monitor listed issuers’ compliance with the Rules through reviews of listed issuers’ announcements before their publication. Generally, the Exchange makes comments that can be categorised broadly as follows:

- (a) comments relating to disclosure requirements as to the content of the announcement under the Rules;

¹ The Guide was formerly named “Guide on pre-vetting requirements for announcements” when it was first published in August 2006. It was subsequently updated and renamed in June 2007.

- (b) comments on issues concerning compliance with specific Rule requirements applicable to the matters/transactions which are the subject of the announcement; and
- (c) comments on issues concerning trading arrangements for listed securities that may affect an orderly market for trading in the relevant securities.

Reasons for proposed changes to pre-vetting approach

7.8 Whilst the commenting process has contributed to the quality of disclosure and Rule compliance, the Exchange must also consider the areas of concern set out below when formulating its proposed way forward in relation to vetting listed issuers' announcements.

- (a) Misallocation of responsibility for corporate disclosures

It is listed issuers' responsibility to take all reasonable care to ensure that information disclosed in announcements is complete and not false, misleading or deceptive, and that it complies with the requirements of the Rules.

Extensive pre-vetting raises a concern about over-reliance by listed issuers on the commenting process to deal with sub-standard initial drafts and other compliance issues.

- (b) Delay in dissemination of information by listed issuers to the market

Announcements are often prepared under a tight schedule and need to be issued on a timely basis. Delay in information dissemination increases the frequency and duration of suspensions of trading.

Reliance on the pre-vetting process as a means of dealing with disclosure and other compliance issues inevitably delays information dissemination.

7.9 To address the concerns described above, the Exchange believes that its regulatory focus should move progressively from the current arrangements involving extensive pre-vetting towards minimal pre-vetting of announcements supplemented by post-publication scrutiny and enforcement.

7.10 This approach is consistent with the direction of the proposals of the SFC in respect of the administration of the proposed new statutory listing requirements².

7.11 As illustrated by Table 7A above, the current Rules require pre-vetting of a wide scope of announcements of listed issuers. The proposed new approach would require amendments to the Rules regarding the requirements for review prior to publication. Under the proposed amended Rules, certain or all existing pre-vetting requirements would be removed. However, the Exchange would retain its power to require listed issuers to submit draft announcements for review where the Exchange considers it necessary.

Implementation of the proposed new approach

7.12 While announcements would no longer be pre-vetted under the proposed new approach, the Exchange would continue to monitor compliance with the Rules through reviews of announcements published by listed issuers. In many cases, there also exist other means of monitoring compliance in respect of the subject matter of a listed issuer's announcement. They include, for example:

- (a) vetting draft circulars or listing documents;

² See "Consultation Conclusions on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules" published by the SFC in February 2007.
(http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/07/conclusions_stock_mkt_listing_20070228.pdf)

- (b) review of listed issuers' applications for listing where the subject matter involves the issue of new or further securities that are proposed to be listed on the Exchange; and
 - (c) review of listed issuers' applications for the Exchange's approval in respect of proposals for spin-off or withdrawal/cancellation of listing.
- 7.13 The Exchange conducted a pre-sounding exercise to solicit input into the proposals from some members of the market that would be most affected by the changes. Some groups indicated that, if listed issuers' announcements were no longer subject to mandatory pre-vetting, there might be an overall decline in the quality of disclosure. They considered that listed issuers' supplementary disclosures as well as Exchange regulatory actions would increase. Furthermore, as non-compliance with Rule requirements could only be identified after publication of an announcement, the arrangements or transactions might fail to proceed as announced.
- 7.14 The Exchange considers that such risks can be mitigated by consultation with the Exchange before publication of any announcement should a listed issuer wish to ascertain whether or to what extent any provisions of the Rules apply to the announcement and the transaction or other matter to which it relates.
- 7.15 In addition, where a listed issuer is required to issue a circular/listing document, it is encouraged to submit the draft circular/listing document to the Exchange, in confidence, for review before the disclosure obligation arises. This should enable the listed issuer to deal with any compliance issues prior to publication of the announcement.
- 7.16 In respect of matters involving a change in or which relate to or affect trading arrangements in listed securities (including suspension or resumption of trading, and cancellation or withdrawal of listing), the Exchange proposes to include specific requirements in the amended Rules:
- (a) to require listed issuers to consult the Exchange before the relevant announcement is issued; and
 - (b) to require that the announcement not include any reference to a specific date or specific timetable in respect of such matters, which date or timetable has not been agreed in advance with the Exchange, for example, timetables in relation to rights issues and share consolidations.
- 7.17 The proposed new requirements would allow the Exchange to comment on issues concerning trading arrangements that might affect an orderly market for trading in listed securities without the need to pre-vet the relevant announcements.
- 7.18 The Exchange considers that a progressive phased approach to reduction in pre-vetting activities for different types of announcements would enable a smooth transition to the new approach and address some potential concerns of listed issuers.
- 7.19 The tables on the following pages set out the announcements/categories of announcements that the Exchange will no longer pre-vet upon implementation of the Rule amendments (Table 7B); and the announcements/categories of announcements that the Exchange will continue to pre-vet for a transitional period before these announcements are also no longer subject to pre-vetting (Table 7C).

Table 7B: Announcements no longer to be pre-vetted

	Matters/transactions where announcements require pre-vetting	Reference in “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements”	Explanatory notes
1.	Proposed amendments to issuer’s Memorandum or Articles of Association or equivalent documents	12.4	These announcements normally contain: (a) an explanation of the effect of the proposed amendments; and (b) details of the proposed amendments and the revised provisions. Disclosure is expected to be straight-forward.
2.	Share option schemes under Main Board Chapter 17/GEM Chapter 23	4.18	The Rules require listed issuers to publish announcements on the outcomes of shareholders’ meetings for adoption of share option schemes. There are no other specific requirements for disclosure of matters relating to share option schemes by way of announcements. Disclosure is expected to be straight-forward.
3.	Pledging or charging of interests in issuer’s securities by initial management shareholder or significant shareholder (for GEM listed issuers only)	11.1, 11.2	The GEM Rules provide specific disclosure requirements as to the content of announcements in respect of these matters. Disclosure is expected to be straight-forward.
4.	Matters involving a change in or relating to or affecting trading arrangements in listed securities (including suspension or resumption of trading, and cancellation or withdrawal of listing)	3.1, 3.3, 3.5 to 3.8, 13.1, 14.1, 14.2	As discussed in paragraph 7.7 above, the Exchange comments on issues concerning trading arrangements for listed securities that may affect an orderly market for trading in the relevant securities. Under the proposed new approach, whilst the announcements would no longer require pre-vetting, there would be specific requirements in the amended Rules to allow the Exchange to comment on issues concerning trading arrangements that might affect an orderly market for trading in listed securities without the need to pre-vet the relevant announcements.

	Matters/transactions where announcements require pre-vetting	Reference in “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements”	Explanatory notes
5.	Issue of new or further securities (other than pursuant to capitalisation issue or a scrip dividend scheme)	4.1 to 4.17	Under the existing pre-vetting approach, the Exchange comments on issues concerning disclosure requirements as to the content of the announcements and issues concerning compliance with specific rule requirements applicable to the issue of securities. In many cases, the securities to be issued are proposed to be listed on the Exchange. In addition to vetting of announcements, the Exchange also monitors listed issuers’ compliance with the Rules in respect of the issue of securities through the reviews of listing applications.
6.	Takeovers, mergers or offers	5.1, 5.2	The Rules require that listed issuers comply with the Takeovers Code and the Code on Share Repurchases. There are generally few Rule compliance issues.
7.	Transactions under Main Board Chapter 14/GEM Chapter 19 a. Share transactions b. Discloseable transactions c. Further announcements relating to any transactions/ arrangements under Main Board Chapter 14/GEM Chapter 19 with major terms previously disclosed in published documents of the listed issuers	7.1 7.1 7.2, 7.4, 7.5	Transactions under Main Board Chapter 14/GEM Chapter 19 generally involve more compliance issues (such as how the transactions are classified or, in certain cases, whether the transactions would result in the issuers being treated as new listing applicants). They pose higher regulatory risk in terms of Rule compliance. It may be sensible to first implement the new approach to: – announcements for notifiable transactions which are relatively less significant and are not subject to shareholders’ approval under the notifiable requirements (such as share transactions and discloseable transactions); and – further announcements relating to any transactions or arrangements under Main Board Chapter 14/GEM Chapter 19 with major terms previously disclosed in published documents of the listed issuers. Disclosure in these announcements is expected to be straight-forward or involve less complex issues.

	Matters/transactions where announcements require pre-vetting	Reference in “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements”	Explanatory notes
8.	<p>Connected transactions (including continuing connected transactions)</p> <p>a. Connected transactions discloseable under Main Board Rule 14A.42(1) or GEM Rule 20.42(1)</p> <p>b. Further announcements relating to any connected transactions with major terms previously disclosed in published documents of the listed issuers</p>	<p>7.7</p> <p>7.8, 7.10 to 7.14</p>	<p>Connected transactions generally involve more compliance issues and need to be made conditional on independent shareholders’ approval unless they fall under specific exemptions in the Rules. They pose a higher risk to Rule compliance. It may be sensible to first implement the new approach to:</p> <ul style="list-style-type: none"> – announcements for connected transactions with non-executive directors discloseable under Main Board Rule 14A.42(1) or GEM Rule 20.42(1). In these cases, announcements are made pursuant to waivers granted by the Exchange and any major compliance issues should have been dealt with during processing of the waiver application; and – further announcements relating to any connected transactions with major terms previously disclosed in published documents of the listed issuers. Disclosure in the announcements is expected to be straight-forward or involve less complex issues.

Table 7C: Announcements still to be pre-vetted for transitional period

	Matters/transactions where announcements require pre-vetting	Reference in “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements”	Explanatory notes
1.	<p>Transactions under Main Board Chapter 14/GEM Chapter 19</p> <p>a. Major transactions, very substantial acquisitions, very substantial disposals or reverse takeovers under Main Board Rules 14.34 and 14.35/GEM Rules 19.34 and 19.35</p> <p>b. Transactions or arrangements shortly after listing which would result in material changes in principal business activities under Main Board Rules 14.89 to 14.91/GEM Rules 19.88 to 19.90</p> <p>c. Cash companies under Main Board Rules 14.82 and 14.83/GEM Rules 19.82 and 19.83</p>	<p>7.1</p> <p>1.8</p> <p>3.4</p>	<p>As discussed at Table 7B above, notifiable transactions and connected transactions generally involve more compliance issues and pose a higher risk to Rule compliance. It may be more appropriate to apply the new approach to transactions or arrangements that are expected to have a material impact on listed issuers or affect interests of minority shareholders at a later stage.</p>
2.	<p>Connected transactions (including continuing connected transactions) under Main Board Rules 14A.47 and 14A.56/GEM Rules 20.47 and 20.56</p>	<p>7.6</p>	

7.20 Following implementation of the proposed new approach described in Table 7B above, the Exchange will monitor the developments for a period of time (currently proposed to be about 12 months) before applying the new approach to a wider scope of announcements. The Exchange will inform the market of the proposed implementation date by announcement at least one month before implementation.

7.21 Given the proposed changes to pre-vetting, the Exchange will revise the “Guide on pre-vetting requirements for announcements and selection of headline categories for announcements” (referred to at paragraph 7.6 above). The Exchange will include in the revised guidance note, procedures relating to, and any documents that are required to be submitted by listed issuers for the purpose of, the Exchange’s review of published announcements and the subject matters of such announcements.

Follow-up action by the Exchange

- 7.22 Some market commentators have questioned the scope and basis of any follow-up enquiries or enforcement actions that the Exchange may take in the post-vetting process.
- 7.23 As set out above, it is proposed that the Exchange will be able to make follow-up enquiries with the listed issuer after the publication of an announcement. In making such enquiries, the Exchange will advise the issuer of the Exchange's basis for making the enquiries including by reference to specific Rules or the general principles under the Rules.
- 7.24 As required under Main Board Rule 13.10 or GEM Rule 17.11, the listed issuer will be expected to promptly respond to any enquiries made by the Exchange by giving to the Exchange such relevant information as is available to the issuer.
- 7.25 Where the announcement made by the issuer or the subject matter of the announcement/transaction does not comply with the Rules, the listed issuer will generally need to take remedial or rectification action, such as publication of a clarification announcement. The Exchange may also consider taking appropriate disciplinary action against the listed issuer and its directors for any serious Rule breaches. Depending on the circumstances of each case, suspension in trading of the listed issuer's securities may be warranted under the Rules (see Chapter 6 of the Main Board Rules and Chapter 9 of the GEM Rules).
- 7.26 Currently, the Rules provide that the Exchange may require a listed issuer to comply with certain specific requirements in individual cases, for example:
- (a) the Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction (see Main Board Rules 14.06(6) and 14.22 and GEM Rules 19.06(6) and 19.22);
 - (b) for the purpose of classifying a transaction, the Exchange may disregard the calculation of percentage ratios that produces anomalous results or is inappropriate to the sphere of activity of the listed issuer and substitute other relevant indicators of size (see Main Board Rule 14.20 and GEM Rule 19.20); and
 - (c) the Exchange has the specific power to deem a person to be connected and to specify that certain exemptions will not apply to particular transactions (see Main Board Rules 14A.06, 14A.11 and 14A.30 and GEM Rules 20.06, 20.11 and 20.30).
- 7.27 In the past, there were cases also where the Exchange exercised its discretion to require aggregation of transactions or compliance with other specific requirements based on the information available during the pre-vetting process. However, pre-vetting of announcements is only one of the various means by which the Exchange receives information from listed issuers in respect of their transactions or arrangements.
- 7.28 The proposed change in vetting approach should not undermine the Exchange's power given by the existing Rules to require aggregation of transactions or compliance with other specific requirements.
- 7.29 While announcements of a listed issuer would no longer be pre-vetted, the Exchange would continue to monitor compliance with the Rules through reviews of announcements or other documents published by the listed issuer, and the Exchange would retain the ability to request information from the listed issuer concerning the issuer's compliance with the Rules. The Exchange does not expect a significant change in the availability of information for the Exchange to make a decision regarding imposing any such specific requirements.

- 7.30 Whether or not announcements require pre-vetting, listed issuers should ensure compliance with the Rules before they enter into any transactions or arrangements. As indicated in the draft Rules (set out at Appendix 7), listed issuers could request guidance from the Exchange if they wished to ascertain whether any provisions in the Rules apply to the announcements or the transactions or matters to which they relate.

Consultation questions

- 7.31 *Question 7.1:* Do you agree that the Exchange should no longer review all announcements made by listed issuers? Please provide reasons for your views.
- 7.32 *Question 7.2:* Do you have any views on the proposed arrangements and issues the Exchange should consider in order to effect an orderly transition from the current approach to the new approach with a further reduction in the scope of pre-vetting of announcements?

Proposals in relation to listing documents and circulars

Background

- 7.33 In addition to announcements, public documents issued by listed issuers also include circulars, listing documents, notices of meetings, proxy forms and periodic financial reports.
- 7.34 Currently, the Rules do not require pre-vetting of, and the Exchange does not in practice pre-vet, draft notices of meetings, proxy forms or periodic financial reports.
- 7.35 Therefore, the discussion below focuses on the approach to pre-vetting of listed issuers' listing documents and circulars. By listing document we mean a prospectus, a circular or any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing. The Rules require that drafts of such documents are submitted to the Exchange for review before they are issued.
- 7.36 As to circulars, the pre-vetting Rules apply to circulars for certain matters or transactions. In practice, listed issuers submit to the Exchange for review prior to publication draft circulars in respect of a wide range of matters and transactions. Some draft circulars that are submitted are not strictly required by the Rules to be pre-vetted.
- 7.37 Set out below (Table 7D) is a summary of the pre-vetting requirements under the Rules, which are applicable to listed issuers' listing documents and circulars, as well as a brief description of the matters and/or transactions to which such documents relate.

Table 7D: Summary of current pre-vetting requirements applicable to listing documents and circulars

	Matters and/or transactions	Pre-vetting requirements	
		Main Board Rules	GEM Rules
1.	Listing documents (including supplementary listing documents)	9.07, 11.13, 12.01, 20.12, App 7G (para 6)	12.15, 14.24, 16.01
2.	Prospectuses	11A.04, 11A.10	15.04, 15.10
3.	Transactions under Main Board Chapter 14/GEM Chapter 19	14.03, 14.39	19.03, 19.39
4.	Connected transactions	14A.50	20.50
5.	Share option schemes under Main Board Chapter 17/GEM Chapter 23	17.06	23.06
6.	Takeovers, mergers or offers	13.52(2), 14.79	17.53(2), 19.79
7.	Proposed amendments to issuer’s Memorandum or Articles of Association or equivalent documents	13.52(3)	17.53(3)
8.	Explanatory statements relating to issuers purchasing their own shares on stock exchange	10.06(1)(b)	13.08 Note 2

Reasons for proposed changes to pre-vetting approach

7.38 Table 7E, set out on the following pages, illustrates the matters/transactions for which listing documents or circulars are issued by listed issuers. The table also sets out the relevant Rule requirements. (The narrative descriptions of the matter and/or transaction in question are not exhaustive. The descriptions have been extracted from the Rules and from examples of other circulars that are common in the Hong Kong market.)

Table 7E: Matters/transactions for which listing documents or circulars are issued by listed issuers

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
1.1	Issue of securities - consent of shareholders	Shareholders' approval for general mandate	Notice of meeting or circular	R13.36(2)(b), R13.36(3), R19A.38	R17.41(2), R17.42, R25.23	No
1.2	Issue of securities - consent of shareholders	Shareholders' approval for refreshment of general mandate before the next annual general meeting	Circular	R13.36(4)	R17.42A	No [Note 2]
1.3	Issue of securities - consent of shareholders	Shareholders' approval for specific mandate	Circular	R13.36(1)(a)(i), R13.36(1)(b), R19A.38	R17.39(1), R17.40, R25.23	No [Note 2]
1.4	Issue of securities - consent of shareholders	GEM issuers only - Issue of shares or securities convertible into equity securities within 6 months of listing that are allowable under GEM Listing Rule 17.29(5)	Circular	N/A	R17.29(5)	No [Note 2]
1.5	Issue of securities - method of listing	Rights issue	Listing document	R7.19(2) to (5), R7.22, R11.04, R11.06 to R11.11	R10.25 to R10.28, R10.32, R14.06, R14.08 to R14.14, R14.22	Yes
1.6	Issue of securities - method of listing	Rights issue which is subject to shareholders' approval	Circular	R7.19(6) to (9), R7.21	R10.29, R10.29A, R10.29B, R10.31	Yes

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? <i>[Note 1]</i>
1.7	Issue of securities - method of listing	Open offer	Listing document	R7.24(2) to (4), R7.27, R11.04, R11.06 to R11.11	R10.36 to R10.38, R10.43, R14.06, R14.08 to R14.14, R14.22	Yes
1.8	Issue of securities - method of listing	Open offer which is subject to shareholders' approval	Circular	R7.24(5) to (8), R7.26, R7.26A	R10.39, R10.39A, R10.39B, R10.41, R10.42	Yes
1.9	Issue of securities - method of listing	Offer for subscription	Listing document	R7.05, R11.04, R11.06 to R11.11	R10.05, R14.06, R14.08 to R14.14, R14.22	Yes
1.10	Issue of securities - method of listing	Offer for sale	Listing document	R7.08, R11.04, R11.06 to R11.11	R10.09, R14.06, R14.08 to 14.14, R14.22	Yes
1.11	Issue of securities - method of listing	Placing of securities of a class new to listing	Listing document	R7.12, R11.04, R11.06 to R11.11	R10.12, R14.06, R14.08 to 14.14, R14.22	Yes
1.12	Issue of securities - method of listing	Placing of securities of a class already listed <i>[Note 5]</i>	Listing document <i>[Note 5]</i>	R7.12, R11.05, R11.06 to R11.11	R10.15, R14.07, R14.08 to 14.14, R14.22	Yes
1.13	Issue of securities - method of listing	Introduction	Listing document	R7.17, R11.04, R11.06 to R11.11	R10.21, R14.06, R14.08 to 14.14	Yes
1.14	Issue of securities - method of listing	Capitalisation issue	Listing document in the form of a circular	R7.29, R11.04, R11.06 to R11.11	R10.46, R14.06, R14.08 to R14.14	Yes

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
1.15	Issue of securities - method of listing	Exchange or substitution of securities for or conversion of securities into other class of securities	Listing document in the form of a circular	R7.33, R11.04, R11.06 to R11.11	R10.50, R10.52, R14.06, R14.08 to R14.14	Yes
1.16	Issue of securities - method of listing	Deemed new listing under the Rules	Listing document	R11.04, R11.06 to R11.11	R14.06, R14.08 to R14.14	Yes
1.17	Issue of securities - method of listing	Other methods of listing (not set out in Main Board Rule 11.04 or GEM Rule 14.06) [Note 5]	Listing document [Note 5]	R11.05, R11.06 to R11.11	R14.07, R14.08 to R14.14	Yes
1.18	Issue of securities - subsequent events	Significant change or significant new matter after issue of listing document	Supplementary listing document	R11.13	R14.24	Yes
2.1	Issue of securities - warrants, options or similar rights	Issue of warrants which is subject to shareholders' approval	Circular	R15.03, R13.36(1)(a)(i)	R21.03, 17.39(1)	No [Note 2]
2.2	Issue of securities - warrants, options or similar rights	Issue of new warrants to existing warrantholders and/or alter the terms of existing warrants	Circular	PN4 - Para 4(c), Para 4(d), Para 4(e)	R21.07(3), R21.07(5), R21.07(6)	No [Note 2]

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
3.1	Issue of securities - share option scheme of the issuer or any of its subsidiaries	Adoption of share option scheme	Circular	R17.02(2)	R23.02(2)	Yes
3.2	Issue of securities - share option scheme of the issuer or any of its subsidiaries	Refreshment of 10% limit, granting options beyond 10% limit	Circular	R17.03(3) note 1	R23.03(3) note 1	Yes
3.3	Issue of securities - share option scheme of the issuer or any of its subsidiaries	Granting options beyond 1% individual limit	Circular	R17.03(4) note	R23.03(4) note	Yes
3.4	Issue of securities - share option scheme of the issuer or any of its subsidiaries	Granting options to independent non-executive director or substantial shareholder of listed issuer or any of their associates	Circular	R17.04(1)	R23.04(1)	Yes
4.1	Matters relating to issuer's securities	Increase in authorised capital	Circular or other documents accompanying the notice of meeting	R13.57	R17.61	No
4.2	Matters relating to issuer's securities	Capital reduction	Circular	R13.73	R17.46(2)	No

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
5.1	Matters relating to issuer's subsidiaries	Issue of securities by a major subsidiary with material dilution	Circular	R13.36(1)(a)(ii)	R17.39(2)	No [Note 2]
6.1	Deemed new listing	Cash company - Application for lifting of suspension by cash company	Listing document	R14.84	R19.84	Yes
6.2	Change in business	Transaction or arrangement in a period of 12 months from the listing (or in case of GEM issuers, during the financial year in which dealings commenced on GEM or the 2 financial years thereafter) which would result in a fundamental change in the principal business activities, and a waiver granted by the Exchange on the basis that the circumstances are exceptional and the transaction or arrangement is subject to independent shareholders' approval	Circular	R14.89, R14.90, R14.91	R19.88, R19.89, R19.90	Yes

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
6.3	Change in business	Proposal to explore for natural resources as an extension to or change from its existing activities in the circumstances set out in Main Board Rule 18.07	Circular	R18.07, R18.08	No specific rules for mineral companies	No [Note 2]
6.4	Spin-off	Spin-off which is subject to shareholders' approval	Circular	PN15 - Para 3(e)(4) [R13.36(1)(a)(ii) and/or R14.40, R14.41, R14.51]	R17.39(2) and/or R19.40, R19.41, R19.51	No [Note 2]
7.1	Notifiable transaction	Discloseable transaction	Circular	R14.38	R19.38	Yes [Note 3]
7.2	Notifiable transaction	Major transaction	Circular	R14.40, R14.41	R19.40, R19.41	Yes
7.3	Notifiable transaction	Very substantial disposal	Circular	R14.48 to R14.51	R19.48 to R19.51	Yes
7.4	Notifiable transaction	Very substantial acquisition	Circular	R14.48 to R14.51	R19.48 to R19.51	Yes
7.5	Notifiable transaction	Reverse takeover	Listing document	R14.54 to R14.57	R19.54 to R19.57	Yes
7.6	Notifiable transaction	Material information after issue of circular	Supplemental circular	R14.42, R14.52	R19.42, R19.52	Yes
7.7	Connected transaction	Connected transactions and continuing connected transactions which are subject to independent shareholders' approval requirements	Circular	R14A.49, R14A.58, R14A.59, R14A.60, R14A.61, R14A.62	R20.49, R20.58, R20.59, R20.60, R20.61, R20.62	Yes

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
7.8	Connected transaction	Proposed transaction subsequently becoming connected transaction	Circular	R14A.62	R20.62	Yes
7.9	Connected transaction	Material information after issue of circular	Supplemental circular	R14A.49	R20.49	Yes
8.1	Takeovers	Takeovers, mergers or offers subject to the Takeovers Code	Documents required under the Takeovers Code or the Code on Share Repurchases	R13.23(2), R14.79, R14.80	R17.89, R19.79, R19.80	Yes
8.2	Purchase of issuer's securities	Matters covered by the Code on Share Repurchases	Documents required under the Code on Share Repurchases	R13.23(2)	R17.89	Yes
9.1	Purchase of issuer's securities on stock exchange	Repurchase of shares on stock exchange - Explanatory statement to shareholders for share repurchase mandate	Circular	R10.06(1)	R13.08	Yes [Note 4]
10.1	Withdrawal/cancellation of listing	Withdrawal of listing by issuer with alternative listing	Circular	R6.11	R9.19	No [Note 2]
10.2	Withdrawal/cancellation of listing	Withdrawal of listing by issuer without alternative listing	Circular	R6.12	R9.20	No [Note 2]

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
10.3	Withdrawal/cancellation of listing	Voluntary withdrawal of listing pursuant to applicable laws and regulations or privatisation pursuant to the Takeovers Code	Circular	R6.15	R9.23	No [Note 2]
10.4	Withdrawal/cancellation of listing	Proposal to remedy those matters which have rendered the issuer not suitable for listing and deemed new listing	Listing document	R6.10, R11.04	R9.18, R14.06	Yes
11.1	Meetings	Change in intention of any party as to whether to abstain or vote against resolution	Circular	R13.40	R17.47A	No
11.2	Meetings	Material information on the subject matter to be considered at a general meeting	Circular	R13.73	R17.46(2)	No
11.3	Meetings	Material information on the subject matter to be considered at a general meeting that comes to the directors' attention after issue of circular	Supplementary circular	R13.73	R17.46(2)	No

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)		Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? [Note 1]
12.1	Directors and personnel	Nomination of directors by a shareholder after publication of the notice of meeting	Supplementary circular	R13.70	R17.46B	No
12.2	Directors and personnel	Director's service contract which is subject to shareholders' approval	Notice of meeting or circular	R13.68	R17.90	No
12.3	Directors and personnel	Re-election or appointment of directors which is subject to shareholders' approval	Notice of meeting or accompanying circular	R13.74	R17.46A	No
13.1	Other corporate matters	Proposed arrangements to ascertain whether holders of issuer's securities wish to receive any corporate communication in English or Chinese	Letters to holders of securities	R2.07B note	R16.04B note	No
13.2	Other corporate matters	Proposed alteration of memorandum or articles of association or equivalent documents	Circular	R13.51(1), R13.73	R17.50(1), R17.46(2)	Yes [Note 4]

Ref.no.	Matter/transaction (for both Main Board and GEM unless stated otherwise)	Means of disclosure	Main Board Rules	GEM Rules	Is pre-vetting required by the current Rules? /<i>Note 1/</i>
14.1	Matters relating to collective investment schemes Main Board issuers only – Matters subject to the authorisation conditions for the scheme and any codes and guidelines issued by the SFC relating to collective investment schemes	Documents required by the SFC	App 7G - Para 3	N/A	No
14.2	Matters relating to collective investment schemes Main Board issuers only – Sale or subscription of interests in the scheme	Listing document	R20.04, R20.18, R20.19, R20.24	N/A	Yes

Notes:	
1	<p>The existing Rules require listed issuers to submit drafts of the following documents to the Exchange for review and comment before the document is issued:</p> <ul style="list-style-type: none"> (a) announcements or advertisements relating to issue of new or further securities (other than pursuant to capitalisation issue or a scrip dividend scheme) (see Main Board Rule 13.52(1) or GEM Rule 17.53(1)); (b) announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in issuer’s listed securities (including suspension of dealings) (see Main Board Rule 13.52(1) & Practice Note 11 at paragraph 4, or GEM Rule 17.53(1)); (c) documents issued in connection with takeovers, mergers or offers (see Main Board Rules 13.52(2) & 14.79, or GEM Rules 17.53(2) & 19.79); (d) proposed amendment to issuer’s Memorandum or Articles of Association or equivalent documents (see Main Board Rule 13.52(3) or GEM Rule 17.53(3)); (e) for GEM issuers only, announcements in relation to pledging or charging of interests in issuer’s securities by any initial management shareholder or significant shareholder (see GEM Rule 17.53(4)); (f) announcements, circulars and listing documents in relation to transactions under Main Board Chapter 14 or GEM Chapter 19 (see Main Board Rules 14.03, 14.34(2) & 14.39 or GEM Rules 19.03, 19.34(2) & 19.39); (g) announcements and circulars in relation to connected transactions (see Main Board Rules 14A.47(2) & 14A.50 or GEM Rules 20.47(2) & 20.50); (h) announcements and circulars in relation to share option schemes (see Main Board Rule 17.06 or GEM Rule 23.06); (i) publicity material released relating to an issue of securities (see Main Board Rule 9.08 or GEM Rule 12.10); (j) listing documents (see Main Board Rules 9.07, 11.13, 11A.04, 11A.10, 12.01, 20.12 & Appendix 7G at paragraph 6, or GEM Rules 12.15, 14.24, 15.04, 15.10 & 16.01); (k) explanatory statements relating to issuers purchasing their own shares on stock exchange (see Main Board Rule 10.06(1)(b) or GEM Rule 13.08 Note 2). <p>These transactions or arrangements generally pose a higher risk to Rule compliance such that there is a regulatory interest in pre-vetting the related circulars. The proposed Rule amendments will codify the Exchange’s practice in pre-vetting these circulars (see paragraph 7.50 below for more detail).</p> <p><i>(For any spin-off which is subject to shareholders’ approval because it constitutes a major transaction or above, the circular is subject to pre-vetting requirements under the existing Rules.)</i></p>
2	
3	<p>Under the proposed Rule amendments, the circular requirement for discloseable transactions would be removed (see paragraphs 7.55 to 7.57 below).</p>
4	<p>Under the proposed Rule amendments, the specific pre-vetting requirement in respect of circulars for these matters would be removed (see paragraphs 7.46 to 7.49 below).</p>
5	<p>In the case of methods of listing which are not required by the Rules to be supported by a listing document but where a listing document is otherwise required or issued, the issuer must comply with the relevant requirements of Chapter 11 of the Main Board Rules (see Main Board Rule 11.05) or Chapter 14 of the GEM Rules (see GEM Rule 14.07).</p>

- 7.39 As set out at Table 7D above, the Rules require listed issuers to submit drafts of their listing documents and prospectuses to the Exchange for review before they are issued. The pre-vetting Rules apply to circulars for certain matters/transactions although, in practice, draft circulars even relating to matters/transactions that need not be pre-vetted are generally submitted to the Exchange for pre-vetting.
- 7.40 The Exchange considers that it should re-examine the need to pre-vet various types of circulars and also – to promote transparency of the Exchange's vetting process – clarify the types of circulars that the Exchange intends to pre-vet.
- 7.41 Listing documents and circulars generally provide more detailed information to allow investors or shareholders to make a properly informed investment decision or a decision on how to vote in respect of the subject transactions or arrangements. Given the Exchange's statutory function to operate, as far as reasonably practicable, a fair, orderly and informed market for the trading of securities, the Exchange considers that it should maintain pre-vetting of listing documents and circulars for significant transactions or arrangements of listed issuers to monitor compliance with the Rules.
- 7.42 The Exchange proposes to achieve a reduction in pre-vetting of listed issuers' documents by removing specific pre-vetting requirements in the existing Rules in respect of routine circulars that normally do not raise material regulatory concerns (see paragraphs 7.46 to 7.50 below).
- 7.43 The proposals would also streamline the review process by clarifying the categories of documents that we would continue to pre-vet.
- 7.44 The Exchange's intention is to focus its resources on transactions or arrangements that pose a higher risk to Rule compliance, and to cease pre-vetting other categories of documents.
- 7.45 Under the SFC's proposals in respect of the administration of the proposed new statutory listing requirements, pre-vetting of circulars would be on a voluntary basis. While the Exchange's proposals would not remove pre-vetting requirements for all circulars, they may facilitate the transition to a new regime to be administered by the SFC.

Implementation of the proposed new approach

- 7.46 As set out in Table 7D above, the current Rules require pre-vetting of routine circulars in respect of:
- (a) proposed amendments to listed issuers' Memorandum or Articles of Association or equivalent documents; and
 - (b) the explanatory statements relating to listed issuers purchasing their own shares on a stock exchange.
- 7.47 In general, disclosures in these circulars are quite standard and straightforward and do not normally raise regulatory concerns. Accordingly, the Exchange proposes to amend the Rules such that the circulars described at paragraph 7.46 above would no longer require pre-vetting.

- 7.48 For any proposed amendments to a listed issuer's Memorandum or Articles of Association or equivalent documents, as there are no specific disclosure requirements for the relevant circular under the existing Rules, we propose to amend the Rules to require the circular to contain an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. The listed issuer would be required to submit the published version of the circular together with a letter from the listed issuer's legal advisers confirming that:
- (a) the proposed amendments comply with the requirements of the Rules and the laws of the place where issuer is incorporated or otherwise established; and
 - (b) there is nothing unusual about the proposed amendments for a company listed in Hong Kong.
- 7.49 For an explanatory statement relating to a listed issuer purchasing its own shares on a stock exchange, the listed issuer would be required to submit the published version of the circular together with:
- (a) a confirmation from the listed issuer that:
 - (i) the circular contains the information required under Main Board Rule 10.06(1)(b) or GEM Rule 13.08; and
 - (ii) neither the circular nor the proposed share repurchase has unusual features; and
 - (b) the undertaking from its directors to the Exchange according to Main Board Rule 10.06(1)(b)(vi) or GEM Rule 13.08(6).
- 7.50 In respect of the draft circulars submitted to the Exchange for review which are not strictly required to be pre-vetted (as discussed at paragraph 7.36 above), the Exchange considers that there is a regulatory interest in pre-vetting some of the circulars on the basis that they generally pose a higher risk of non-compliance with the Rules. They are the following:
- (a) circulars relating to cancellation or withdrawal of listings of listed securities;
 - (b) circulars to the listed issuer's shareholders seeking their approval of:
 - (i) transactions or arrangements under Main Board Rule 13.36(1) or GEM Rules 17.39(1) and 17.40;

(That is, issues of securities by a listed issuer or any of its major subsidiaries that require specific mandates from shareholders of the listed issuer.)
 - (ii) transactions or arrangements set out in Main Board Rule 13.39(7) or GEM Rule 17.47(7);

(That is, transactions or arrangements that require shareholders' approval and separate letters from the independent financial advisers to be contained in the relevant circulars. In addition to connected transactions pursuant to Chapter 14A of the Main Board Rules or Chapter 20 of the GEM Rules, such transactions or arrangements also include:

 - spin-off proposals;
 - transactions which the Rules require to be subject to independent shareholder approval (see Main Board Rule 13.39(4)(b) or GEM Rule 17.47(4)(b)) such as:
 - > rights issues under Main Board Rule 7.19(6) or 7.19(7) or GEM Rule 10.29;
 - > open offers under Main Board Rule 7.24(5) or (6) or GEM Rule 10.39;

- > refreshments of general mandates before next annual general meetings under Main Board Rule 13.36(4) or GEM Rule 17.42A;
- > withdrawal of listings under Main Board Rule 6.12 or GEM Rule 9.20; or
- > transactions or arrangements that would result in a fundamental change in the principal business activities of the listed issuer after listing under Main Board Rules 14.89 to 14.91 or GEM Rules 19.88 to 19.90; and
- > issues of shares or securities convertible into equity securities within 6 months of new listing under GEM Rule 17.29(5);

(iii) proposals to explore for natural resources as an extension to or change from the listed issuer's existing activities pursuant to Main Board Rule 18.07; or

(iv) warrant proposals involving approvals by shareholders and all warrant holders under paragraph 4(c) of Practice Note 4 to the Main Board Rules or GEM Rule 21.07(3).

7.51 The Exchange proposes to amend the Rules to expressly require pre-vetting of the categories of documents set out in paragraph 7.50 above.

7.52 To improve the vetting process, the Exchange intends also to provide more guidance to the market in relation to submission procedures and related issues. We intend to do this by issuing procedural guides on different types of public documents to assist listed issuers to assemble the information required in the vetting process in an organised manner and to submit all relevant information in a timely manner.

Consultation questions

7.53 *Question 7.3:* Do you support the proposal to amend the pre-vetting requirements relating to:

- (a) circulars in respect of proposed amendments to listed issuers' Memorandum or Articles of Association or equivalent documents; and
- (b) explanatory statements relating to listed issuers purchasing their own shares on a stock exchange?

Please provide reasons for your views.

7.54 *Question 7.4:* Do you agree that the Exchange should continue to pre-vet (pursuant to a new requirement in the Rules) the categories of documents set out in paragraph 7.50 above? Please provide reasons for your views.

Other issues relating to listed issuers' public documents

Circulars for discloseable transactions

7.55 When formulating the proposals to reduce pre-vetting, the Exchange also considered whether it would be appropriate to remove the requirement to publish a circular for discloseable transactions having regard to the factors set out below.

(a) Purposes of circulars for discloseable transactions

Under Chapter 14 of the Main Board Rules and Chapter 19 of the GEM Rules, an announcement is required for any notifiable transaction.

In addition, a listed issuer which has entered into a discloseable transaction, major transaction, very substantial disposal/acquisition or reverse takeover must send a circular to its shareholders and the Exchange.

Of these notifiable transactions the following are subject to shareholders' approval requirements: major transactions; very substantial disposals/acquisitions; and reverse takeovers.

The relevant circulars serve to provide, amongst other things, all information necessary to allow shareholders to make a properly informed decision on how to vote and information relating to voting action such as directors' recommendation, details of persons that are required to abstain from voting and procedures for demanding a poll.

In general, circulars for discloseable transactions are sent to shareholders for information purposes only.

(b) Materiality of discloseable transactions

Discloseable transactions are relatively less significant compared to other categories of notifiable transactions (except for share transactions) and are not subject to shareholders' approval requirements under Chapter 14 of the Main Board Rules or Chapter 19 of the GEM Rules.

(c) Information contained in the circulars for discloseable transactions

The Rules require that circulars for notifiable transactions requiring shareholders' approval must include additional information such as accountants' reports, pro forma financial information and, where applicable, a property valuation. Such additional information is not required to be included in the circulars for discloseable transactions.

In addition to the general principles set out in the Rules, circulars relating to discloseable transactions must contain: the information specifically required under Main Board Rule 14.64 or GEM Rule 19.64; and, for acquisitions only, Main Board Rule 14.65 or GEM Rule 19.65 or, for disposals only, Main Board Rule 14.70 (or GEM Rule 19.70).

- 7.56 Whilst the circular for a discloseable transaction provides certain supplementary information relating to the transaction, in general, shareholders are able to obtain all key information relating to the transaction from the relevant announcement made by the listed issuer pursuant to the specific disclosure requirements for announcements under the Rules and the general principles set out in Main Board Rule 2.13 and GEM Rule 17.56. Additional disclosures made in the circular for a discloseable transaction mainly include general information relating to the listed issuer group and information relating to interests of directors or the chief executive in the listed issuer which are not directly related to the transaction. For a discloseable transaction involving acquisition of mining assets, the Main Board issuer is required under Chapter 18 of the Main Board Rules to include in the circular a technical adviser report with respect to the estimated reserves of the natural resources. Where a profit forecast appears in the circular, the principal assumptions upon which the profit forecast is based and the reports from the reporting accountants or auditors and the financial adviser must be set out in the circular.

7.57 Given the above, the Exchange proposes to remove from the Rules the requirement for a separate circular to be distributed to shareholders in respect of discloseable transactions. Where the discloseable transaction involves an acquisition of mining assets but does not fall within Main Board Rule 18.07(2) or where the listed issuer prepares a profit forecast in respect of the discloseable transaction, the issuer will be required to include in the announcement (or issue a further announcement, as the case may be) the content of the expert reports as required under the current Rules.

Consultation questions

7.58 *Question 7.5:* Do you support the proposal to amend the circular requirements relating to discloseable transactions including the proposal regarding situations where the Rules currently require that expert reports are included in a circular? Please provide reasons for your views.

Related minor Rule amendments

Exchange disclaimer statement

7.59 Under GEM Rule 2.19, any listing document, circular, announcement or notice issued by an issuer pursuant to the GEM Rules must contain a disclaimer statement as follows:

“The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this document, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

7.60 However, under the Main Board Rules, the requirement to include the Exchange's disclaimer statement only applies to certain documents to be issued by issuers including

- (a) an announcement or advertisement that has been reviewed by the Exchange in accordance with the provisions of Main Board Rule 13.52(1);
- (b) an announcement or circular issued pursuant to Main Board Chapter 14 (notifiable transactions), Chapter 14A (connected transactions) or Chapter 17 (share option schemes); and
- (c) a listing document required pursuant to Main Board Chapter 11 or Chapter 20.

7.61 In practice, the Exchange's disclaimer statement appears in documents other than those set out above, notwithstanding that it is not required by the Rules.

7.62 In view of the Exchange's proposals to reduce pre-vetting of listed issuers' documents and in order to eliminate the discrepancies in requirements between Main Board and GEM (set out at paragraphs 7.59 and 7.60 above), the Exchange proposes to amend Note 7 to Main Board Rule 13.52 to require listed issuers to include the Exchange's disclaimer statement in any listing document, circular, announcement or notice issued pursuant to the Rules.

Rule amendment to reflect the MOU between the Exchange and the SFC

7.63 By a Memorandum of Understanding dated 28 January 2003 (MOU), the Exchange and the SFC agreed that the Rules should reflect procedures set out in the MOU regarding the review of draft documents for takeover-related matters and share repurchases. To implement this agreement, the Exchange proposes to make minor amendments to Note 2 to Main Board Rule 13.52 and Note 3 to GEM Rule 17.53 to reflect the procedures set out in the MOU; specifically, that the Exchange will pass its comments on the relevant document directly to the issuer and, at the same time, will provide a copy of such comments to the SFC.

Consultation questions

- 7.64 *Question 7.6:* Do you have any comments on the proposed minor Rule amendments described at paragraphs 7.59 to 7.63 above? Please provide reasons for your views.
- 7.65 *Question 7.7:* Do you agree that the draft (Main Board and GEM) Rules at Appendix 7 will implement the proposals set out above? Please provide reasons for your views.

Issue 8: Disclosure of changes in issued share capital

Background

- 8.1 The Rules currently require a listed issuer to publish an announcement on an issue of securities in certain specific circumstances (e.g. where the transaction constitutes a “share transaction” or an issue of shares under a general mandate). However, there is currently no general requirement under the Rules for a listed issuer to publish an announcement every time it issues shares, including the issue of shares pursuant to the exercise of convertible securities, or when there are any other changes in its issued share capital.
- 8.2 Where a listed issuer issues convertible securities which may potentially result in substantial dilution to a listed issuer’s issued share capital, the Exchange will in appropriate cases include as a condition to the granting of listing approval that the listed issuer must publish a monthly announcement on the Exchange website or GEM website as to whether there has been any conversion during the relevant month. The announcement must include certain details with regard to the listed issuer’s share capital. In addition, if the cumulative number of shares issued pursuant to the conversion reaches 5% of the issued share capital of the listed issuer since the last monthly announcement or any subsequent announcement made by the listed issuer in respect of the convertible securities (and thereafter in a multiple of such 5% threshold), the listed issuer must make a further announcement. These disclosure requirements are imposed in addition to any disclosures required under Main Board Rule 13.09(1) and GEM Rule 17.02.
- 8.3 Under the Exchange’s current practice, all listed issuers are under a standing request to lodge with the Exchange (by fax or mail or by completion of an online electronic form on the Exchange’s e-Submission System) a Monthly Return on the movements in the listed issuer’s issued shares by no later than the 10th day of each succeeding month. There are four forms for the Main Board (for movements in listed equity securities, listed debt securities, listed derivative warrants/equity linked instruments and listed unit trusts and mutual funds). GEM only has one form, which is for movements in listed equity securities. GEM currently has no listing of securities other than equity. However, the lodging of a Monthly Return is not currently a requirement under the Rules. A sample check of the Exchange’s records show that only about 83% of listed issuers were punctual in their filing of their Monthly Return for the month of May 2007.
- 8.4 Information on the change in issued share capital may be important for investors to enable them to understand better the latest developments in relation to individual listed issuers. Information from the Monthly Returns also helps the Exchange to compile market statistics. Some of the data, such as the number of issued shares and amount outstanding on warrants, is also disseminated to the investing public via various channels, e.g. Company Profiles under Investment Services Centre on the Exchange website.

8.5 A change in a listed issuer's issued share capital may occur as a result of:

- placing;
- consideration issue;
- open offer;
- rights issue;
- bonus issue;
- scrip dividend;
- exercise of option;
- exercise of warrant;
- conversion of convertible securities;
- share repurchase;
- share redemption; or
- capital reorganisation.

Next day disclosure

8.6 Due to the potential price sensitivity arising from its dilutive effect on share capital, the Exchange considers that a change in issued share capital under any one of the above categories should be promptly disclosed by the listed issuer. However, we also see the need to strike a balance between promptly informing the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other. The Exchange therefore proposes the disclosure framework described at this paragraph 8.6 to paragraph 8.16 below, which distinguishes between:

- (a) those categories requiring next day disclosure (i.e. disclosure on the Exchange website or GEM website by 9:00 a.m. on the morning of the next business day); and
- (b) those which only require next day disclosure if:
 - (i) the change in issued share capital under that category reaches a prescribed *de minimis* threshold or the aggregate of all changes in issued share capital under any of the categories (other than those referred to in paragraph (a)) since the last Monthly Return or next day disclosure, whichever is the later, reaches the *de minimis* threshold; or
 - (ii) the listed issuer is in any case required to disclose some other change in issued share capital under paragraph (a) and the change in issued share capital described in this paragraph (b) has not yet been disclosed in either a Monthly Return or pursuant to next day disclosure (because the *de minimis* threshold had not been reached).

8.7 So as to avoid over-complication, the percentage change in the listed issuer's issued share capital is to be calculated by reference to the listed issuer's total issued share capital as it was immediately before the earliest relevant event which has not been disclosed in a Monthly Return or pursuant to next day disclosure. In other words, calculation of whether the *de minimis* threshold has been reached would be based on:

$$\frac{\text{aggregate change in issued share capital not yet reported}}{\text{total issued share capital since last Monthly Return or next day disclosure, whichever is later.}}$$

8.8 The proposed next day disclosure regime is summarised in the following table:

	Next day disclosure
Placing	<i>Yes</i>
Consideration issue	<i>Yes</i>
Open offer	<i>Yes</i>
Rights issue	<i>Yes</i>
Bonus issue	<i>Yes</i>
Scrip dividend	<i>Yes</i>
Share repurchase	<i>Yes</i>
Exercise of option by director	<i>Yes</i>
Capital reorganisation	<i>Yes</i>
Exercise of option other than by director	<i>Subject to de minimis threshold being reached or listed issuer in any case being required to disclose a change which is not subject to de minimis threshold</i>
Exercise of warrant	<i>Subject to de minimis threshold being reached or listed issuer in any case being required to disclose a change which is not subject to de minimis threshold</i>
Conversion of convertible securities	<i>Subject to de minimis threshold being reached or listed issuer in any case being required to disclose a change which is not subject to de minimis threshold</i>
Share redemption	<i>Subject to de minimis threshold being reached or listed issuer in any case being required to disclose a change which is not subject to de minimis threshold</i>
Change in issued share capital not falling within any of the above categories	<i>Yes</i>

8.9 The Exchange proposes to set the *de minimis* threshold for disclosure referred to in the table in paragraph 8.8 at 5% of the listed issuer's existing issued share capital before the relevant change in issued share capital. Changes in issued share capital during the calendar month or since the last disclosure which are not disclosed in a Next Day Disclosure Return would be the subject of disclosure in the Monthly Return (see paragraphs 8.17 to 8.25).

8.10 In the case of changes in issued share capital requiring next day disclosure, the Exchange proposes to amend the Rules to require the listed issuer to complete and submit to us through the Exchange's e-Submission System, or such other means as the Exchange may from time to time prescribe, a Next Day Disclosure Return, in such form and containing such information as the Exchange may from time to time prescribe, for publication on the Exchange website or GEM website (as the case may be) by 9:00 a.m. on the morning of the next business day.

- 8.11 The Exchange proposes to set out the categories of changes requiring next day disclosure in the Rules (as set out in the table in paragraph 8.8). The Next Day Disclosure Return would show, among other things, the opening issued share capital as previously disclosed, shares issued subsequent thereto and closing issued share capital as at a specific date. Each category would need to be disclosed individually with sufficient information to enable the user to identify the relevant category in the listed issuer's Monthly Return (see paragraphs 8.17 to 8.25).
- 8.12 A draft of the Next Day Disclosure Return for equity issuers is set out at Appendix 8B.
- 8.13 The Exchange believes that the general principles underlying next day disclosure should apply to all collective investment schemes ("CISs") (including REITs¹) listed under Chapter 20 of the Main Board Rules) as they do to equity issuers with the exception of listed open-ended CISs (the majority of which are Exchange Traded Funds). That is, the issue of further units by a listed CIS which is not an open-ended CIS is potentially as price sensitive as the issue of further shares by an equity issuer due to its dilutive effect. We therefore propose to require listed CISs other than open-ended CISs to submit a Next Day Disclosure Return similar to the one proposed for equity issuers. Open-ended CISs listed under Chapter 20 of the Main Board Rules (the majority of which are Exchange Traded Funds) issue units upon subscriptions by investors and cancel units upon redemption requests on a regular basis. Further, such issuance and cancellations will be conducted in accordance with the net asset value of the relevant listed open-ended CIS and will not have dilutive impact on the remaining investors. For these reasons, the next day disclosure requirement need not be extended to open-ended CISs listed under Chapter 20 of the Main Board Rules other than REITs.
- 8.14 It is not necessary to amend the Rules with regard to structured products and debt issues to introduce a requirement for next day disclosure since listing approval for such issues is granted for a fixed issue size. If the issuer wishes to increase the issue size, it will be required to submit a listing application for that issue. If the issue is approved, the issuer is required under the Rules to announce it. Furthermore, issuers of structured products submit to the Exchange each business day details of their outstanding warrant issues (including details of the number of outstanding warrants in each issue) and details of their trading in them and this information is published on the Exchange website.
- 8.15 A draft of the Next Day Disclosure Return for CISs listed under Chapter 20 of the Main Board Rules other than listed open-ended CISs is set out at Appendix 8B.
- 8.16 The Exchange proposes to create a new headline category in the Rules under which Next Day Disclosure Returns would be published on the Exchange website or GEM website.

Monthly return

- 8.17 The Exchange proposes to make certain enhancements to the existing Monthly Return and to make the publication of a Monthly Return a mandatory requirement under the Rules. We propose to have just one form of the Monthly Return for equity issuers which would replace the current forms for both Main Board and GEM equity issuers.

¹ A Real Estate Investment Trust (REIT) is a Collective Investment Scheme whose primary objective is to invest in income generating real estate and is required to distribute at least 90% of its audited annual net income after tax as dividends. REITs that are offered to the public are required under the Securities and Futures Ordinance to be authorised by the Securities and Futures Commission as well as comply with the Code on Real Estate Investment Trusts (REIT Code).

- 8.18 While the purpose of the Next Day Disclosure Return is to report on recent issues of issued share capital, the purpose of the Monthly Return is to provide an update on a fixed monthly basis not only of securities issued but also other information relating to the listed issuer's share capital and other movements in its securities, including any future obligation to issue shares (such as upon exercise of options or upon conversion of convertible securities).
- 8.19 For the same reasons as those set out in paragraph 8.14 above with regard to next day disclosure, it is not necessary to amend the Rules with regard to structured products and debt issues to make the submission of a Monthly Return mandatory.
- 8.20 We propose to require listed issuers to complete and submit to us a Monthly Return in such form and containing such information as the Exchange may from time to time prescribe for publication on the Exchange website or GEM website (as the case may be) by no later than 9:00 a.m. of the fifth business day following the end of each calendar month (i.e. irrespective of whether there has been any change in the information provided in its previous Monthly Return).
- 8.21 The Exchange proposes that the revised Monthly Return would be in an electronic format and would be submitted electronically through Exchange's e-Submission System, or such other means as the Exchange may from time to time prescribe. After submission, the completed return would be published on the Exchange website or GEM website (as the case may be).
- 8.22 A draft of the Monthly Return for equity issuers is set out at Appendix 8B. Changes from the current form are highlighted. As revised, the Monthly Return will include details of movements in authorised share capital and in issued share capital, such as the number of shares issued or to be issued under share option schemes, under warrants to issue shares of the issuer which are to be listed, under securities convertible into shares of the issuer which are to be listed and any other agreements or arrangements to issue shares of the issuer which are to be listed.
- 8.23 We believe that the general principles underlying the submission of a Monthly Return apply to all CISs listed under Chapter 20 of the Main Board Rules as they do to equity issuers. The Monthly Return provides an update on a fixed monthly basis of the movements in the units during the relevant month together with an opening and closing balance. We therefore propose to require all such CISs to submit a Monthly Return.
- 8.24 A draft of the revised Monthly Return for CISs listed under Chapter 20 of the Main Board Rules other than listed open-ended CISs and a draft of the revised Monthly Return for open-ended CISs listed under such Chapter are set out in Appendix 8B. The revised Monthly Return for open-ended CISs listed under Chapter 20 of the Main Board Rules is relatively simple due to the limited range of corporate activity which can be undertaken by such open-ended CISs.
- 8.25 The Exchange proposes to create a new headline category in the Rules under which Monthly Returns would be published on the Exchange website or GEM website.

Disclosure of share option grants

- 8.26 The Exchange has noted recent instances in overseas markets where the grant of share options by listed companies may have been backdated. Backdating of a grant to a period of relatively low share price is a way for management to bestow upon the grantee a greater benefit than that permitted under the Rules at the expense of shareholders.
- 8.27 To further enhance transparency in relation to the grant of options, the Exchange is proposing to amend the Rules to require listed issuers to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme. The listed issuer would be required to give the following details in the announcement:
- (a) date of grant;
 - (b) exercise price of options granted;
 - (c) number of options granted;
 - (d) market price of its securities on the date of grant;
 - (e) where any of the grantees is a director, chief executive or substantial shareholder of the listed issuer, or an associate of any of them, the names of such grantees and the number of options granted to each of them; and
 - (f) validity period of the options.
- 8.28 The proposed Main Board Rule amendments are set out at Appendix 8A. (The proposed amendments to the headline categories are not shown.) The Exchange would also make equivalent amendments to the GEM Rules.

Consultation questions

- 8.29 *Question 8.1:* Are there any other types of changes in issued share capital that should be included in the Next Day Disclosure Return?
- 8.30 *Question 8.2:* Have the various types of changes in a listed issuer's issued share capital been appropriately categorised for the purpose of next day disclosure, bearing in mind the need to strike a balance between promptly informing the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other?
- 8.31 *Question 8.3:* Is 5% an appropriate *de minimis* threshold for those categories of changes to which it applies? Please provide reasons for your views.
- 8.32 *Question 8.4:* Do you have any comments on the draft of the Next Day Disclosure Return for equity issuers?
- 8.33 *Question 8.5:* Do you have any comments on the draft of the Next Day Disclosure Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?
- 8.34 *Question 8.6:* Is 9:00 a.m. of the next business day an achievable deadline for the Next Day Disclosure Return? Please provide reasons for your views.
- 8.35 *Question 8.7:* Do you have any comments on the draft of the revised Monthly Return for equity issuers?

- 8.36 *Question 8.8:* Do you have any comments on the draft of the revised Monthly Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?
- 8.37 *Question 8.9:* Do you have any comments on the draft of the revised Monthly Return for open-ended CISs listed under Chapter 20 of the Main Board Rules?
- 8.38 *Question 8.10:* Is 9:00 a.m. of the fifth business day following the end of each calendar month an achievable deadline for publication of the Monthly Return? Please provide reasons for your views.
- 8.39 *Question 8.11:* Should the Exchange amend the Rules to require listed issuers to make an announcement as soon as possible when share options are granted pursuant to a share option scheme? If so, do you have any comments on the details which we propose to require listed issuers to disclose in the announcement?
- 8.40 *Question 8.12:* Do you agree that the draft Rules at Appendix 8A will implement the proposals set out above? Please provide reasons for your views.

Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue

- 9.1 As illustrated by Table 7A (under Issue 7) above, the Rules require pre-vetting of announcements relating to the issue of new or further securities (other than pursuant to a capitalisation issue or a scrip dividend scheme).
- 9.2 The current Main Board Rule 13.28 and GEM Rule 17.30 set out the specific requirements as to the content for announcements regarding issues of securities for cash (such as details of the securities to be issued, the proposed use of proceeds, information on the allottees and reasons for the issue). These Rules only apply where the relevant securities are issued under general mandates. However, in practice, the content requirements in these Rules are regarded as information relevant to any fundraising exercise; they also reflect the content commonly found in listed issuers' announcements regarding the issue of securities for cash not involving general mandates.
- 9.3 Consequently, the Exchange also proposes to amend the Rules to codify the disclosure practices in respect of announcements for issues of securities for cash (irrespective of whether general mandates are involved).
- 9.4 Whilst listed issuers should continue to observe the general principles in Main Board Rule 2.13 and GEM Rule 17.56, the Exchange considers that setting out specific disclosure requirements in the Rules will assist listed issuers in meeting their disclosure obligations.
- 9.5 To implement this proposal, the Exchange proposes to amend the current Main Board Rule 13.28 and GEM Rule 17.30 such that the specific disclosure requirements will be extended to any issue of securities for cash. The proposed amendments would require the relevant announcement to contain a statement on whether the issue of securities is subject to shareholders' approval and, where the securities are issued under a general mandate, details of such mandate. Further, where the securities are issued by way of a rights issue or an open offer, the listed issuer would also need to disclose certain specific details applicable to a rights issue or open offer under the Rules.

- 9.6 The proposed amendments also codify the practice in relation to the disclosure of information relating to the placing/underwriting arrangements for the issue and, where the issue involves convertible securities or warrants, material terms of the convertible securities or warrants (such as the conversion/subscription price and provisions for adjustments of such price) and the maximum number of shares that could be issued upon exercise of the conversion/subscription rights. Certain specific disclosure requirements (including the basis for determining the issue price, conditions for the issue of securities and any other material information with regard to the issue) that are currently set out in GEM Rule 17.30 would also be included in Main Board Rule 13.28.
- 9.7 The Rules provide that, in every rights issue where arrangement is made for disposal of securities not subscribed by allottees by means of excess application, such securities must be available for subscription by all shareholders and allocated on a fair basis. For an open offer, the arrangement to dispose of securities not validly applied for by shareholders is also subject to the same requirement. Currently the Rules require directors of a listed issuer to allocate excess securities in a rights issue or open offer on a fair basis. However, the listed issuer is not required to disclose the basis of allocation in the rights issue or open offer announcement or listing document(s). To ensure that sufficient information is provided to shareholders to make an informed decision, the Exchange proposes to amend the Rules to require listed issuers to disclose the basis of allocation of excess securities in the announcement, circular and listing document for a rights issue/open offer.
- 9.8 The proposed Rule amendments are set out at Appendix 9.

Consultation questions

- 9.9 *Question 9.1:* Do you support the proposal to amend Main Board Rule 13.28 and GEM Rule 17.30 to extend the specific disclosure requirements to other categories of issues of securities for cash and to include additional items of information in the amended Rule? Please provide reasons for your views.
- 9.10 *Question 9.2:* Do you agree that the draft Rules at Appendix 9 will implement the proposals set out above? Please provide reasons for your views.
- 9.11 *Question 9.3:* Do you support the proposal to amend Main Board Rules 7.21(1) and 7.26A(1) and GEM Rules 10.31(1) and 10.42(1) to require listed issuers to disclose the basis of allocation of the excess securities in the announcement, circular and listing document for a rights issue/open offer?

Issue 10: Alignment of requirements for material dilution in major subsidiary and deemed disposal

Background

- 10.1 Currently, there are two sets of Rule requirements governing a reduction in the effective equity interest of a subsidiary held by a listed issuer. These are: the material dilution requirements in Main Board Chapter 13 and GEM Chapter 17 (Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2)(ii)) and the deemed disposal requirements in Main Board Chapter 14 and GEM Chapter 19 (Main Board Rule 14.29 and GEM Rule 19.29).

- 10.2 Main Board Rule 13.36(1)(a) and GEM Rule 17.39(2) require shareholders' consent where any major subsidiary of the issuer makes any allotment, issue or grant of: (i) shares, securities convertible into shares; or (ii) options, warrants or similar rights to subscribe for any shares or such convertible securities, so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary. A physical shareholders' meeting is required to be held. A major subsidiary is defined in Note 3 as a subsidiary of the issuer where the value of its total assets, profits or revenue represents 5% or more under any of the size tests as defined in Main Board Rule 14.04(9) and GEM Rule 19.04(9). Material dilution is defined in Note 4 to the Rule to occur where the subsidiary ceases to be consolidated in the accounts of the issuer following an allotment of new shares, or where the dilution effect measured by any of the size tests defined in Main Board Rule 14.04(9) and GEM Rule 19.04(9) is 5% or more.
- 10.3 An allotment of shares by a subsidiary would also be a deemed disposal under Main Board Rule 14.29 and GEM Rule 19.29 as it would result in a reduction in the percentage equity interest of the listed issuer in such subsidiary. Accordingly, the transaction is subject to the notifiable transaction requirements under Main Board Chapter 14 and GEM Chapter 19 and, depending on the size tests as defined in Main Board Rule 14.04(9) and GEM Rule 19.04(9), may fall to be treated as a very substantial disposal, major transaction or discloseable transaction.
- 10.4 Compared to the requirements for notifiable transactions, the requirements under Main Board Chapter 13 and GEM Chapter 17 are more stringent in two respects: (i) the shareholders' approval requirement is triggered at 5%, a much lower threshold compared to the 25% requirement under Main Board Chapter 14 and GEM Chapter 19 (for a major transaction, whereas a discloseable transaction, triggered at 5%, requires disclosure only and not shareholders' approval); and (ii) a physical shareholders' meeting must be held. In contrast, a major transaction allows a written certificate in lieu of a physical meeting.

Consultation proposals

- 10.5 Currently listed issuers may be subject to both the requirements for material dilution (under Main Board Chapter 13 and GEM Chapter 17) and deemed disposal (under Main Board Chapter 14 and GEM Chapter 19) in the event of a subsidiary allotting shares to third parties. The Exchange proposes to align the requirements for material dilution and deemed disposal such that the requirement for shareholders' consent would be based on a size test threshold of 25% (i.e. the threshold for a major transaction). Consistent with the requirements for Main Board Chapter 14 and GEM Chapter 19, a written certificate would be accepted in lieu of a physical shareholders' meeting.
- 10.6 The Exchange proposes to effect the above proposals by removing Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2) (which currently contain the material dilution requirements).
- 10.7 The proposed Rule amendments are set out in Appendix 10.

Consultation questions

- 10.8 *Question 10.1:* Should the Rules continue to impose a requirement for material dilution, separate from notifiable transaction requirements applicable to deemed disposals? Please provide reasons for your views.
- 10.9 *Question 10.2:* Do you agree that the requirements for material dilution under Main Board Chapter 13 and GEM Chapter 17 should be aligned to those for deemed disposal in Main Board Chapter 14 and GEM Chapter 19? Please provide reasons for your views.
- 10.10 *Question 10.3:* Do you agree that the draft Rules at Appendix 10 will implement the proposals set out above? Please provide reasons for your views.

Issue 11: General mandates

Background

- 11.1 This section of the consultation paper aims to facilitate public discussion regarding regulation by the Exchange of the issues of securities pursuant to general mandates. Unless stated otherwise, references to Rules in this discussion of Issue 11 are to Main Board Rules but generally there are equivalent GEM Rules.
- 11.2 The Exchange has an open mind about the policy direction. Consequently, the Exchange does not propose a preferred position at this stage. Rather, the paper summarises the issues and past comments and sets out the Exchange's own statistical analyses of recent practices regarding the use of general mandates and research on the approach taken in key overseas jurisdictions.
- 11.3 Hong Kong company law¹ provides that if a company proposes to issue new equity for cash, the company's existing shareholders must be given the first opportunity to subscribe for the new equity. That is, it must be a pre-emptive securities issue.
- 11.4 The retention of this pre-emptive right is a major point of principle to investors. Many investors believe that a pre-emptive issue (e.g. a rights issue) is the fairest and most appropriate course for any company wishing to raise additional equity capital because, rather than diluting their interests, it provides all shareholders with the choice of subscribing for the new capital (on a pro-rata basis). In the case of a rights issuer, the shareholder has the further option of selling the nil-paid rights in the market.
- 11.5 To that end, one of the guiding principles of the Rules (set out at Rule 2.03(6)) is that the Rules are designed to ensure that all new issues of equity securities by a listed issuer are first offered to the existing shareholders by way of rights (i.e. the issue is pre-emptive) unless the existing shareholders have agreed otherwise.
- 11.6 Notwithstanding the importance of pre-emptive rights, it is generally accepted that there should be some flexibility for listed issuers to raise funds in the market without having to do so on a pre-emptive basis. One such example might be where a listed issuer wishes to attract a strategic investor. Consequently, the Rules provide for pre-emptive rights to be varied with shareholders' approval such as by general mandate.
- 11.7 Under the current Rules, listed issuers are allowed, pursuant to a general mandate, to issue securities representing up to 20% of their existing issued share capital (i.e. issued share capital as at the date of the general meeting approving the general mandate). The general mandate generally lasts for 12 months and can be refreshed (such that during the course of the year securities representing more than 20% of the listed issuer's issued share capital can be issued pursuant to the mandate). (A more detailed description of general mandates and how they operate is set out at paragraphs 11.11 to 11.17 below.)
- 11.8 Over recent years, there has been market concern in relation to the use of general mandates – in particular, about the size and frequency of issues made pursuant to general mandates. Some argue that, amongst other things, the number of securities that are allowed to be issued under a general mandate should be reduced. Others contend that the existing general mandate arrangements should be retained because they allow listed issuers to raise capital quickly in a cost-effective way and, in turn, enhance listed issuers' growth and benefit shareholders.

¹ Section 57B of the Companies Ordinance

- 11.9 The Exchange consulted on these and related issues in a consultation paper published in January 2002 (the 2002 Consultation Paper). The Exchange's consultation conclusions were set out in a consultation conclusions report published in January 2003 (the 2003 Consultation Conclusions) and a news release published on 30 January 2004 (the 2004 News Release). Amongst other things, the Exchange tightened the Rules regarding refreshments of general mandates. (The current Rules regarding refreshment of general mandates are also set out at paragraphs 11.11 to 11.17 below.) In relation to the size of general mandates, the Exchange concluded that it would retain the Rules allowing listed issuers to issue securities representing up to 20% of their issued share capital under general mandate but, subject to further market consultation, the Exchange would consider lowering the maximum number of securities that are allowed to be issued under the general mandate to bring our requirements closer to the practice in the United Kingdom. (There is more discussion about the past consultation at paragraphs 11.18 to 11.25 below and about the requirements of other jurisdictions including the United Kingdom in the brief overview at paragraphs 11.47 to 11.58 below.)
- 11.10 As anticipated in the 2004 News Release, the Exchange now seeks public comment on various issues relating to the issue of securities under a general mandate. The questions posed are set out at paragraphs 11.60 to 11.64 below.

The existing Rules

- 11.11 Generally, the Rules² provide that, where a listed issuer issues securities on a non-pre-emptive basis, it must be approved by shareholders. Shareholders' approval may either be by specific mandate (i.e. approval by ordinary resolution in general meeting of a specific transaction) or by general mandate.
- 11.12 A general mandate is where a listed issuer's existing shareholders have by ordinary resolution (in the case of a non-H-share issuer) or special resolution (in the case of an H-share issuer) in general meeting given a mandate to the listed issuer's directors to issue securities on a non-pre-emptive basis.
- 11.13 General mandates are subject to certain conditions including in respect of size and price. In relation to size, (pursuant to Rule 13.36(2)) under a general mandate the aggregate number of securities allotted (or agreed to be allotted) must not exceed the aggregate of:
- (a) 20% of the listed issuer's existing issued share capital; and
 - (b) the number of securities repurchased by the listed issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the existing issued share capital of the listed issuer), provided that the existing shareholders of the listed issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the listed issuer to add such repurchased securities to the 20% general mandate.
- 11.14 In the event a general mandate is given, (pursuant to Rule 13.36(3)) it remains in force until the earlier of:
- (a) the conclusion of the listed issuer's next annual general meeting (i.e. first annual general meeting of the listed issuer following the passing of the resolution); and
 - (b) the general mandate being revoked or varied by ordinary resolution of the shareholders in general meeting.

² In the case of a non-H-share issuer, Rules 13.36(1) and (2) and, in the case of an H-share issuer, Rule 19A.38.

- 11.15 In the meantime, the general mandate can be refreshed. That is, where securities have been issued pursuant to an existing mandate, the mandate can be restored to the higher level. For example, if a listed issuer has obtained a general mandate from its shareholders and issued securities pursuant to the general mandate, it may refresh the general mandate before the next annual general meeting such that the listed issuer will again have a mandate to issue securities up to 20% of the listed issuer's existing issued share capital.
- 11.16 H-share issuers are currently subject to a modified form of the 20% size limit on general mandates. Under Rule 19A.38, the size limit for H-share issuers is 20% of each of the existing issued domestic shares and overseas listed foreign shares of the H-share issuer. Under Rule 8.08(1)(b), the H-share issuer may seek a listing of its H-shares on the Exchange provided the H-shares make up at least 15% of the H-share issuer's total issued share capital and the expected market capitalisation at the time of listing is not less than HK\$50,000,000. Thus, for example, where only 15% of an H-share issuer's issued share capital is listed in Hong Kong (and there are no other overseas listed foreign shares of the H-share issuer), the H-share issuer is effectively subject to a size limit on its general mandate of 3% (i.e. 20% of 15%) of its total issued share capital.
- 11.17 The impact on H-share issuers of any further reduction of the size, or restriction in the calculation of the size limit, of the general mandate will therefore be greater than on non-H-share issuers.

Recent consultation regarding the size of general mandates

- 11.18 The existing 20% limit on the issue of securities under the general mandate was one of the issues on which the Exchange consulted in the 2002 Consultation Paper.
- 11.19 In the 2003 Consultation Conclusions, the Exchange summarised relevant respondents' comments to the 2002 Consultation Paper as follows:
- (a) many respondents supported retention of the existing 20% limit for issue of securities under general mandate in order to give listed issuers flexibility to raise funds in the market;
 - (b) certain respondents considered that given the existing practice of voting by a show of hands and the low attendance rate of minority shareholders at shareholders' meetings, the existing Rules on general mandate have been subject to abuse by controlling shareholders of listed issuers. Professional and trade associations had diverse views on the relevant proposal;
 - (c) respondents that did not support retention of the existing 20% limit raised concern over past abuses of general mandates by certain controlling shareholders resulting in material and unfair dilution of minority interests. These respondents considered the Rules should be amended to reduce the maximum number of securities that can be issued under the general mandate and to restrict the number of times that the general mandate can be refreshed;
 - (d) one respondent recommended that the Rules be amended to follow the UK approach and draw a distinction between cash and non-cash issues of securities and between pre-emptive and non-pre-emptive issues for cash; and
 - (e) in relation to a proposal that the Rules should follow the UK approach by imposing a cumulative limit on the issue of securities in any rolling three-year period, a majority of the respondents considered that issue of securities should not be subject to any such cumulative limit. Most considered that listed issuers should be free to raise capital and any such cumulative limit would dampen the fund raising opportunities for listed issuers to develop their businesses.

11.20 Having considered respondents' comments, the Exchange concluded (in the 2003 Consultation Conclusions), most relevantly, that:

- (a) according to the responses and commentaries received, in most past cases of abuse of general mandates, the main problem stemmed from listed issuers' repeated refreshments of the 20% general mandate and issues of securities at a deep discount to the market price. Therefore it would be more appropriate to impose restrictions on refreshments of the general mandate and/or the placing discounts, rather than to lower the existing limit on securities that can be issued under the general mandate; and
- (b) the Rules on general mandate should cover both cash and non-cash issues of securities, which is different from the UK approach. Since transactions with non-cash issues may also have a significant impact on listed issuers and may result in a material dilution of interests of the existing shareholders, it is not appropriate to exclude non-cash issues of securities from the Rules on issue of securities under the general mandate.

11.21 In January 2004 (by the 2004 News Release) the Exchange announced Rule amendments that implemented the relevant 2003 Consultation Conclusions. The 2004 Rule amendments included a tightening of regulation regarding refreshments of general mandate and placing discounts on issues made under the general mandate.

11.22 In relation to the refreshment of general mandates, the amended Rules provide (at Rule 13.36(4)) that any refreshment of a general mandate is subject to certain provisions. Most significantly (and subject to an exception in respect of listed issuers that top up the unused portion of their previous general mandate based on the enlarged issued share capital after a pre-emptive issue of equity securities to existing shareholders), only independent shareholders may vote in favour of the refreshment. That is, the following parties may not vote in favour of the refreshment (although they are generally allowed to vote against):

- (a) any controlling shareholders and their associates or, where there are no controlling shareholders, the directors (excluding independent non-executive directors) and the chief executive of the listed issuer and their respective associates; and
- (b) if the Exchange so requires: any parties who were controlling shareholders of the listed issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their associates; or where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the listed issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their respective associates.

11.23 In relation to the size limit on the issue of securities under the general mandate, the 2004 News Release stated that, currently, "listed issuers are allowed to issue securities representing up to 20% of their issued share capital under the general mandate. We have retained the existing provision for the time being. However, subject to further market consultation, we will consider lowering the maximum number of securities that are allowed to be issued under the general mandate to bring our requirements closer to those of the United Kingdom".

- 11.24 The 2004 Rule amendments also imposed a limit on discounts to the market price in the case of a placing of securities for cash consideration. In such cases, the listed issuer may not issue any securities pursuant to a general mandate if the relevant price represents a discount of 20% or more to the “benchmarked price”³, unless the listed issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances.
- 11.25 As stated in the 2003 Consultation Conclusions, the trigger discount level of 20% was adopted in order to strike a balance among the diverse views expressed by the market. We stated in the 2003 Consultation Conclusions that we would review the trigger discount level from time to time in view of market developments.

Concern with existing Rules and practices

- 11.26 As noted at paragraph 11.8 above, over the past few years there has been some market concern as to the size and frequency of the use of general mandates and the price at which new securities have been issued under general mandates; in particular, concern as to the dilution effect of general mandates on interests of existing shareholders. One of the aims of the 2004 Rule amendments was to address this point.
- 11.27 As noted at paragraph 33 of the 2003 Consultation Conclusions, there had also been market criticism and investor complaint about abuse of the general mandate by some listed issuers in the repeated issues of securities under the general mandate at a deep discount to the market price resulting in a substantial dilution of the minority shareholders’ interest and / or a significant drop in the share prices. To address this point, the 2004 Rule amendments introduced the prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the “benchmarked price” referred to at paragraph 11.24 above.
- 11.28 There have been calls for the Exchange to amend the Rules to further restrict the ability for listed issuers to issue securities for cash under a general mandate in order to protect shareholders’ pre-emptive rights (and thereby protect shareholders from dilution of their interests).
- 11.29 Where there are share repurchases (as mentioned at paragraph 11.13 above), the general mandate can effectively be more than 20% of issued share capital as at the date of the meeting approving the mandate.
- 11.30 The prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the “benchmarked price” referred to at paragraph 11.24 above currently applies only where the placing is for cash consideration. A listed issuer is currently permitted to place securities pursuant to a general mandate at a discount of 20% or more to the “benchmarked price” where the consideration is other than cash.

³ The benchmarked price is defined in Rule 13.36(5) as being the higher of:

- (a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (b) the average closing price in the 5 trading days immediately prior to the earlier of:
 - (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
 - (ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
 - (iii) the date on which the placing or subscription price is fixed.

- 11.31 An issue of shares at a discount to the current market value accords an advantage to the recipient of the shares at the expense of the existing shareholders, who will see a fall in the value of their investment. The prohibition on issuing shares at a discount of 20% or more to the “benchmark price” limits this diminution in value by ensuring that shares are issued at values not substantially different from the prevailing market value. However, as a means of protecting existing investors from this diminution in value, it is only effective in cases where the share issue takes place near to the time the benchmark valuation is performed. As the gap between the valuation (i.e. setting of the price) and the issue of shares extends so the effectiveness of the price limitation is potentially reduced.
- 11.32 In certain types of fund raising, which may ultimately lead to an issue of shares under the general mandate, there will be such a gap. One of these methods is issuing options to enable the holder to subscribe for shares at a pre-determined price (the “exercise price”) during a pre-determined period. The diminution in shareholder value caused by the option will be deferred until the option is exercised which, in line with restrictions in the Listing Rules governing options, may be up to five years after the option was granted. Thus, when an option was issued its exercise price may have been set above the then prevailing “benchmark price” (or even above the prevailing market price). At the time it is exercised it may be substantially below the market price resulting in a significant diminution in value for existing shareholders. Where the option is properly priced, there should not be any cause for concern. For properly priced options, we would expect the issuer to obtain a fair return, which is normally a function of the option price and the exercise price. In some circumstances, however, the fairness to the listed issuer may be questionable, e.g. in some cases where the price is nominal and the exercise price is at a discount to the market price at the time of issue.
- 11.33 Applying the “benchmark price” to the setting of the exercise price may not be entirely appropriate to protect shareholders’ interests in every case. An exercise price may be above the “benchmark price” at the time of issue but substantially below the market price at the time of exercise. A further matter to consider in respect of options is that there may be difficulties in valuing them (and hence determining that any consideration received on the granting of the options was fair). Although pricing models are available they are subject to certain limitations, particularly in the case of long-dated options and where the securities over which they are granted are not actively traded. Other fund raising methods where there may be a time gap between funds being raised and a diminution in value occurring include warrants (which may be issued alone or as a “sweetener” to a debt security issue) and convertible bond issues.
- 11.34 Given the inherent problems with securities which exhibit a significant gap between issue date and the date any diminution in value is crystallised, it may be more appropriate for such issues to be treated differently from placings under a general mandate as regards the level of discount that is allowed. There may be grounds for amending the current Rules such that:
- (a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the “benchmark price” would apply only to placings of shares for cash;
 - (b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
 - (c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information.

Listed issuers' current practices

11.35 In order to better inform a decision about whether current regulation is appropriate, the Exchange has conducted two separate research projects.

General Mandates and Specific Mandates

11.36 The Exchange noted with concern a tendency on the part of some issuers since the 2004 Rule amendments to obtain specific mandates rather than general mandates. Use of specific rather than general mandates allows issuers to avoid the requirements for the need for independent shareholders' approval of refreshments of general mandates as required under the 2004 Rule amendments.

11.37 The Exchange conducted a research project whereby all general mandates, refreshments of general mandates and specific mandates issued by listed issuers in Hong Kong for the periods from the last annual general meeting or one year before 31 March 2004 (the effective date of implementation of the 2004 Rule amendments) to 10 June 2005 were reviewed.

11.38 The review covered 554 listed issuers (i.e. 51% of the companies listed on the Exchange as at 31 May 2005) including all the then 33 HSI companies, all listed issuers for which we received complaints in relation to share issues or convertible securities, and other listed issuers which recorded significant movements in their issued share capital during the relevant period.

11.39 A summary of the findings of the Exchange's research on the use of mandates is set out at Appendix 11. We note that, in the year following 31 March 2004 (i.e. implementation of the 2004 Rule amendments):

- (a) the total number of refreshments of general mandates obtained by those listed issuers we reviewed fell by about 41%;
- (b) the total number of specific mandates obtained rose by about 46%;
- (c) not all issuers obtained a general mandate;
- (d) of the 543 general mandates obtained by the 543 listed issuers in the year after 31 March 2004, only 122 (or 22% of the mandates obtained) were utilised, either in part or in full.

Given these findings, there may be grounds for imposing further restrictions on the general mandate.

Size and Use of General Mandates

11.40 The Exchange also conducted a research project to identify all general mandates obtained by listed issuers in Hong Kong for the three-year period from 31 March 2003 (i.e. one year before the implementation of the Rule Amendments set out in the 2004 News Release) to 30 March 2006 (the Relevant Period).

11.41 The review covered 554 listed issuers (the Relevant Issuers) (i.e. 48.6% of the companies listed on the Exchange as at 31 March 2006) including all then 33 HSI companies, all listed issuers for which we received complaints in relation to issues of securities, and other listed issuers which recorded significant movements in their issued share capital during the relevant period.

11.42 A summary of the findings of the Exchange's research on the size of general mandates obtained during the Relevant Period is set out below:

Size of general mandate obtained	Number	
	Companies reviewed	HSI companies (as at 31 March 2006)
5%*	1	1
10%*	0	0
20%*	532	28
Sub-total	533	29
Size of general mandate obtained varied from year to year (from 5% to 20%)	10	4
No general mandate obtained in any year	11	0
Grand total	554	33

* This percentage refers to the size of the general mandate obtained in any particular year by the listed issuer. While the listed issuer may not have obtained a general mandate every year during the Relevant Period, the general mandate in those years in which the listed issuer did obtain a general mandate was consistently of a size represented by this percentage.

11.43 From the summary, it can be seen that, during the Relevant Period:

- (a) in respect of approximately 96% of the Relevant Issuers, the size of the general mandate obtained (in any year in which a general mandate was obtained) was invariably 20%;
- (b) approximately 2% of the Relevant Issuers did not obtain any general mandate in any of the three years; and
- (c) approximately 2% of the Relevant Issuers obtained a general mandate which varied in size from year to year (from 5% to 20%).

11.44 The Exchange found that during the Relevant Period:

- (a) 1.4% of the Relevant Issuers obtained a general mandate in only one year;
- (b) 13.2% of the Relevant Issuers obtained a general mandate in only two years; and
- (c) 83.4% of the Relevant Issuers obtained a general mandate in each of the three years.

11.45 With regard to the general mandates obtained by the Relevant Issuers:

- (a) 29% of the general mandates obtained from 31 March 2003 to 30 March 2004 were used (either in part or whole), i.e. 71% of these general mandates were not used;
- (b) 19% of the general mandates obtained from 31 March 2004 to 30 March 2005 were used (either in part or whole), i.e. 81% of these general mandates were not used; and
- (c) 14% of the general mandates obtained from 31 March 2005 to 30 March 2006 were used (either in part or whole), i.e. 86% of these general mandates were not used.

- 11.46 With regard to the general mandates obtained by the Relevant Issuers that were used (in part or whole):
- (a) 90% of such general mandates obtained from 31 March 2003 to 30 March 2004 were used (in part or whole) to raise cash through the issue of securities;
 - (b) 86% of such general mandates obtained from 31 March 2004 to 30 March 2005 were used (in part or whole) to raise cash through the issue of securities; and
 - (c) 85% of such general mandates obtained from 31 March 2005 to 30 March 2006 were used (in part or whole) to raise cash through the issue of securities.

Overseas regulation

11.47 Set out below is a brief overview of the relevant regulation in each of the United Kingdom, Australia and Singapore; specifically, whether those jurisdictions impose a cap on the securities that can be issued under a general mandate.

United Kingdom

- 11.48 In the United Kingdom, the statutory position regarding pre-emption is set out in the Companies Act 2006 (sections 561 to 577). Those provisions are derived from the EU Second Company Law Directive. Pursuant to the Act (and the Directive) a public company must not allot equity securities for cash⁴ unless the securities are first offered to existing shareholders. One exception to this is where shareholder approval has been obtained to disapply pre-emptive rights. Shareholder approval must be by special resolution (i.e. a 75% majority vote at general meeting). The mandate can be granted for all issues for up to five years or on a case-by-case basis.
- 11.49 The Listing Rules (9.3.11) require that a listed company proposing to issue equity shares for cash must first offer those securities in proportion to their existing holdings to existing holders of that class of equity shares and holders of other equity shares of the listed company who are entitled to be offered them. This does not apply where a general disapplication of statutory pre-emption rights was authorised by shareholders in accordance with the Companies Act.
- 11.50 While the law and Listing Rules might be seen as relatively permissive, standards are raised by market pressure exerted by institutional investors supporting the Statement of Principles published by the Pre-Emption Group. The Statement of Principles provide guidance to companies and investors on the factors to be taken into account when considering the case for disapplying pre-emption rights. It replaces the Pre-Emption Guidelines, which had been in place since 1987.
- 11.51 The Statement of Principles relates to issues of equity securities for cash other than on a pre-emptive basis pro rata to existing shareholders by all UK companies which are primary listed on the Main Market of the London Stock Exchange.
- 11.52 The Statement of Principles considers that routine requests are less likely to need in-depth discussion and shareholders will be more inclined in principle to support them. In this regard, it states that requests are more likely to be routine in nature when the company is seeking authority to issue non-pre-emptively no more than 5% of ordinary share capital in any one year.

⁴ Pre-emption rights are only triggered in allotments of equity securities for cash.

- 11.53 The Statement of Principles further states that, in the absence of suitable advance consultation and explanation or the matter having been specifically highlighted at the time at which the request for disapplication was made, companies should not issue more than 7.5% of the company's ordinary share capital for cash other than to existing shareholders in any rolling three year period.
- 11.54 The Statement of Principles explains that a discount of greater than 5% is not likely to be regarded as routine and that any discount at which equity is issued for cash other than to existing shareholders will be of major concern and that companies should, in any event, seek to restrict the discount to a maximum of 5% of the middle of the best bid and offer prices for the company's shares immediately prior to the announcement of an issue or proposed issue.

Australia

- 11.55 In Australia, the Listing Rules (in particular, the Australian Stock Exchange (ASX) Listing Rule 7.1) provide that, without the approval of the holders of ordinary securities (by ordinary resolution), an entity must not issue equity securities exceeding 15% of the number of fully paid ordinary securities on issue 12 months before the date of issue or agreement except, most relevantly, by a pre-emptive issue.
- 11.56 In 2003 the ASX proposed to increase the limit to 20% and to give to securities holder the right to confer a general mandate for a period of 13 months. The proposals were not implemented due to opposition.

Singapore

- 11.57 In Singapore, the Companies Act (section 161) provides that the directors of a company must not, without the approval of the company's shareholders in general meeting, exercise any power of the company to issue shares. The Listing Rules (in particular, Rule 806) provide that such a general mandate must be limited to not more than 50% of the issued share capital of which the aggregate number of shares and convertible securities issued other than on a pre-emptive basis must be not more than 20% of the issued share capital. There is a prohibition on issue of convertible securities if the maximum number of shares to be issued upon conversion cannot be determined at the time of the issue of convertible securities.
- 11.58 A general mandate generally remains in force for 12 months (i.e. until the next annual general meeting) or it is revoked or varied by ordinary resolution of the shareholders in general meeting.

Consultation proposals

- 11.59 To facilitate discussion, the Exchange proposes the following options:
- (a) as to the size of issues of securities under the general mandate:
 - (i) retain the current Rules on the size of issues of securities under the general mandate without amendment; or

- (ii) amend the current Rules to restrict the size of the general mandate that can be used to issue securities for cash or (subject to the position taken on paragraph (c)(ii) below) to satisfy an exercise of convertible securities to:
- 10% (of the issued share capital at the time of the mandate); or
 - 5% (of the issued share capital at the time of the mandate),
- with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital⁵; or
- (iii) amend the current Rules to restrict the size of the general mandate that can be used for any purpose, including to issue securities for cash or (subject to the position taken on paragraph (c)(ii) below) to satisfy an exercise of convertible securities, to 10% or some other percentage;
- (b) as to the calculation of the size limit for the general mandate:
- (i) retain the current Rules on the calculation of the size limit for the general mandate without amendment; and
- (ii) amend the current Rules so as to exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the granting of the general mandate. In other words, the listed issuer's issued share capital as at the date of the granting of the general mandate will remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting; and
- (c) as to the issue of securities at a discount to market price:
- (i) retain without amendment the current Rule prohibiting the placing of securities for cash consideration pursuant to a general mandate at a discount of 20% or more to the "benchmark price", unless the listed issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances; or
- (ii) amend the current Rules such that:
- the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmark price" would apply only to placings of shares for cash;
 - all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
 - for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information.

⁵ In other words, the total size of the general mandate would be either 15% or 20% (i.e. 10% plus either 5% or 10%) of the issued share capital.

Consultation questions

11.60 *Question 11.1:* Should the Exchange retain the current Rules on the size of issues of securities under the general mandate without amendment? If so, then please provide your comments and suggestions before proceeding to *Question 11.3* below.

11.61 *Question 11.2:* Should the Exchange amend the current Rules to restrict the size of the general mandate that can be used to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities to:

(choose one of the following options)

- 10%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If so, then what should be the percentage of the issued share capital for issuing securities for such other purposes?
- 5%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If so, then what should the percentage of the issued share capital be for issuing securities for such other purposes?
- 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)?
- a percentage other than 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)? If you support this option, then please state the percentage you consider appropriate.

Please provide your comments and suggestions.

11.62 *Question 11.3:* Should the Exchange amend the current Rules so as to exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the granting of the general mandate? (In other words, the listed issuer's issued share capital as at the date of the granting of the general mandate would remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting.)

If so, then please provide your comments and suggestions.

11.63 *Question 11.4:* Should the Exchange amend the current Rules such that:

- (a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmark price" would apply only to placings of shares for cash;
- (b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
- (c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information?

11.64 *Question 11.5:* Do you have any other comments or suggestions in relation to general mandates? Please specify.

Issue 12: Voting at general meetings

Background

12.1 This section of the consultation paper aims to facilitate public discussion regarding regulation by the Exchange on the extent to which voting by poll should be made mandatory at general meetings and the minimum notice period required for convening shareholders meetings.

Voting by poll

12.2 The right to vote at general meetings is an effective means for shareholders to safeguard their own interests. In Hong Kong, the practice for voting in general meetings of issuers is by a show of hands unless a poll is demanded in accordance with the constitutional documents of issuers or required under the Rules. When a vote is taken on a show of hands, each person attending the meeting has one vote on each resolution, irrespective of the number of shares he may hold or represent.

12.3 Prior to 31 March 2004, the Rules did not set out mandatory requirements on voting procedures of an issuer, except for certain limited exceptions. Since 31 March 2004, the Rules have, as a result of a package of corporate governance Rule amendments implemented that year, required voting by poll for connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting.

12.4 The 2004 Rule amendments were enacted following the 2002 Consultation Paper mentioned in paragraph 11.9.

12.5 There were views that it was necessary to enhance transparency and fairness of the issuers' voting procedure, particularly when dealing with matters which involved conflicts of interests or had a significant impact on issuers and shareholders. In the 2002 Consultation Paper, we proposed to require voting by way of poll for connected transactions and all resolutions requiring independent shareholders' approval (i.e. where controlling shareholders were required to abstain from voting). Those respondents that disagreed with this proposal were given the choice of stating that voting by poll at a general meeting should be required for all resolutions.

12.6 Respondents had diverse views on the Consultation Proposal. Most respondents that disagreed with the proposal were issuers. Respondents from professional and trade associations generally supported voting by poll. However, they had different views on when voting by poll should be required. Some of them supported our proposal to require voting by poll for connected transactions and all resolutions requiring independent shareholders' approval. Others considered that voting by poll should be required for all resolutions. There are also suggestions that voting by poll should be required for all resolutions requiring any shareholders to abstain from voting.

12.7 Most respondents that supported voting by poll raised concerns about the shortfalls of voting by a show of hands. They considered that voting by a show of hands did not take into account the voting power attaching to the shares held by shareholders attending the general meetings. As all the votes of shareholders holding their shares through the Central Clearing and Settlement System (CCASS) would be counted as a single vote at the general meeting, the voting rights of these shareholders were disenfranchised. Most issuers' constitutional documents contain certain provisions that enable shareholders to demand a poll and include certain conditions (e.g. the level of shareholding interest and/or the number of shareholders attending the general meetings) for demanding a poll. Some respondents considered that, since most retail investors held their shares through CCASS, it was very difficult for a shareholder that wished to demand a poll to fulfil the respective conditions. They suggested that the Rules should include less stringent conditions for shareholders to demand a poll. Respondents further suggested that the poll should be scrutinised by the appointed auditor which should certify the voting results.

- 12.8 Respondents that did not support the Consultation Proposal held different views. A number of respondents considered that voting by poll required additional time and was costly, particularly where the voting result would be a foregone conclusion, regardless of whether the voting procedure was carried out by way of poll or by a show of hands. Some respondents commented that the existing company laws and issuers' constitutional documents already provided a sufficient channel for shareholders to demand a poll, if considered necessary. Therefore, it would not be necessary to introduce further requirements for voting by poll in the Rules. Others commented that shareholders holding shares through CCASS always had the option of withdrawing their shares from CCASS, if they considered voting by poll necessary. Therefore, shareholders were free to exercise their right to demand a poll in accordance with the issuers' constitutional documents or company laws.
- 12.9 Given the broad support of various professional and trade associations, we adopted the Consultation Proposal to require voting by poll for connected transactions and transactions that required controlling shareholders to abstain from voting. Since, in Hong Kong, most issuers are controlled by a single shareholder or family, or a small group of closely related shareholders and attendance and participation of minority or public shareholders at general meetings remain low, we also extended the requirement of voting by poll to transactions requiring any interested shareholders to abstain from voting.
- 12.10 Given the additional time and costs that may be incurred by issuers, we considered that it might not be justifiable to require voting by poll for all resolutions. The Rules already set out the conditions for the chairman of the meeting to demand a poll¹. To further protect the rights of minority shareholders, we adopted another of our Consultation Proposals, namely to require issuers to disclose the procedure for demanding a poll by shareholders pursuant to their constitutional documents in circulars to shareholders, when voting by poll was not a mandatory requirement under the Rules or in the issuers' constitutional documents. Further, we subsequently included in our Code on Corporate Governance Practices as a Code Provision² that, among other things, the chairman of a meeting should ensure disclosure in the issuer's circulars to shareholders of the procedures for and the rights of shareholders to demand a poll. Also included are Code Provisions that: (i) the issuer should count all proxy votes and, except where a poll is required, the chairman of a meeting should indicate to the meeting the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands. The issuer should ensure that votes cast are properly counted and recorded (although there is no provision in the Code for the Chairman's remarks to be subsequently reported); and (ii) the Chairman should at the commencement of the meeting ensure that an explanation is provided of the procedures for demanding a poll by shareholders before putting a resolution to the vote on a show of hands and the detailed procedures for conducting a poll and then answer any questions from shareholders whenever voting by way of a poll is required. We considered that the enhanced disclosure requirement would promote transparency as to shareholders' rights on demanding a poll at general meetings.

¹ Under Main Board Rule 13.39(3) and GEM Rule 17.47(3), if the Chairman of the meeting and/or the directors individually or collectively hold proxies in respect of shares holding 5% or more of the total voting rights at a particular meeting, and if on a show of hands a meeting votes in the opposite manner to that instructed in those proxies, the Chairman and/or the directors and the Chairman holding proxies as aforesaid collectively shall demand a poll; provided that if it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands, then the directors and/or the Chairman shall not be required to demand a poll.

² The Code works on what is known as a "comply or explain" basis; in other words, companies may choose not to comply with specific provisions but, in the case of a "Code Provision", will have to give considered reasons for any deviation.

12.11 To help ensure a higher standard of corporate governance and greater transparency, we also amended the Rules to require that a scrutineer be appointed and that issuers must publish an announcement to provide details of the poll results (Main Board Rule 13.39(5) or GEM Rule 17.47(5)).

Notice of general meetings

12.12 In order for shareholders to have time for the exercise of judgement as to the appropriate course of action in respect of a particular resolution, it is essential that they are given adequate notice of the meeting and sufficient details of the agenda, in particular, the resolutions to be considered and, if thought fit, passed at the meeting.

12.13 The Companies Ordinance, which applies to listed issuers incorporated in Hong Kong, requires 14 days notice for the passing of an ordinary resolution and 21 days notice (as well as a 75% majority) for the passing of a special resolution. 21 days notice is also required for convening an annual general meeting. The Rules contain provisions which extend the same requirements for notice periods to listed issuers incorporated in Bermuda and the Cayman Islands by requiring that they incorporate such provisions into their constitutional documents. (In the absence of any such provisions in their constitutional documents, only 5 days notice would be required under the Companies Act of Bermuda and Companies Law of the Cayman Islands to convene a general meeting.)

12.14 The Companies Ordinance requires “special notice” to be given to convene a meeting for certain resolutions (e.g. removal of a director or auditor). Where special notice is required, notice of the intention to put forward the resolution must be given to the company at least 28 days before the meeting at which it is to be put forward. The company must then give notice of the resolution when it calls the relevant meeting (e.g. at least 14 days notice to convene an extraordinary general meeting to vote on an ordinary resolution). If that is not practicable, notice can be given in newspapers or in any other mode allowed by the articles at least 21 days before the meeting. This provision applies only to listed issuers incorporated in Hong Kong.

12.15 On the Mainland, 20 and 15 days notice is required for annual general meetings and extraordinary general meetings respectively under the Company Law of the People’s Republic of China. In the case of H-share issuers, 45 days notice of shareholder meetings is required under the “Mandatory Provisions for Companies Listing Overseas” for all resolutions.

Overseas regulation

12.16 Set out below is a brief overview of the relevant regulation in each of the United Kingdom, Australia and Singapore; specifically, the extent to which those jurisdictions require voting by poll and the minimum notice period required for convening shareholders meetings.

United Kingdom

Voting by poll

- 12.17 The default method of voting under the Companies Act is by a show of hands, not by poll.
- 12.18 Provision D.2.2 of the Combined Code³ states that a company should, where resolutions are decided in a manner other than a poll (e.g. a show of hands), release the following confirmation both at the meeting, and as soon as practicable on the company's website:
- (a) the number of shares in respect of which proxy appointments have been validly made;
 - (b) the number of votes for the resolution;
 - (c) the number of votes against the resolution; and
 - (d) the number of shares in respect of which the vote was directed to be withheld.

Notice of general meetings

- 12.19 Under the Companies Act, a general meeting of a public company (other than an adjourned meeting) must be called by notice of: (a) in the case of an annual general meeting, at least 21 clear days; and (b) in any other case, at least 14 clear days.
- 12.20 The Companies Act requires "special notice" to be given to convene a meeting for certain resolutions (e.g. removal of a director or auditor). Where special notice is required, notice of the intention to put forward the resolution must be given to the company at least 28 clear days before the meeting at which it is to be put forward. The company must then give notice of the resolution when it calls the relevant meeting (e.g. a public company must give at least 14 clear days notice except for an annual general meeting). If that is not practicable, notice can be given in newspapers or in any other mode allowed by the articles at least 14 clear days before the meeting.
- 12.21 Provision D.2.4 of the Combined Code recommends that the Chairman take responsibility for ensuring that notices (and related papers) be circulated to shareholders at least 20 working days before the meeting.

Australia

Voting by poll

- 12.22 The Corporations Act provides that companies may vote by a show of hands or by a poll, if shareholders ask for one.
- 12.23 Before any vote is taken, "the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast".

³ Like the Code on Corporate Governance Practice in the (Hong Kong) Rules, the Combined Code works on a "comply or explain" basis.

12.24 Listed companies must record in the minutes of their meetings, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and, if the resolution is decided by a show of hands, the total number of proxy votes in respect of which the appointments specified that: (i) the proxy is to vote for the resolution; (ii) the proxy is to vote against the resolution; (iii) the proxy is to abstain on the resolution; and (iv) the proxy may vote at the proxy's discretion. If the resolution is decided on a poll, the company must record the total number of votes for, against or abstaining in its minutes. Companies must make their minute books available for inspection by members free of charge.

Notice of general meetings

12.25 The Corporations Act requires listed companies to give its shareholders at least 28 days notice of general meetings.

12.26 The Corporations Act requires "special notice" to be given to convene a meeting for certain resolutions (e.g. removal of a director or auditor). Where special notice is required, notice of the intention to put forward the resolution must be given to the company at least 28 days before the meeting at which it is to be put forward. The company must then give notice of the resolution when it calls the relevant meeting (e.g. at least 28 days notice in the case of a listed company). If that is not practicable, notice must be given in any manner allowed by the articles at least 14 days before the meeting.

Singapore

Voting by poll

12.27 Companies may vote by a show of hands or by a poll, if shareholders ask for one. Whichever voting method is chosen, companies must immediately publish a notice announcing the results of the meeting. The Singapore Listing Manual requires an issuer to immediately announce all resolutions put to a general meeting of the issuer, and immediately after such meeting, whether or not the resolutions were passed.

12.28 There is no requirement in the Singapore Listing Manual that any transactions requiring shareholder approval must be voted on by poll.

Notice of general meetings

12.29 The Companies Act requires at least 14 clear days notice for shareholder meetings and, in the case of public companies, 21 days for meetings with special resolutions, which require a 75% majority.

12.30 The Companies Act requires "special notice" to be given to convene a meeting for certain resolutions (e.g. removal of a director or auditor). Where special notice is required, notice of the intention to put forward the resolution must be given to the company at least 28 days before the meeting at which it is to be put forward. The company must then give notice of the resolution when it calls the relevant meeting (e.g. at least 21 days notice for a special resolution in the case of a public company). If that is not practicable, notice must be given in any manner allowed by the articles at least 14 days before the meeting.

12.31 The Singapore Listing Manual states that: "[a]ll notices convening meetings must be provided to the Exchange and sent to shareholders at least 10 market days before the meeting (for meetings to pass special resolution, at least 15 market days)."

Concern with existing Rules and practices

Voting by poll

12.32 In its “CG Watch 2007”, the Asian Corporate Governance Association acknowledges that the current regime in Hong Kong is stronger than most in the region in several areas. Nevertheless, certain weaknesses including voting by show of hands were noted. In its “ACGA Asian Proxy Voting Survey 2006”, the Association had put forward the following arguments against the practice of voting by a show of hands and in favour of requiring voting by poll on every resolution at a general meeting:

- (a) When a vote is taken on a show of hands, each person attending the meeting has one vote on each resolution. An investor with 100 shares, therefore, has the same voting rights as a shareholder with 100,000 or one million shares. This undermines the voting rights of the person or institution with more shares - something that could make a difference in a closely contested vote. It also undermines the “one share, one vote” principle, a core pillar of modern corporate governance.
- (b) Voting by show of hands favours incumbent management, since they will attend the meeting in person and will arrange for relatives and friendly employee/minority shareholders to attend also. Domestic institutional shareholders find it difficult to attend (because of their large number of portfolio companies and limited staff), while most cross-border investors find it impossible to attend in person.
- (c) Votes sent in by proxy are easily ignored, especially if the chairman of the meeting is appointed as the proxy (which is common). When voting is done on a show of hands, chairmen often omit to announce the number of proxies they hold. Best practice says that after each vote by hand, the chairman should announce the number of proxies voting for and against. This is to assure the meeting that the result would have been the same had a poll been taken and all the votes counted.
- (d) If the chairman holds a large number of proxies voting against, and he believes that a vote by poll would produce a different result to one by show of hands, then he should call a poll. But since company law and listing rules in Asia are vague on this point, it seems reasonable to conclude that many polls that should be called are being quietly dropped.⁴
- (e) Results of AGMs: Issuers that vote by show of hands typically publish short announcements simply stating that “all resolutions at our AGM were passed”. Hence, investors voting by proxy receive no information as to the actual balance of votes for and against, whether their votes were even counted (probably not), and whether their votes made any difference. This hardly constitutes fair treatment of shareholders in a modern securities market.

12.33 Another market commentator has also advocated making voting by poll mandatory for all resolutions of listed issuers.

12.34 Many listed issuers in Hong Kong now aspire to a higher level of corporate governance and transparency and voluntarily vote all meeting resolution by poll, even where this is not required under the Rules and independently publish the next day voting results that have been reviewed by a scrutineer.

⁴ With regard to Hong Kong listed issuers, however, please see footnote 1 at page 69.

- 12.35 As mentioned in paragraph 12.10, we considered in 2004 that it might not be justifiable to require voting by poll for all resolutions given the additional time and costs that may be incurred by issuers. Since the implementation of the 2004 Rule amendments, however, there are views in the market that any additional cost and time incurred as a result of conducting a vote by poll may be relatively small. From a listed issuer's perspective, the meeting venue in any event needs to be booked for a minimum period of a few hours in order to allow sufficient time for any ensuing deliberation with or among the shareholders. In other words, the difference between a meeting which lasts less than an hour and one which lasts for two or three hours is probably minimal in terms of the booking fee. Therefore, it may be that the only extra costs involved are the expense of engaging a scrutineer and additional management time. From a shareholder's perspective, the exercise of his rights will have been completed once the vote has been taken. He may leave immediately thereafter or remain at the meeting venue in a purely social capacity. Therefore, in terms of demands on his time, the position is the same whether voting is by a show of hands or by poll. Where the voting is by poll and a shareholder decides to leave after the vote has been taken and before the results of the voting are announced at the meeting venue, he will learn of the results when the relevant announcement is published, usually on the following day.
- 12.36 It is to be noted that none of the three jurisdictions described in our overview require voting by poll on all resolutions. In two of the three (United Kingdom and Australia), there is a provision (in the Combined Code and in the Corporations Act respectively) for listed companies, where voting has been on a show of hands, to publish the total number of proxies received to the meeting together with a detailed breakdown of the voting instructions. In Singapore, whichever voting method is chosen, companies must immediately publish a notice announcing the results of the meeting.
- 12.37 We therefore seek market views on whether the Rules should be amended to extend the requirement for voting by poll beyond the current scope (i.e. connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting) so as to cover all resolutions at general meetings.
- 12.38 If the Rules are not amended to require voting on all resolutions at general meetings to be by poll, two alternative measures can also be considered.
- 12.39 The first alternative is to amend the Rules to require voting on all resolutions at annual general meetings to be by poll (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting), as it is at annual general meetings that most of a listed issuer's key recurring corporate matters are dealt with. These typically include the adoption of the annual financial statements and reports of the directors and auditors, appointment of directors, appointment of auditors, general mandate for the issue of shares and general mandate for share repurchases.
- 12.40 Where voting is taken on a poll, the listed issuer must comply with Main Board Rule 13.39(5) or GEM Rule 17.47(5) which requires publication on the next business day in an announcement of the results of the poll (including: (i) the total number of shares entitling the holder to attend and vote for or against the resolution at the meeting; (ii) the total number of shares entitling the holder to attend and vote only against the resolution at the meeting; and (iii) the number of shares represented by votes for and against the relevant resolution).

- 12.41 Other than in certain specific circumstances⁵, there is currently no requirement in the (Hong Kong) Rules for a listed issuer to publish an announcement as to whether or not a resolution has been passed following the holding of the meeting. The second alternative therefore is to amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to publish the total number of proxy votes in respect of which proxy appointments have been validly made together with the number of appointments which specify that: (i) the proxy is to vote for the resolution; (ii) the proxy is to vote against the resolution; (iii) the proxy is to abstain on the resolution; and (iv) the proxy may vote at the proxy's discretion. This practice is common in the United Kingdom and Australia (see section on "Overseas regulation"). Although falling short of full enfranchisement, it does provide investors with some degree of transparency in the form of information on how proxies would have voted if the voting had been on a poll where each share represented would have had one vote.
- 12.42 The first and second alternatives are not mutually exclusive and can be implemented together if the Rules are not amended to require voting on all resolutions at general meetings to be by poll.

Notice of general meetings

- 12.43 Central Clearing and Settlement System sets the following deadlines for the receipt of voting instructions from its participants, namely brokers, custodians and investors:
- (a) Where the meeting is to take place in Hong Kong, the deadline is normally 1 trading day before the meeting. Upon receipt of any voting instructions from its participants and subject to the relevant constitutional documents of the listed issuer and applicable laws, CCASS will arrange for one or more persons to attend the meeting as corporate representatives of HKSCC Nominees Limited (the registered shareholder) (HKSCC). As this does not involve the appointment of any proxies, the 48 hour deadline set by listed issuers for lodging a proxy form is not relevant. Typically, HKSCC will appoint just one corporate representative where no beneficial shareholder wishes to attend and vote at the meeting. Where a beneficial shareholder wishes to attend and vote and the listed issuer's constitutional documents allow multiple corporate representatives, HKSCC will appoint him as an additional corporate representative. Unlike proxies (who can usually only vote on a poll), corporate representatives are entitled to vote on both a show of hands and on a poll. Where a corporate representative appointed by HKSCC (other than a beneficial shareholder appointed as an additional corporate representative) holds instructions to vote both for and against a resolution, he will vote as follows:
- (i) on a show of hands, he will "net off" instructions to vote for and against the resolution (e.g. if the instructions attaching to 100,000 shares represented by him is to vote for and the instructions attaching to 200,000 shares represented by him is to vote against the resolution, he will vote against); and
- (ii) on a poll, he will enter on the poll paper the exact number of votes he has been instructed to cast both for and against the resolution.

⁵ Such circumstances include where voting is taken on a poll (Main Board Rule 13.39(5) and GEM Rule 17.47(5)).

- (b) Where the meeting is to take place outside Hong Kong, CCASS will not send a person to attend the meeting. Upon receipt of any voting instructions from its clients, CCASS will appoint the chairman of the meeting as proxy. Where the listed issuer has stipulated an address in Hong Kong for the lodging of proxy forms, CCASS will normally set, as its deadline for receipt of voting instructions from its participants, 4:15 p.m. on the last trading day immediately prior to the expiration of the 48 hour deadline normally set by the listed issuer for lodging proxy forms. For example, if the listed issuer's proxy deadline is Monday 9:00 a.m., the CCASS deadline will be 4:15 p.m. on the preceding Thursday and the proxy form will be delivered to the stipulated place (in Hong Kong) on Friday. If the listed issuer's proxy deadline is Monday afternoon, the CCASS deadline will be 4:15 p.m. on the preceding Friday and the proxy form will be delivered to the stipulated place (in Hong Kong) on Monday morning. If the constitutional documents allow multiple proxies, beneficial shareholders may also attend the meeting as proxies though CCASS will not send any person to attend.
- (c) Where the meeting is to take place outside Hong Kong and the listed issuer has stipulated an address outside Hong Kong for the lodging of proxy forms, more time is required to take into account the time it takes for mail to be delivered to the overseas destination. As with (b) above, CCASS will appoint the chairman of the meeting as proxy. The deadline set by CCASS for receipt of voting instructions from its participants will vary from case to case, but a typical deadline is between 3 to 5 trading days before the meeting.

12.44 We understand that custodians typically impose additional trading days on top of the CCASS deadlines for receipt of voting instructions from their clients. For example, where the proxy is to be lodged at an address in Hong Kong, the deadline for receipt of voting instructions from clients is typically a few days (e.g. 3 days) before the meeting. (This would include the 48 hour deadline normally set by the listed issuer for lodging of the proxy.) Where the proxy is to be lodged at an address outside Hong Kong, however, the time given by the custodian to the client to respond is typically much shorter.

12.45 Most custodians with whom we have spoken considered the minimum notice periods currently prescribed in the Rules for general meetings to be sufficient for the purpose of obtaining voting instructions from their clients. One custodian, however, expressed the view that 14 days notice of a meeting (i.e. an extraordinary general meeting where only ordinary resolutions are to be voted on) may not be sufficient in some circumstances. Where statutory holidays fall within the notice period and/or the deadline for receipt of voting instructions by CCASS or the custodian is earlier than usual because the listed issuer has stipulated an address outside Hong Kong for the lodging of proxies, clients may not have sufficient time for the exercise of judgement as to the appropriate course of action in respect of the resolutions to be voted on.

12.46 In its "ACGA Asian Proxy Voting Survey 2006", the Asian Corporate Governance Association has expressed the view that, in most Asian markets, late publication of full agendas, combined with tight voting deadlines set by custodians, allow cross-border investors little time in which to vote.

12.47 The Association points out that, in the United States, the notice period is 30 days, in Australia it is 28 days and, in the United Kingdom, it is 21 days under the Companies Act and, under the Combined Code, it is "at least 20 working days before the meeting" which equates to 28 calendar days. The Association recommends that final and detailed notices/agendas should be published at least 28 calendar days before all annual general meetings.

12.48 Much of the subject matter of annual general meetings is routine and not particularly time-sensitive in nature (e.g. the amendment of articles, the election or re-election of directors). They are annually recurring events held at fairly predictable intervals. It may therefore be possible for listed issuers to prepare their notices and agendas well in advance of an annual general meeting.

12.49 From a shareholder's perspective, a lengthening of the notice period is obviously desirable as it would afford him more time to exercise his judgement. However, the delay caused by a longer notice period may have adverse consequences for the listed issuer. Examples of corporate activity which require or may require shareholder approval under the Rules include certain instances of fund-raising (e.g. those requiring a specific mandate and rights issues which would increase the listed issuer's share capital or market capitalisation by more than 50%) and certain categories of notifiable transactions and connected transactions. Most of these matters are dealt with at extraordinary general meetings. A delay caused by a longer notice period might be considered undesirable from a listed issuer's viewpoint for the following reasons:

- where the fund-raising is transaction specific, there is greater uncertainty as to the availability of proceeds;
- there is the risk of a market downturn in the interim;
- the longer underwriting period might mean higher underwriting expenses; and
- there is a potential loss of business opportunity.

12.50 There may therefore be grounds for extending the notice period for annual general meetings to 28 calendar days while, on balance, the grounds for extending the notice period for extraordinary general meetings to 28 calendar days, or a period of between 14 and 28 calendar days, may be less persuasive.

Consultation questions

Voting by poll

12.51 *Question 12.1:* Should the Exchange amend the Rules to require voting on all resolutions at general meetings to be by poll?

12.52 *Question 12.2:* If your answer to *Question 12.1* is "no", should the Exchange amend the Rules to require voting on all resolutions at annual general meetings to be by poll (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting)?

12.53 *Question 12.3:* If your answer to *Question 12.1* is "no", should the Exchange amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to make an announcement on the total number of proxy votes in respect of which proxy appointments have been validly made together with: (i) the number of votes exercisable by proxies appointed to vote for the resolution; (ii) the number of votes exercisable by proxies appointed to vote against the resolution; (iii) the number of votes exercisable by proxies appointed to abstain on the resolution; and (iv) the number of votes exercisable by proxies appointed to vote at the proxy's discretion?

Notice of general meetings

12.54 *Question 12.4:* In the case of listed issuers other than H-share issuers, the Rules currently require 14 days notice for the passing of an ordinary resolution and 21 days notice for the passing of a special resolution. 21 days notice is also required for convening an annual general meeting. In the case of H-share issuers, 45 days notice of shareholder meetings is required under the “Mandatory Provisions for Companies Listing Overseas” for all resolutions. Should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings? If so, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

12.55 *Question 12.5:* If your answer to *Question 12.4* is “no”, should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all annual general meetings, but not extraordinary general meetings (or, depending on the listed issuer’s place of incorporation, special general meetings)? If so, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

General

12.56 *Question 12.6:* Do you have any other comments regarding regulation by the Exchange on the extent to which voting by poll should be made mandatory at general meetings or the minimum notice period required for convening shareholders meetings? Please provide reasons for your views.

Issue 13: Disclosure of information about and by directors

Disclosure of biographical information

13.1 Currently, the Rules (Main Board Rule 13.51(2) and GEM Rule 17.50(2)) require that when a new director or supervisor is appointed or on the resignation or re-designation of a director or supervisor the relevant issuer must make arrangements to ensure that an announcement of the appointment, resignation or re-designation of the director or supervisor is published. The Rules require the announcement of appointment or re-designation of a director or supervisor (Appointment Announcement) to include certain information, for example:

- (a) positions held with the issuer and other members of the issuer’s group;
- (b) previous experience including other directorships held in listed public companies in the last three years and other major appointments and qualifications;
- (c) full particulars of any public sanctions made against the director or supervisor by statutory or regulatory authorities;
- (d) full particulars of any unsatisfied judgments or court orders of continuing effect against the director or supervisor;

- (e) where the director or supervisor is currently subject to (i) any investigation, hearing or proceeding brought or instituted by any securities regulatory authority, including the Hong Kong Takeovers Panel or any other securities regulatory commission or panel, or (ii) any judicial proceeding in which violation of any securities law, rule or regulation is or was alleged, full particulars of such investigation, hearing or proceeding; and
 - (f) where the director or supervisor is the defendant in any current criminal proceeding involving an offence which may be material to an evaluation of his character or integrity to be a director or supervisor of the issuer, full particulars of such proceeding.
- 13.2 It is proposed that such information of the nature described in Main Board Rule 13.51(2) and GEM Rule 17.50(2), as may be relevant, should be required to be disclosed continuously up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or re-designation.
- 13.3 Such a change would facilitate investors and the market being kept informed. It also recognises the fact that the information remains relevant beyond the appointment or re-designation.
- 13.4 To implement this proposal, the Exchange proposes to introduce a new Main Board Rule 13.51B.
- 13.5 To help ensure that the issuer is made aware of the relevant information, the Exchange also proposes to introduce a new Main Board Rule 13.51C requiring that directors and supervisors provide the required information to the issuer continuously up to and including the time of their resignation.
- 13.6 The Exchange also proposes to make an amendment to paragraphs (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2). The amendments will confirm, for the sake of clarity, that the information referred to in those paragraphs need not be disclosed if such disclosure is prohibited by law. That is, paragraphs (r), (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2) require the disclosure of information relating to certain investigations, hearings and proceedings involving a director or supervisor of a listed issuer. Paragraph (r) provides that disclosure must be made "except where such disclosure is prohibited by law". Paragraphs (u) and (v), on the other hand, do not include an express limitation on disclosure where it is prohibited by law. Whilst such exception is implied, the Exchange considers that it would be best to amend paragraphs (u) and (v) such that they too include the express exception "where such disclosure is prohibited by law".
- 13.7 The proposed Main Board Rule amendments are set out at Appendix 13. The Exchange would also make equivalent amendments to the GEM Rules.

Consultation questions

- 13.8 *Question 13.1:* Do you agree that the information equivalent to that set out in draft new Main Board Rule 13.51B should be expressly required to be disclosed in the Rules by issuers up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or re-designation? Please provide reasons for your views.
- 13.9 *Question 13.2:* Do you agree that the relevant information should be discloseable immediately upon the issuer becoming aware of the information (i.e. continuously) rather than, for example, only in annual and interim reports? Please provide reasons for your views.
- 13.10 *Question 13.3:* Do you agree that, to ensure that the issuer is made aware of the relevant information, a new obligation should be introduced requiring directors and supervisors to keep the issuer informed of relevant developments? Please provide reasons for your views.

- 13.11 *Question 13.4:* Do you agree that paragraphs (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2) should be amended to clarify that the disclosure referred to in those Rules need not be made if such disclosure would be prohibited by law? Please provide reasons for your views.
- 13.12 *Question 13.5:* Do you agree that the draft Rules at Appendix 13 will implement the proposals set out above? Please provide reasons for your views.

Disclosure of information about board or other major appointments

- 13.13 Currently, the Rules require that issuers disclose their directors’/proposed directors’ and supervisors’/ proposed supervisors’ current and past (held in the last three years) directorships in other listed public companies. (The relevant Rules are Main Board Rule 13.51(2)(c), paragraph 41(1) of Appendix 1A of the Main Board Rules, paragraph 34 of Appendix 1B of the Main Board Rules, GEM Rule 17.50(2)(c), paragraph 41 of Appendix 1A of the GEM Rules and paragraph 34 of Appendix 1A of the GEM Rules.)
- 13.14 In relation to what is meant by “listed public companies”, Main Board Rule 1.01 defines “listed” as meaning having a listing on and permission to deal in securities on the Exchange. GEM Rule 1.01 defines “listed” as meaning having a listing on and permission to deal in securities on GEM. Consequently, a strict interpretation of the Rules would limit the current requirement for disclosure of directorships, in the case of Main Board issuers, to directorships in issuers with securities listed on the Exchange or, in the case of GEM issuers, to directorships in issuers with securities listed on GEM; not issuers with securities listed on other markets.
- 13.15 The Exchange proposes to amend the Rules relating to the disclosure requirements for the Appointment Announcement to clarify that issuers should disclose their directors’, supervisors’ and proposed directors’ and supervisors’ current and past (held at some time during the past three years) directorships in all public companies with securities listed in Hong Kong or overseas.
- 13.16 The Exchange further proposes to amend Main Board Rule 13.51(2)(c) and GEM Rule 17.50(2)(c) to clarify the requirement for disclosure of “professional qualifications” of a director/supervisor to mirror the language that currently appears in question 1(g) of Part 1 of the respective “Declaration and Undertaking” Forms.
- 13.17 The proposed Main Board Rule amendments are set out at Appendix 13. These amendments should be considered together with the proposals set out at section 17A to streamline disclosure in undertakings. The Exchange would also make equivalent amendments to the GEM Rules.

Consultation questions

- 13.18 *Question 13.6:* Do you agree that the Rules should be amended to clarify that issuers should publicly disclose in the Appointment Announcements their directors’, supervisors’ and proposed directors’ and supervisors’ current and past (during the past three years) directorships in all public companies with securities listed in Hong Kong and/or overseas? Please provide reasons for your views.
- 13.19 *Question 13.7:* Do you agree that Main Board Rule 13.51(2)(c) and its GEM Rules equivalent, GEM Rule 17.50(2)(c), should be amended to clarify that issuers should publicly disclose their directors’, supervisors’ and proposed directors’ and supervisors’ professional qualifications? Please provide reasons for your views.
- 13.20 *Question 13.8:* Do you agree that the draft Rules at Appendix 13 will implement the proposals set out above? Please provide reasons for your views.

Disclosure of information about previous convictions

13.21 Currently, Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) provide that an issuer must disclose in the Appointment Announcement particulars of certain convictions of the director or supervisor, subject to the provisions of the Rehabilitation of Offenders Ordinance or comparable legislation of other jurisdictions.

13.22 The Main Board Rule provides that the relevant convictions are those:

- “(i) involving fraud, dishonesty or corruption;
- (ii) under the Companies Ordinance, the Bankruptcy Ordinance, the Banking Ordinance, the Securities and Futures Ordinance, the repealed Protection of Investors Ordinance, the repealed Securities Ordinance, the repealed Securities (Disclosure of Interests) Ordinance and any Ordinance relating to taxation, and any comparable legislation of other jurisdictions; and
- (iii) in respect of which the director or supervisor has, within the past 10 years, been sentenced as an adult to a period of imprisonment of six months or more, including suspended or commuted sentences”.

13.23 GEM Rule 17.50(2)(m)(ii) differs slightly from Main Board Rule 13.51(2)(m) in that the GEM Rule includes additional Ordinances to those referred to in the Main Board Rule. The Ordinances referred in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii) are as follows:

- (a) the Commodity Exchanges (Prohibition) Ordinance;
- (b) the repealed Securities and Futures Commission Ordinance;
- (c) the repealed Commodities Trading Ordinance;
- (d) the repealed Stock Exchanges Unification Ordinance;
- (e) the repealed Securities and Futures (Clearing Houses) Ordinance;
- (f) the repealed Exchanges and Clearing Houses (Merger) Ordinance; and
- (g) the repealed Securities (Insider Dealing) Ordinance.

13.24 The Exchange proposes to amend Main Board Rule 13.51(2)(m)(ii) to include reference to the additional Ordinances (including repealed Ordinances) referred to above.

13.25 It is not clear from the current wording of Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) whether the disclosure obligation arises only where a conviction falls under all three limbs of those Rules or whether the disclosure obligation arises where a conviction falls under any one of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii)). The Exchange therefore also proposes to amend Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) to put beyond doubt that the disclosure obligation arises where a conviction falls under any one of the three limbs. This amendment is to give effect to the original purpose for which Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2) were first introduced in February 2006 which was to mirror the disclosure in the respective director’s/supervisor’s declarations in the forms set out in Appendix 5 of the Main Board Rules and Appendix 6 of the GEM Rules.

Consultation questions

- 13.26 *Question 13.9:* Do you agree that Main Board Rule 13.51(2)(m)(ii) should be amended to include reference to the Ordinances referred to in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii)? Please provide reasons for your views.
- 13.27 *Question 13.10:* Do you agree that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended so as to put beyond doubt that the disclosure obligation arises where a conviction falls under any one (rather than all) of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii))? Please provide reasons for your views.
- 13.28 *Question 13.11:* Do you agree that the draft Rules at Appendix 13 will implement this proposal? Please provide reasons for your views.

Issue 14: Codification of waiver to property companies

Background

- 14.1 On 14 December 2006, the Exchange and the SFC jointly published a news release (the Joint Release) announcing a conditional waiver of general effect (the Waiver) that exempts listed issuers actively engaged in property development as a principal business activity (Qualified Issuers) from the shareholders' approval requirement of the Listing Rules in certain scenarios of acquisitions (Acquisitions) of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders (Qualified Property Projects). The Joint Release is available at the Exchange's website: <http://www.hkex.com.hk/press/press.htm>.
- 14.2 The Waiver was narrowly focused – designed to cater for the particular hardship and practical difficulties of Qualified Issuers resulting from a strict application of the relevant Rules to Acquisitions. The Waiver is applicable to both Main Board issuers and GEM issuers. For ease of reference, only Main Board Listing Rule references are cited under this issue.
- 14.3 The Waiver exempts Qualified Issuers engaging in the Acquisitions, whether on a sole basis or on a joint venture basis, from the shareholders' approval requirements of the Rules. Broadly, projects undertaken with non-connected persons will not require shareholders' approval but will be subject to announcement and reporting requirements. Projects undertaken with any person that is a bona fide independent third party, but who has become a connected person (defined in Rule 14A.11 of the Main Board Listing Rules) of the Qualified Issuer solely because such person is a substantial shareholder with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific (Qualified Connected Person), will not be subject to shareholders' approval for specific projects. The Qualified Issuer will be required to obtain an authority granted to it in advance by its shareholders in general meeting to engage in the Acquisitions (General Property Acquisition Mandate or GPA Mandate).

- 14.4 Set out below is a comparative table (Table 14A) illustrating the compliance obligation of a Qualified Issuer pursuant to the Waiver.

Table 14A

Scenarios	Compliance Requirements under the Waiver		
	Shareholders' approval	Announcement	Reporting
Acquisitions undertaken on a sole basis that contain a capital element	No	Yes	Yes
Acquisitions undertaken with non-connected person	No	Yes	Yes
Acquisitions undertaken with Qualified Connected Person	General Property Acquisition Mandate obtained in advance from shareholders in annual general meeting	Yes	Yes

- 14.5 The relief provided by the Waiver is temporary only. It expires on 31 December 2008. It was intended that the Waiver would provide interim relief to Qualified Issuers whilst the Exchange undertook a public consultation process to determine, based on the scope of relief (the Proposed Relief) permitted by the Waiver, what revised regulatory regime should be established in the Rules. The Exchange intends that the Rules should be amended to implement the revised regime before 31 December 2008.
- 14.6 Since the Joint Release, the Division has only received one letter from a listed issuer requesting guidance on the contents of the Joint Release. Generally, the effect of the Waiver on listed issuers in practice has been minimal.
- 14.7 The Exchange now seeks public comments regarding the following issues relating to the proposed codification of the Waiver into the Rules: who should be eligible for Relief; the scope of the Proposed Relief; and what conditions should apply to the Proposed Relief.
- 14.8 The Exchange has also prepared and seeks comments on draft amendments to the Rules that would implement the consultation proposals. The draft Rule amendments are set out at Appendix 14.

Eligibility for the Proposed Relief

- 14.9 The term “ordinary and usual course of business” is used in determining whether or not a transaction would be caught under the definition of “transaction” in Chapter 14 of the Main Board Rules. (Main Board Rule 14.04 (8) defines “ordinary and usual course of business” to mean the existing principal activities of the entity or an activity wholly necessary for the principal activities of the entity.)
- 14.10 To ensure that the Waiver was targeted at companies who face hardship and practical difficulties in conducting property acquisitions, the Exchange determined that the Waiver would be available only to Qualified Issuers.
- 14.11 As a means of clarifying the application of the Proposed Relief, the Exchange proposes to provide further guidance on factors it will ordinarily accept as demonstrating compliance with this test. A case by case assessment of the factual circumstances would be undertaken for all other applications for the Proposed Relief.

Consultation proposal

- 14.12 The Exchange proposes to adopt the eligibility test set out in the Waiver. Accordingly, the Proposed Relief would apply to listed issuers actively engaged in property development as a principal business activity.
- 14.13 The proposed guidance will indicate that the Exchange would accept the following as factors for consideration whether or not the listed issuer is actively engaged in property development as a principal business activity:
- (a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors' Report of the listed issuer's latest published annual financial statements;
 - (b) property development activity is being reported as a separate and continuing business segment (if not the only segment) in the listed issuer's latest published financial statements; and
 - (c) the listed issuer's (primary or secondary) format for reporting segmental information is in business segments, and its latest published annual financial statements have fully complied with the requirements of Hong Kong Accounting Standard 14 or International Accounting Standard 14, as appropriate, which require, among other things, reporting of segment revenue and segment expense.

Consultation questions

- 14.14 *Question 14.1:* Do you agree that the Proposed Relief should provide relaxation of strict compliance with the shareholders' approval requirements of the Rules only to listed issuers that are actively engaged in property development as a principal business activity? Please provide reasons for your views.
- 14.15 *Question 14.2:* Do you agree with the proposed criteria in determining whether property development is a principal activity of a listed issuer (described at paragraphs 14.12 and 14.13 above)? Please provide reasons for your views.

Scope of the Proposed Relief

- 14.16 The Waiver applies to property acquired through public auction in Hong Kong. Consequently, it does not apply to other classes of assets, nor to other auction processes or property auctions outside Hong Kong, public or otherwise.
- 14.17 The Exchange considered the following factors in framing the scope of the current Waiver, namely:
- (a) the principle of level playing field in relation to non-property sectors participating in public auctions or tenders;
 - (b) the frequency of property auctions versus auctions of other non-property assets in Hong Kong or overseas;
 - (c) the mode of operation of property issuers versus non-property issuers in a public auction scenario in Hong Kong, and
 - (d) the degree of confidence in the transparency of auction processes other than public auctions in Hong Kong as well as the integrity of the land auction system overseas where the property auction takes place.

14.18 The Exchange’s observations and line of thinking with regard to the above factors can be summarised as follows:

- (a) Auctions of non-property assets in Hong Kong generally either: (i) fall within the “revenue nature in the ordinary and usual course of business” of a listed issuer and are therefore not caught under the definition of “transaction” in Chapter 14 of the Main Board Rules; or (ii) are less frequent compared to auctions of property assets.
- (b) In non-public auction processes, the final terms of the acquisition or disposal, including the price, are often subject to changes and negotiations between the vendor and the bidders. The bidder is in a position to influence the outcome of a bid and the negotiation process is not always transparent to an outside observer.
- (c) It is the interaction of the relatively unique business practice of the property sector in Hong Kong with the Rule requirements that has created difficulty for strict compliance with the Rules for property companies. It is not apparent that such interaction exists with the same level of frequency in other industries nor in other jurisdictions such as the U.K. or Singapore where the regulatory regime is similar to that of Hong Kong.
- (d) As a matter of guiding principle in framing the Waiver, where investors are requested to forego their right to vote on an Acquisition to be undertaken by a listed issuer, there must exist, as a pre-condition, a high degree of confidence in the transparency and integrity of the auction process in order to compensate for the dispensation from shareholders’ approval for the Acquisition.

14.19 In light of the above observations, the Exchange does not consider that there are compelling reasons to warrant an extension of the dispensation from the shareholders’ approval requirements of the Rules to auctions of non-property assets, or to non-public auction processes or property auctions overseas, public or otherwise.

Consultation proposal

14.20 As with the Waiver, the Exchange proposes that the Proposed Relief would apply only to land or property development projects acquired in Hong Kong from the Government or Government-controlled entities through public auctions or tenders (Qualified Property Projects).

Consultation question

14.21 *Question 14.3:* Do you agree that the scope of the Proposed Relief should be confined to acquisition of property assets that fall within the definition of Qualified Property Projects? Please provide reasons for your views. Are you aware of any examples of Hong Kong listed issuers encountering difficulties in strict compliance with the Rules when participating in other types of auctions or tenders? If so, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.

Revenue nature vs. a combination of revenue and capital elements

- 14.22 Main Board Rule 14.04(1)(g) provides an exemption for transactions undertaken by listed issuers (including their subsidiaries) which “are of a revenue nature in the ordinary and usual course of business”. It follows that transactions which are in the ordinary and usual course of business but contain a capital element are not exempted from the Chapter 14 compliance obligations.
- 14.23 It is not uncommon for property projects that are subject to public-sector related auctions or tenders to be sizeable and contain a mixture of both revenue and capital elements. A typical example would be for a major part of the project to be developed into residential units for sale as a revenue item, whilst the shopping mall and /or car parking space that are part and parcel of the development project are to be retained for investment purposes (i.e. are of a capital nature).
- 14.24 The development plan, in terms of the proportion of revenue to capital split, is subject to change, depending on market sentiment and governmental approval.
- 14.25 The Exchange recognises that there is likely to be an element of revenue and capital nature in relation to the Qualified Property Projects. The Waiver therefore allows the exemption under Main Board Rule 14.04(1) to be extended to cover a mixture of revenue and capital elements for these Qualified Property Projects.
- 14.26 The Waiver applies irrespective of the weighting between the revenue and capital elements. It is the intention of the Exchange that, in permitting the dispensation to be available to Qualified Property Projects that contain a capital element, the proportion of such capital element would only account for a minority portion of the estimated investment costs at the time of entering into the transaction.
- 14.27 The Waiver as it stands gives rise to a potential risk of a misuse of the dispensation in a scenario where the project is heavily geared towards the capital element. Such project might otherwise be subject to the shareholders’ approval requirement of the Rules even if the listed issuer proceeds on a sole basis.
- 14.28 One possible safeguard to mitigate such a risk would be to restrict the relief to circumstances where the revenue element of any project accounts for a majority of the project costs forecast at the time of application for a waiver.

Consultation proposal

- 14.29 Notwithstanding the risk mentioned above, the Exchange proposes that the Proposed Relief (to be codified in the Rules) will be available to Qualified Property Projects that contain any portion of a capital element as opposed to being restricted to projects that are of a revenue nature only. As an alternative, the Exchange would consider capping the proportion attributable to the capital element at not more than 50% of the investment costs forecast at the time of application for a waiver.

Consultation question

14.30 *Question 14.4:* Do you agree that Qualified Property Projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules set out in Main Board Chapter 14? If so, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.

Exemption in relation to connected transactions

14.31 Property joint ventures that are formed to participate in Government auctions can broadly be differentiated into two types, namely where:

- (a) the joint venture partner is a Qualified Connected Person; and
- (b) the joint venture partner is a connected person other than a Qualified Connected Person.

14.32 The connected transaction Rules are designed to safeguard the interests of minority shareholders from being potentially compromised by actions taken by the controlling shareholder and connected parties that have (or are perceived as having) a position of influence over a listed issuer.

14.33 For the property sector in Hong Kong, it is common for property issuers to enter into joint venture arrangements to participate in the acquisition of Qualified Property Projects, a practice that is not normally present in other industries. There are a variety of combinations of joint venture partners in different projects. These partners can also be competitors in other bidding situations and the decision on the selection of partners depends on the project in question. The joint venture arrangement is primarily driven by commercial considerations, which help regulate the operation of the joint venture to the extent that the interest of each joint venture partner, and hence the shareholders of the listed issuer, is maximized.

14.34 The scope of the exemption permitted by the Waiver for property joint ventures with connected persons is limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures). The Exchange considers that there is a reasonable basis for the Proposed Relief to be made available specifically to joint ventures that fall within the category.

Consultation proposal

14.35 The Exchange proposes to amend the Rules to codify relief for property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects from strict compliance with Chapter 14A in relation to the shareholders' approval requirements. Such relief would be subject to certain conditions as set out below.

Consultation question

14.36 *Question 14.5:* Do you agree that the scope of the exemption from strict compliance with Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons should be limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects? Please provide reasons for your views.

Conditions of the Proposed Relief

14.37 The Waiver provides an exemption from strict compliance with the shareholders' approval requirements for Qualified Issuers engaging in Acquisitions by way of Type B property joint ventures on the basis that these listed issuers will be subject to alternative compliance requirements. The requirements, set out in Paragraphs 14.38 to 14.46 below, were designed to safeguard against potential abuse of the Waiver.

Requirement for General Property Acquisition Mandate

14.38 Under the Waiver, a Qualified Issuer is required to obtain an authority granted to it in advance by its shareholders under the General Property Acquisition Mandate (GPA Mandate), including an Annual Cap, to engage in an Acquisition.

14.39 The GPA Mandate allows shareholders the opportunity to express their views and to vote for or against the listed issuer's proposed business plan and engagement in relation to Qualified Property Projects.

14.40 The Annual Cap for the purpose of the GPA Mandate and the detailed basis upon which it is calculated must be clearly set out in a shareholders' circular, and both the Independent Financial Adviser (IFA) and all the Independent Non-executive Directors (INEDs) would need to opine affirmatively that the proposed Annual Cap and the underlying assumptions were reasonable. It would be up to a listed issuer to decide on a proposed Annual Cap, and to provide a detailed and reasonable basis for the same.

14.41 The Annual Cap relates to events in the future and the Exchange expects Qualified Issuers to take a forward-looking approach in arriving at the Annual Cap, in addition to considerations on the terms of the proposed Acquisition. Among other things, the Exchange will expect a statement by the directors of the Qualified Issuer that in their opinion the working capital available to the group will be sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary, in light of the expected Acquisitions and the Annual Cap proposed.

Following approval of the General Property Acquisition Mandate

14.42 The GPA Mandate will continue to be in force only until the conclusion of the first annual general meeting (AGM) of the Qualified Issuer following the passing of the resolution at which time it will lapse, unless, by ordinary resolution passed at that meeting, the mandate is renewed.

14.43 The Qualified Issuer must submit to the Exchange written confirmation, upon the successful qualified property acquisition becoming legally binding, that the controlling shareholder(s) of the Qualified Issuer and the associates (as defined in Rule 14A.11(4)) of the controlling shareholder(s) do not have any material business dealings or relationships with the joint venture partner(s) or its/their controlling shareholder(s) or its/their associates. For this purpose, any material business dealings or relationships with the joint venture partner(s), its controlling shareholder(s) or its/their associates do not include existing property joint venture arrangement(s) with the joint venture partner(s) or its/their controlling shareholder(s) or its/their associates that would meet the conditions of the exemption.

14.44 The Qualified Issuer will include appropriate information on the basis of the Annual Cap, together with details of each successful transaction, the terms of the joint venture and its dividend policy in its subsequent annual reports.

14.45 The INEDs will be required to review all successful transactions under the joint venture arrangements annually. Such review is to be based on an opinion from an IFA, and to be confirmed by all the INEDs in the annual report, that the successful transaction has been carried out in accordance with the initial purpose of the joint venture and the relevant agreement governing the transaction on terms that are fair and reasonable and in the interests of the shareholders of the Qualified Issuer as a whole.

- 14.46 Any refreshments of the GPA Mandate before the next AGM must be approved by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting and the relevant circular to shareholders must contain information relating to the use of the GPA Mandate, the Qualified Issuer's history of refreshments of the mandate since the last AGM and the status of each of the Type B property joint ventures that were formed under the GPA Mandate.

Consultation proposal

- 14.47 The Exchange proposes that the Proposed Relief would require Qualified Issuers entering into Type B property joint ventures to obtain in advance, at an annual general meeting of the Qualified Issuer, a General Property Acquisition Mandate together with the proposed Annual Cap to engage in the acquisition of Qualified Property Projects. The Qualified Issuer would be required to substantiate the reasonableness of the basis of the Annual Cap by demonstrating sufficiency of working capital of the Qualified Issuer in light of the expected Acquisitions. The conduct of the meeting would need to comply with the conditions set out in the Waiver.

Consultation question

- 14.48 *Question 14.6:* Do you agree that the General Property Acquisition Mandate is useful to confer protection on shareholders and is necessary as regards property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures)? If so, should the General Property Acquisition Mandate include any limit on the size of the Annual Cap by reference to some quantifiable thresholds? Please provide reasons for your views.

Disclosure Obligations

- 14.49 In framing the Waiver, the Exchange focused on the particular hardship and practical difficulties in terms of timing and confidentiality in disclosure of details and obtaining shareholders' approval, where applicable, prior to submitting a bid in a public auction scenario. There was no evidence to suggest that the same level of hardship had presented itself by virtue of other continuing obligations of the Rules. The Exchange therefore determined that the compliance obligations of the Rules, including the general obligations of disclosure in Main Board Rule 13.09, would continue to apply for Qualified Issuers engaging in the Acquisitions.
- 14.50 The Qualified Issuers will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Rules.

Consultation proposal

- 14.51 The Exchange proposes that the Proposed Relief would only provide an exemption from strict compliance with the shareholders' approval requirements of the Rules for certain scenarios of Acquisitions. The Qualified Issuer would continue to be subject to the other requirements of the Rules, including the general obligations of disclosure in Main Board Rule 13.09. In undertaking an Acquisition, the Qualified Issuer would be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and circularise holders of its listed securities, with details of the Acquisition as required by Chapters 14 and 14A of the Main Board Rules.

Consultation questions

- 14.52 *Question 14.7:* Are the disclosure obligations described at paragraph 14.51 above appropriate? Please provide reasons for your views.
- 14.53 *Question 14.8:* Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out above? Please provide reasons for your views.

Issue 15: Self-constructed fixed assets

The existing Rules

- 15.1 The current version of the notifiable transaction Rules under Chapter 14 of the Main Board Rules was last amended in March 2004. The Main Board Rules and the GEM Rules as regards the notifiable transaction requirements are couched in the same language. The present discussion of the Main Board Rules also applies to the GEM Rules, unless otherwise stated.
- 15.2 Chapter 14 deals with certain transactions, principally acquisitions and disposals by a listed issuer. The purpose of the notifiable transaction Rules is to ensure that shareholders are provided with material information on the business activities of the listed issuer to enable them to appraise the position of the listed issuer and/or are given adequate opportunity to consider in advance and/or vote upon major changes¹ in the listed issuer’s activities. The notifiable transaction Rules acknowledge that investors may subscribe for shares in the expectation that there will be some continuity in a listed issuer’s operations. Similarly, this may be a factor that a shareholder may consider when deciding whether to continue to hold shares in a listed issuer.
- 15.3 Main Board Rule 14.04 (1) sets out the scope of application of the notifiable transaction Rules. Main Board Rule 14.04(1)(a) defines a transaction as including “the acquisition or disposal of assets”.
- 15.4 Main Board Rule 14.04(1)(g) excludes any transaction of a revenue nature in the ordinary and usual course of business of the listed issuer from the application of the notifiable transaction Rules. The notes to Main Board Rule 14.04(1)(g) set out some non-exhaustive factors to assist listed issuers in assessing whether or not a transaction is of a revenue nature.

¹

Transaction type	Assets ratio or other percentage ratios in Main Board Rule 14.07	Disclosure requirements - publish announcement and send circular to shareholders	Shareholders’ approval
Discloseable transaction	5% or more but less than 25%	Yes	No
Major transaction - acquisition	25% or more but less than 100%	Yes	Yes
Very substantial acquisition	100% or more	Yes	Yes

- 15.5 The current definition of “transaction” includes any addition to the general pool of assets of the listed issuer in the ordinary and usual course of its business. The definition therefore includes any construction of fixed assets (for example property, plant and machinery) by a listed issuer for its own use in the ordinary and usual course of its business.

Subject to be consulted

- 15.6 The Exchange wishes to consult on whether the definition of transaction under the notifiable transaction Rules should be amended to exclude any construction of a fixed asset (for example property, plant and machinery) by a listed issuer for its own use in the ordinary and usual course of its business.
- 15.7 The Exchange considers that the rationale for the notifiable transaction Rules is to prevent a listed issuer from making a material change to its business and/or move to other businesses without informing shareholders or affording them an opportunity to vote on such change.
- 15.8 On the other hand, activities involving construction of a fixed asset by a listed issuer are normally tied to expansion plans or come with natural growth of the listed issuer’s business in relation to which the management of the listed issuer has expertise. It may thus be argued that sufficient shareholder protection is afforded through the listed issuer’s regular financial disclosures under discussions of management development and analysis, and, depending on the circumstances, through the listed issuer’s obligations to announce price sensitive information to the market on a timely basis. There are also other practical issues regarding the application of the notifiable transaction requirements to activities relating to the construction of a fixed asset by a listed issuer. For example, the decision to expand through self-construction is an internal decision and does not readily give rise to a single obvious point in time when the transaction can be said to have materialised. If the proposal is put forward for shareholders approval after the board decision to approve the capital expenditure, there is a question of whether sufficient information is being provided to shareholders to enable them to make an informed investment decision. If the transaction is considered to crystallise after the aggregation rules are applied (normally upon partial completion of the project when costs are incurred), it may not be meaningful for shareholders to vote upon the transaction.
- 15.9 On balance, the Exchange believes that the proposal to exclude any transaction involving the construction of a fixed asset by a listed issuer for its own use from the application of the notifiable transaction Rules would be in line with the prevailing regulatory rationale, in that it would afford shareholders the right to know about/participate in decisions that involve important changes affecting the listed issuer. At the same time, directors would have some discretion in planning for business development that is conducive to a listed issuer’s core business which, in turn, would enhance shareholder value.

Consultation proposal

- 15.10 The Exchange proposes² amending the Rules to clarify that any construction of a fixed asset (for example property, plant and machinery) by a listed issuer for its own use in the ordinary and usual course of its business is not caught as a transaction under Chapter 14 of the Main Board Rules.

² In *Question 14.4* under Issue 14 regarding codification of waiver to property companies, the Exchange is consulting whether certain qualified property projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules. This consultation proposal therefore overlaps with *Question 14.4* to the extent that the capital element in Qualified Property Projects also involves construction of fixed assets for the listed issuer’s own use in the ordinary and usual course of its business.

- 15.11 For greater clarity, the provision does not exempt listed issuers from the notifiable transaction requirements where the acquisition of a component of the self-constructed fixed asset is in itself a transaction. An example is the acquisition of land intended for use as the site for a self-constructed plant, which is a transaction falling under Rule 14.04(1)(a) as an acquisition of an asset. Where the cost of the land results in a discloseable transaction or higher under the size test, the acquisition of land would be subject to the notifiable transaction requirements.
- 15.12 The proposed Main Board Rule amendments are set out at Appendix 15. The Exchange would also make equivalent amendments to the GEM Rules.

Consultation questions

- 15.13 *Question 15.1:* Do you agree that the notifiable transaction Rules should be amended to specifically exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary and usual course of its business? Please provide reasons for your views³.
- 15.14 *Question 15.2:* Do you agree that the draft Rules at Appendix 15 will implement the proposal set out above? Please provide reasons for your views.

Issue 16: Disclosure of information in takeovers

Background

- 16.1 Where a listed issuer acquires a company through an acquisition constituting a very substantial acquisition or a major transaction, the current Rules (Main Board Rules 14.66, 14.67 and 14.69 and GEM Rules 19.66, 19.67 and 19.69) require the listed issuer in question to include in its circular to shareholders certain prescribed information on the offeree company.
- 16.2 Where the offeree company is overseas listed and will become a subsidiary of the listed issuer, some listed issuers have sometimes faced difficulties in complying with the full disclosure requirements applicable to the circulars. The difficulties arise in situations where there is no or limited access to non-public information on the offeree company (such as in the case of a hostile takeover), or where there are legal restrictions in providing non-public information to the listed issuers.
- 16.3 The Exchange has granted waivers in such circumstances and allowed listed issuers to publish a supplemental circular at a later time when the listed issuer is able to exercise control or gain access to the offeree company's books and records, whichever is earlier. With a view to promoting transparency of the Rules and the Exchange's practice, it is proposed that the Rules be amended to codify these waivers on a structured basis.
- 16.4 The proposed Main Board Rule amendments are set out at Appendix 16 below. The Exchange proposes to make equivalent amendments to the GEM Rules.

Consultation questions

- 16.5 *Question 16.1:* Do you agree that the current practice of the Exchange, i.e. the granting of waivers to listed issuers to publish prescribed information of the target companies in situations such as hostile takeovers, should be codified in the Rules? Please provide reasons for your views.

³ See Note 2 above.

16.6 *Question 16.2:* Do you agree the new Rule should extend to non-hostile takeovers where there is insufficient access to non-public information as well as hostile takeovers? Please provide reasons for your views.

16.7 *Question 16.3:* Paragraph (3) of the new Rule proposes that the supplemental circular must be despatched to shareholders within 45 days of the earlier of the following:

- the listed issuer being able to gain access to the offeree company's books and records for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under Rules 14.66 and 14.67 or 14.69; and
- the listed issuer being able to exercise control over the offeree company.

Do you agree that the 45-day time frame is an appropriate length of time? Please provide reasons for your views.

16.8 *Question 16.4:* Do you have any other comments on draft new Rule 14.67A at Appendix 16? Please provide reasons for your views.

Issue 17: Review of the Director's and Supervisor's Declaration and Undertaking

Issue 17A: Streamlining disclosure of director's and supervisor's information through an issuer's announcement

The existing Rules

17.1 Under the Rules, where a new director (or supervisor in the case of H share issuers) is or proposed to be appointed or re-designated, an issuer or a new applicant is required to procure that each new director or supervisor signs and lodges with the Exchange a declaration and undertaking in the form set out in Appendices 5B, 5H or 5I of the Main Board Rules or Appendices 6A, 6B and 6C of the GEM Rules (DU Form(s)) before or after his appointment or re-designation as a director/supervisor. These DU Forms consist of three parts, namely:

- (a) Part 1 contains a list of questions required to be answered by the declarant (where the declarant is a director, the answers must be given by way of a statutory declaration) regarding:
 - (i) personal details for identification purposes (e.g. name, date of birth, document of identity, nationality, residential address etc.); and
 - (ii) a series of other questions relating to the biographical particulars of the director/ supervisor (e.g. other directorships, bankruptcy record (if any), major litigation (if any) and conviction record (if any)). These questions are substantially the same as those required to be disclosed in the announcement relating to, among other things, the appointment or re-designation of the director or supervisor (Appointment Announcement) published pursuant to the requirements under Main Board Rule 13.51(2) and GEM Rule 17.50(2).

- (b) Part 2 contains an undertaking by the director/supervisor, among other things, to comply with the Listing Rules.
- (c) Part 3 (applicable to DU Forms for directors only) contains:
 - (i) a certification by the sponsor (in the case of a new applicant only) that it has reviewed the answers in Part 1 and a statement that it is unaware of information that would cause enquiries on the truthfulness, completeness or accuracy of the answers provided; and
 - (ii) a certification by a solicitor that he has explained all applicable requirements and procedures for completing and making the director's declaration under Part 1 of the form as well as possible consequences of a false declaration.

17.2 New listing applicants are required to disclose biographical details of the directors (and also supervisors in the case of H-share issuers) in the listing documents. However, there are no specific disclosure requirements for biographical details similar to those under Main Board Rule 13.51(2) or GEM Rule 17.50(2).

Consultation proposal

17.3 The Exchange proposes to streamline the respective DU Forms by:

- (a) deleting the questions relating to biographical details of directors or supervisors appearing in Part 1 of the respective DU Forms (see paragraph 17.1(a)(ii)). The question in Part 1 of the DU Form for the purpose of identifying the director/supervisor will be retained (see paragraph 17.1(a)(i)); and
- (b) removing the statutory declaration requirement in the relevant DU Forms (i.e. the DU Forms in Appendices 5A and 5H of the Main Board Rules and Appendices 6A and 6B of the GEM Rules).

17.4 The Exchange proposes that under the proposed revised DU Forms:

- (a) the director or supervisor will be required to declare in the relevant DU Forms that the personal details referred to in the Appointment Announcement relating to the director/supervisor concerned are true, accurate and complete. In the case of a new listing application, the DU Forms will make reference to the listing document which will be amended (see paragraph 17.19 below) to require at least the same level of disclosure as that required in the Appointment Announcement; and
- (b) Part 2 and Part 3 of the DU Forms will largely retain their present forms except for the consequential amendments to reflect the deletion of the questions in Part 1 of the respective DU Forms.

Reasons for the proposal

17.5 The rationale behind the Exchange's proposal to streamline the DU Forms is as follows:

- (a) to remove duplication in the Rules as regards information submitted by and disclosure concerning directors/supervisors (see further discussion in paragraphs 17.6 and 17.7);
- (b) to standardise disclosure of director's/ supervisor's information in new and post-listing cases (see further discussion in paragraph 17.8); and
- (c) to simplify the administrative procedure for executing a DU Form (see further discussion in paragraphs 17.9 to 17.13).

Removing duplication in the Rules as regards information by or about directors/supervisors

- 17.6 The Exchange notes that currently most of the information required to be disclosed in the DU Forms is also required to be made public by way of the Appointment Announcement. Further, if the proposed Rule amendments mentioned in *Questions 13.1 to 13.3* discussed under Issue 13 are adopted, the public will receive up-to-date biographical information about a director or supervisor on a continuous basis.
- 17.7 The Exchange is also of the view that disclosure of information about directors/supervisors by way of an Appointment Announcement is more meaningful than by way of a DU Form which is a private submission to the Exchange.

Standardising disclosure of director's/supervisor's information in new and post-listing cases

- 17.8 While considerable efforts have been made by the Exchange to increase the transparency of the information about directors/supervisors after listing, the Exchange believes that the same information should be made available to potential investors at the time of listing by requiring equivalent disclosure in the listing document. This will be achieved by requiring disclosure in the listing document in a manner comparable to the disclosure in the Appointment Announcement.

Simplifying the administrative procedure for executing a DU Form

- 17.9 As regards the statutory declaration requirement in the relevant DU Forms, the Exchange notes that the requirement was first incorporated into the DU Forms in August 1993 to impose criminal liability on persons making a false declaration in the documents at a time when a false declaration could only have been sanctioned as a breach of the Rules.
- 17.10 While the removal of the statutory declaration requirement in the DU Form would remove the director's liability for making a false declaration under the Crimes Ordinance¹, the Exchange believes that assurance of true, accurate and complete information relating to a director's personal details would be achieved through enforcement of the dual filing requirements. Further, the Rules (Main Board Rule 2.13 and GEM Rule 2.18) also require that, among other things, information in any announcement must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not omit material facts of an unfavourable nature or fail to accord them appropriate significance.

¹ Pursuant to section 36 of the Crimes Ordinance, any person who knowingly and wilfully makes a statement false in a material particular in Part 1 of the DU Form commits an offence, and if prosecuted shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.

- 17.11 Dual filing was introduced on 1 April 2003 through the enactment of the Securities and Futures (Stock Market Listing) Rules upon the implementation of the Securities and Futures Ordinance (SFO) to give statutory backing to all company disclosure and listing application materials filed with the Exchange and, via the Exchange, the SFC. Dual filing establishes the SFC as the statutory regulator of listed company (including listing applicant) disclosure, empowering it to exercise enforcement powers against persons issuing false or misleading corporate information under section 384² of the SFO.
- 17.12 The Exchange is therefore of the view that the purpose served by requiring the DU Form to be executed by way of a statutory declaration would be equally served through the introduction of the dual filing requirements which attract comparable liabilities at law and therefore should have the same deterrent effect. In view of the administrative inconvenience to directors of the statutory declaration requirement, especially where the DU Forms are executed outside Hong Kong, the proposed new approach may be preferable.
- 17.13 To maintain the same degree of solemnity of the DU Forms served by the statutory declaration requirement, the Exchanges proposes to retain the sponsor's certification and solicitor's certification sections of the relevant DU Forms (i.e. Part 3) and to include a warning statement in the revised DU Forms to remind the persons giving the declaration of the liability for making a false or misleading statement under section 384 of the SFO.

Implementation of the new proposal

- 17.14 As the DU Forms contain some information which may not be covered by the Appointment Announcement or the listing document which is proposed to be amended (see paragraph 17.19) to contain no less information than that which appears in the Appointment Announcement, the Exchange proposes to deal with certain disclosure requirements in the DU Forms as follows:
- (a) to move the disclosure in the DU Forms which requires an independent non-executive director (INED) to make specific disclosure of his past or present financial or other interests with the business of the issuer or its connected persons (namely question 16 of the DU Form at Appendix 5A and question 17 of the DU Form at Appendix 5H of the Main Board Rules and their GEM Rule equivalents, i.e. question 16 of the DU Form at Appendix 6A and question 17 of the DU Form at Appendix 6B of the GEM Rules) to Main Board Rule 3.13 and its GEM Rules equivalent, GEM Rule 5.09. An INED would therefore need to state in the written confirmation regarding his independence required to be submitted to the Exchange pursuant to Main Board Rule 3.13 and GEM Rule 5.09 his interests, if any, in the issuer or its connected persons; and
 - (b) as regards the requirement in question 2 of Part 1 of the DU Forms relating to disclosure of other directorships (and roles as supervisor or manager) in "any company" and other related details, the Exchange sees little regulatory value in retaining such disclosure in the DU Forms given that the information so disclosed is given to the Exchange only and not to the public. The Exchange therefore proposes to delete question 2 of Part 1 of the DU Forms.

² Liability for false statements under the SFO includes: pursuant to section 384(1) of the SFO, any person who, in purported compliance with a requirement to provide information imposed by or under "the relevant provisions" (which includes provisions under the SFO and certain provisions of the Companies Ordinance), provides false or misleading information in a material particular to specified recipients, which includes the Exchange, knowing that or recklessly as to whether the information is false, commits an offence, and if prosecuted shall be liable on (a) conviction upon indictment to imprisonment for 2 years and to a fine of \$1 million; or (b) summary conviction to imprisonment for 1 year and a fine of up to HK\$100,000.

- 17.15 The proposal to streamline the DU Forms also involves other amendments:
- (a) an incidental amendment to the GEM Rules to eliminate a difference between the Main Board and GEM Rules regarding the submission of DU Forms to the Exchange (as discussed in paragraphs 17.16 to 17.18);
 - (b) a consequential amendment to the Rules to align the disclosure requirements in the listing document with regard to directors'/supervisors' details with those for the Appointment Announcement (as discussed in paragraph 17.19);
 - (c) various consequential amendments to the listing application procedures for new listing applicants as regards the timing of the submission of the DU Forms to the Exchange arising out of the proposed amendments to the respective DU Forms (as discussed in paragraph 17.20).
- 17.16 Under GEM Rule 17.50(2), a GEM issuer must inform the Exchange of any proposed appointment of director or supervisor and lodge with the Exchange a signed DU Form of such proposed director or proposed supervisor not less than 14 business days *prior* to the proposed date of his appointment. There is no pre-submission requirement in the Main Board Rules.
- 17.17 The Exchange proposes to amend the GEM Rules to align them with the Main Board Rules in this regard, such that a GEM issuer would be required to lodge with the Exchange a DU Form signed by every director or supervisor after (as opposed to before) the appointment of such director or supervisor.
- 17.18 This proposed amendment is in line with the Exchange's proposal to streamline the DU Forms. The removal of this GEM requirement would also be consistent with the general direction proposed by the Exchange to post-vet announcements.
- 17.19 To help ensure that the investing public is informed of the biographical information about directors and supervisors at the time of new listing and that a consistent standard for public disclosure is established for new listing applicants, the Exchange also proposes to amend the Rules (paragraph 41(1) of Appendix 1A and paragraph 46 of Appendix 1C of the Main Board Rules and paragraph 41 of Appendix 1A and paragraph 46 of Appendix 1C of the GEM Rules) to require the listing document of new listing applicants to contain no less information about directors and proposed directors (and also supervisors and proposed supervisors, where relevant) than that required to be disclosed under Main Board Rule 13.51(2) or GEM Rule 13.50(2), as the case may be.
- 17.20 The Exchange also proposes the following amendments to the listing application procedures:
- (a) to amend the Rules such that a new applicant for the listing of equity and debt securities is required to submit to the Exchange the following:
 - (i) at the time when the new application for listing is submitted, a written confirmation and undertaking signed by each director or supervisor that the personal particulars of such director and supervisor stated in the first draft listing document that is submitted to the Exchange for vetting are true, accurate and complete and to keep the Exchange informed of any changes to such details in the draft listing document;
 - (ii) where any director or supervisor is appointed at a date subsequent to the first draft of the listing document, the confirmation and undertaking mentioned in (a)(i) above must also be given by such director or supervisor, but reference to the first listing document is to be read as a reference to the relevant draft listing document that sets out the personal particulars of such director or supervisor; and

- (iii) as soon as practicable after the listing document of the new applicant is published, a DU Form duly signed by each director or supervisor. The submission of a duly completed DU Form signed by each director and supervisor will be made a condition to listing approval being granted;
- (b) to amend the forms of Formal Application (applicable to Main Board listing applicants only) for the listing of equity and debt securities (i.e. Form C1 and C2), such that the issuer will be required to give an undertaking to the Exchange to procure each director (and supervisor, where relevant) to give a duly completed DU Form (in the revised format) as soon as practicable after the listing document of the new applicant is published. Corresponding amendments will be made to the forms set out in Appendices 5A and 5C of the GEM Rules; and
- (c) to delete the requirement in the sponsor's declaration in Appendix 19 of the Main Board Rules and Main Board Rule 3A.15(1), and their GEM Rules equivalents, Form G of Appendix 7 and GEM Rule 6A.15(1) respectively, for the sponsor to confirm that it has reasonable grounds to believe and does believe that the answers provided by each director or proposed director in Part 1 of the DU Form are true and do not omit any material information. This deletion is required since, under the revised listing application procedure, the DU Form has yet to be submitted at the time the sponsor is required to give the prescribed declaration. The Exchange is of the view that the removal of this express declaration in the prescribed sponsor's declaration will not alter the due diligence responsibilities of the sponsor under the Rules. The sponsor will still be required to certify on each revised DU Form of a director (which must be submitted to the Exchange prior to listing) that the sponsor is unaware of information that would cause enquiries on the truthfulness, completeness or accuracy of the director's personal details in the listing document or in the DU Form.

17.21 The proposed Main Board Rule amendments are set out at Appendix 17. The Exchange would also make equivalent amendments to the GEM Rules.

Consultation questions

- 17.22 *Question 17.1:* Do you agree that the respective forms of declaration and undertaking for directors and supervisors (i.e. the DU Forms) should be streamlined by deleting the questions relating to the directors' and supervisors' biographical details? Please provide reasons for your views.
- 17.23 *Question 17.2:* Do you agree that the DU Forms for directors should be amended by removing the statutory declaration requirement? Please provide reasons for your views.
- 17.24 *Question 17.3:* Do you agree that the GEM Rules should be amended to align with the practice of the Main Board Rules as regards the timing for the submission of DU Forms by GEM issuers, such that a GEM issuer would be required to lodge with the Exchange a signed DU Form of a director or supervisor after (as opposed to before) the appointment of such director or supervisor? Please provide reasons for your views.
- 17.25 *Question 17.4:* Do you agree that the Rules should be amended such that the listing documents relating to new applicants for the listing of equity and debt securities must contain no less information about directors (and also supervisors and other members of the governing body, where relevant) than that required to be disclosed under Main Board Rule 13.51(2) or GEM 13.50(2), as the case may be? Please provide reasons for your views.

- 17.26 *Question 17.5:* Do you agree that the application procedures should be amended as discussed in paragraph 17.20 to harmonise with the proposed amendments for the purpose of streamlining the respective DU Forms? Please provide reasons for your views.
- 17.27 *Question 17.6:* Do you agree that the draft Rules at Appendix 17 will implement the proposals set out above? Please provide reasons for your views.

Issue 17B: Information gathering powers of the Exchange

- 17.28 Given the proposal to introduce a new Main Board Rule 2.12A (as discussed under Issue 2 above), it would be logical also to include an express provision in the Director's Undertaking so as to impose a similar obligation on directors.
- 17.29 The proposed Main Board Rule amendments are set out at Appendix 17. The Exchange proposes to make equivalent amendments to the GEM Rules.

Consultation questions

- 17.30 *Question 17.7:* Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information from directors?
- 17.31 *Question 17.8:* Do you agree that the draft paragraph (c) to the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.7* above?

Issue 17C: Service of disciplinary proceedings on directors

Background

- 17.32 The undertaking given by directors of GEM issuers makes detailed provision for service. A director undertakes to inform the Exchange of his residential address whilst he remains a director of a GEM issuer and for three years after ceasing to hold that position. More importantly, if a present or former director fails to notify the Exchange of his new address, any document delivered to his former address is deemed to be validly served.
- 17.33 However, there is no equivalent language in the undertaking given by directors of Main Board issuers.
- 17.34 The proposed amendment to paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Director's Undertaking set out at Appendix 17, is to bring both undertakings mutually into line.
- 17.35 For consistency, the Exchange proposes to adopt the same wording of the amended paragraph (e) in the GEM Rules.
- 17.36 Main Board Rule 2.05 provides that the "Exchange Listing Rules" (defined in Main Board Rule 1.01 to include its appendices and any contractual agreement entered into with any party pursuant thereto) may be amended by the Exchange from time to time. The Director's Undertaking can therefore be amended by the Exchange from time to time subject to compliance with the usual approval procedures.
- 17.37 The Exchange proposes to make express the ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking.
- 17.38 The proposed Main Board amendment is set out at Appendix 17. The Exchange proposes to make equivalent amendments to the GEM Rules.

Consultation questions

- 17.39 *Question 17.9:* Do you agree that paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules should be amended to include detailed provisions for service similar to those of the GEM Rules?
- 17.40 *Question 17.10:* Do you agree that the proposed amendment to paragraph (e) of the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.9* above?
- 17.41 *Question 17.11:* Do you agree that the Rules should be amended to make express the ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking?

Issue 18: Review of Model Code for Securities Transactions by Directors of Listed Issuers

18.1 The Exchange proposes to amend the Model Code in the following areas:

- (a) expanding the list of exceptions to the definition of “dealing” in 7(d);
- (b) clarifying the meaning of “price sensitive information” in the context of the Model Code;
- (c) extending the current “black out” periods provided in Rule A.3; and
- (d) restricting the time for responding to the request for clearance to deal, and the time for dealing once clearance has been received.

Expanding the list of exceptions to the definition of “dealing” in paragraph 7(d) of the Model Code

18.2 Whilst 7(a) of the Model Code defines “dealing” in very broad terms, paragraph 7(d) provides a list of 5 exceptions. The Exchange proposes to introduce the following three new exceptions:

- (a) dealing where the beneficial interest or interests in the relevant security of the listed issuer do not change;
- (b) a director shareholder who places out his existing shares in a “top-up” placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out; and
- (c) bona fide gifts to a director by a third party.

“dealing where the beneficial interest or interests in the relevant security of the listed issuer do not change”

18.3 By way of example, it may be the case that a director holds certain securities as a trustee for and on behalf of a charitable trust and, due to restructuring, the shares have to be transferred from one trustee or holding vehicle to another. As long as the underlying beneficial interests remain with the same beneficiary or beneficiaries before and after the transfer and in the same ratio, this exception will apply.

“a director shareholder who places out his existing shares in a “top-up” placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out”

18.4 “Top-up” placing is considered an efficient and common means for the issuer to raise funds. Given that the director in question will not receive any advantage or benefit from the “top-up” placing exercise, and since the Exchange has generally granted waivers in these circumstances, the Exchange proposes that this type of dealing should be made an exception. To avoid a breach of the Model Code the company and the director shareholder in question must ensure that there was certainty that the “top-up” would complete.

“bona fide gifts to a director by a third party”

18.5 This exception is necessary in light of the fact that “*acquisition*” “*whether or not for consideration*” is dealing according to 7(a) of the Model Code.

Consultation question

18.6 *Question 18.1:* Do you agree with the proposed new exceptions set out above? Please provide reasons for your views.

Clarifying the meaning of “price sensitive information” in the context of the Model Code

18.7 The Model Code refers in a number of places to “price sensitive information”. To promote certainty and clarity in the Rules, the Exchange proposes to introduce a note in the Model Code that clarifies the meaning of “price sensitive information”.

18.8 The Exchange has prepared and seeks comments on draft amendments to the Main Board Rules and the GEM Rules that would implement the consultation proposal. The draft Rule amendments are set out at Appendix 18.

Consultation questions

18.9 *Question 18.2:* Do you agree with the proposal to clarify the meaning of “price sensitive information” in the context of the Model Code?

18.10 *Question 18.3:* Do you agree that the draft new Note to Rule A.1 of the Code would implement the proposal?

Please provide reasons for your views.

Proposals in relation to extending the “black out” periods

18.11 The Model Code currently provides that a director of a listed issuer is prohibited from dealing in securities of the issuer for a period of one month immediately preceding the earlier of: (a) the date of the board meeting for the approval of the issuer’s annual, half-year or quarterly results; and (b) the deadline for the issuer to publish its annual, half-year or quarterly results, and ending on the date of the results announcement. The periods when dealing is prohibited are generally referred to as the “black out” periods.

- 18.12 The Model Code imposes restrictions beyond those imposed by law. The purpose of the Model Code can be seen to be: (a) to buttress the statutory provisions in the Securities and Futures Ordinance by creating a mirror obligation that directors, certain employees and those connected with them (Company Insiders) do not abuse unpublished price sensitive information; and (b) to promote investor confidence by creating requirements to remove, or at least mitigate, any suspicion of abuse by Company Insiders of price sensitive information that they may have or be thought to have, especially during periods leading up to an announcement of results.
- 18.13 First raised by the SFC Public Shareholders Group and supported by the staff of the SFC and the Exchange Listing Committee, the Exchange proposes to extend the current “black out” periods (Proposal). The rationale behind the Proposal is that unpublished price sensitive information in respect of a listed issuer continues to accrue after the year/period end. The current “black out” period may fail to ensure that Company Insiders do not abuse the market whilst in possession of such “relevant” information, especially in periods leading up to a results announcement by the listed issuer and may also not adequately address concerns about the perception of abuse.

Overseas regulation

- 18.14 In making the Proposal, the Exchange has considered the “black out” periods adopted in various exchanges including the UK, Australia and Singapore. It would appear that the Proposal may be more restrictive than the provisions applicable in other relevant jurisdictions including the UK. The UK’s fixed “black out” requirement specifies a maximum “black out” period of 60 days and a minimum “black out” period from the period end to the results announcement/annual report.
- 18.15 However, it may be argued that, in practice, the UK Code operates much as the Proposal because there is evidence that UK companies tend to report more quickly than the set deadlines, in contrast the tendency of Hong Kong companies is to report on the deadline.
- 18.16 In addition, the Exchange has also looked at the rules in Australia and Singapore. Australia and Singapore do not have specified “black out” periods, and the rules leave it to the companies to set their own “black out” periods. The SFC observed that these markets essentially rely on a mixture of insider dealing laws and market forces that result in companies setting tight internal controls. However, it may be argued that neither of these factors may work sufficiently well in Hong Kong and therefore it is necessary to set a formal benchmark by tightening the Exchange Listing Rules for companies to follow.
- 18.17 The Proposal will prohibit directors from dealing in their listed issuer’s securities during the period between the listed issuer’s year/period end date and the date the listed issuer releases the relevant results announcement.
- 18.18 Currently, a listed issuer has four months from the year-end and three months from the period end in which to publish annual results and half-year results respectively. Assuming that full use is made by a listed issuer of the periods permitted to publish the results, the maximum “black out” period would be seven months.
- 18.19 Public consultations in relation to the shortening of reporting deadlines and the introduction of quarterly reporting for Main Board issuers are underway. If the proposed shortening of reporting deadlines and quarterly reporting will be adopted and assuming that full use is made by a listed issuer of the period permitted to publish the results, the “black out” periods could be eight months.

- 18.20 The Exchange believes that directors should not be actively and frequently trading in their company's shares, but should be long term investors in the company. The Proposal would provide investors with greater protection and be in line with international best practices in that it would:
- (a) reduce the risk that Company Insiders may trade, or fall under suspicion of trading, when possessing unpublished price sensitive information; and
 - (b) provide an incentive for listed issuers to report earlier.
- 18.21 The Exchange has also prepared and seeks comments on draft amendments to the Main Board Rules and the GEM Rules that would implement the consultation proposals. The draft Rule amendments are set out at Appendix 18.

Consultation question

- 18.22 *Question 18.4:* Do you agree that the current "black out" periods should be extended to commence from the listed issuer's year/period end date and end on the date the listed issuer publishes the relevant results announcement? Please provide reasons for your views.

Restricting the time for responding to the request for clearance to deal, and the time for dealing once clearance has been received

- 18.23 The Exchange proposes to introduce a deadline within which an issuer must respond to a request for clearance to deal. It is proposed that clearance should be given or refused within 5 business days.
- 18.24 More importantly, once clearance has been granted, it is essential that the deal takes place as soon as possible and, in any event, there should be a time limit of 5 business days.
- 18.25 The time limits are important to avoid dealings taking place in a prohibited period. It is conceivable that price sensitive development may arise in relation to the issuer after a director has been granted clearance to deal. In those circumstances, the director must refrain from dealing in the listed issuer's securities notwithstanding the receipt of a clearance.

Consultation questions

- 18.26 *Question 18.5:* Do you agree that there should be a time limit for an issuer to respond to a request for clearance to deal and a time limit for dealing to take place once clearance is given?
- 18.27 *Question 18.6:* Do you agree that the proposed time limit of 5 business days in each case is appropriate? Please provide reasons for your views.

CHAPTER 3 DISCUSSION OF MINOR RULE AMENDMENTS

- I. The Exchange proposes to make various minor amendments to the Rules. Set out in paragraphs III to XLIII below is a summary of the intended objective of these Rule amendments. The draft Rule amendments are set out at Appendix 19.
- II. These minor Rule amendments will become effective on a date to be announced, subject to the necessary regulatory approvals. In the meantime, the Exchange welcomes comments regarding whether the manner in which the proposed Rule amendments have been drafted will give rise to any ambiguities or unintended consequences.

Correction to sponsor certifications

- III. The Rules provide for a sponsor appointed by a new applicant to provide a certification to the Exchange in respect of the declaration made by a director by Main Board Form 5B or 5H or GEM Form 6A or 6B. Those forms refer to the certification being given if the issuer is a new applicant or otherwise continues to retain a sponsor. However, the sponsor certification is only relevant and necessary if the issuer is a new applicant (and therefore must retain a sponsor pursuant to Main Board Rule 3A.02 or GEM Rule 6A.02).
- IV. Consequently, the Exchange intends to amend the Rules as follows:
 - (a) remove “or continues to retain a sponsor” from Note (1) and Part 3(A) of Main Board Appendix 5 Form B and Main Board Appendix 5 Form H; and
 - (b) remove “or is obliged to or otherwise continues to retain a Sponsor” from Note (1) and Part 3(A) of GEM Appendix 6 Form A and GEM Appendix 6 Form B.
- V. Also, the sponsor’s certification in Part 3 of Main Board Form 5H refers to the sponsor being appointed for the purpose referred to in Rule 3.01. It should refer to Rule 3A.02. The Exchange proposes to correct this reference.
- VI. These proposed amendments to correct sponsor certifications will be superseded if the amendments proposed under Issue 17 (Review of Director’s and Supervisor’s Declaration and Undertaking) are made.

Clarification regarding continuing connected transactions

- VII. Main Board Rule 14A.35 and GEM Rule 20.35 provide that, when an issuer enters into a continuing connected transaction not falling under Main Board Rule 14A.33 / GEM Rule 20.33, it must, amongst other things: enter into written agreement(s) with the connected person; and set a maximum aggregate annual value in respect of each connected transaction.
- VIII. The continuing connected transactions described in Main Board Rule 14A.34 / GEM Rule 20.34 do not fall under Main Board Rule 14A.33 / GEM Rule 20.33 and are therefore subject to Main Board Rule 14A.35 and GEM Rule 20.35.
- IX. However, Main Board Rule 14A.34 states that a continuing connected transaction of the nature described in that Rule is “only subject to the reporting and announcement requirements set out in Rules 14A.45 to 14A.47 and is exempt from the independent shareholders’ approval requirements of [Chapter 14A]”. The Rule does not refer to being subject to the requirements of Rule 14A.35. The same concern arises in respect of GEM Rule 20.34.

- X. The Exchange proposes to make a minor amendment to Main Board Rule 14A.34 and GEM Rule 20.34 to clarify that a continuing connected transaction which falls within Main Board Rule 14A.34 / GEM Rule 20.34 is also subject to the requirements under Main Board Rules 14A.35(1) to (2) / GEM Rules 20.35(1) to (2).

Minor amendment to outdated reference in Share Repurchase Rules

- XI. Main Board Rule 10.05 and GEM Rule 13.03 provide that an issuer may purchase its shares on relevant stock exchanges, under “the exemption from the general offer rule contained in Rule 2 of the Code on Share Repurchases”. However, pursuant to amendments to the Code on Share Repurchases (the Code) made in October 2005, the references to Rule 2 are no longer correct. The exemptions are now set out in Rule 1 of the Code.
- XII. The Exchange proposes to amend Main Board Rule 10.05 and GEM Rule 13.03 to reflect amendments to the Code.

Clarification to Main Board Form 5C

- XIII. The Exchange proposes to make minor clarifications to the first paragraph of Forms C1, C2, and C3 of Appendix 5 to provide for appropriate adaptations to the forms where the applicant is not a company. In addition to making corresponding changes to the Chinese version of those forms, the Exchange proposes to make a minor amendment to the first sentence in the first paragraph of the Chinese version of Form C3Z of Appendix 5 to more accurately reflect the intended meaning.
- XIV. The GEM Rules do not require amendment in this regard.

Minor amendment to outdated references to Prospectus Vetting Unit

- XV. The Exchange proposes to delete an obsolete reference to the “Prospectus Vetting Unit” in each of Main Board Rule 11A.09 and Main Board 15A.76.
- XVI. There is no amendment required to the GEM Rules.

Clarification regarding shareholder meetings

- XVII. The Rules (at Main Board Rule 13.39(3) and GEM Rule 17.47(3)) provide that, even if a shareholders’ meeting has voted on a show of hands, in certain circumstances, a poll will also have to be called. The circumstances are where:
- (a) the Chairman of the meeting and/or the directors individually or collectively hold proxies in respect of shares holding 5% or more of the total voting rights; and
 - (b) on a show of hands, the meeting votes in the opposite manner to that instructed in those proxies.
- XVIII. In those circumstances, the Rules provide that the Chairman must call a poll unless it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands. Specifically, the Rules state: “provided that if it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands (because the votes represented by those proxies exceed 50%, 75% or any other relevant percentage, as the case may be, of the total issued share entitled to vote on the resolution in question,) then the directors and/or the Chairman shall not be required to demand a poll”.

- XIX. The words in brackets in the Rule are intended to assist users to understand the Rule. However, the Exchange acknowledges that they may only serve to confuse understanding of the Rule. Consequently, we propose to remove the words in brackets from both Main Board Rule 13.39(3) and GEM Rule 17.47(3).

Minor amendment to cross-references to the Companies Ordinance

- XX. The Exchange proposes to correct incorrect references to sections 39D(3) and (5) of the Companies Ordinance in Main Board Rule 11A.03. The Rule should refer to sections 38D(3) and (5).
- XXI. There is no amendment required to the GEM Rules.

Additional copies of listing document in electronic format

- XXII. Main Board Rule 12.11 requires listing documents to be in printed form. However, the Rule also states that a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public:

- “(1) in electronic format on CD ROM (together with the relative application form in electronic format on the same CD ROM); and/or
- (2) in electronic format through publication of the listing document (together with the relative application form) on the new applicant's own website on a continuous basis for at least 5 years from the date of first publication.”

- XXIII. Main Board Rules 20.19A (authorised collective investment schemes), 25.19A (debt securities (other than selectively marketed securities)) and 37.31(3) (debt securities (selectively marketed securities)) and GEM Rules 16.04C (equity securities), 29.21A (debt securities (other than selectively marketed securities)) and 30.33(3) (debt securities (selectively marketed securities)) are couched in similar terms.

- XXIV. However, Main Board Rule 2.07C and GEM Rule 16.19 in any event require an issuer to publish on its own website all documents required to be submitted for publication on the Exchange website and GEM website, respectively, and such documents include listing documents. Such documents must remain available on the issuer's own website on a continuous basis for at least 5 years from the date of first publication.

- XXV. The Exchange proposes to remove from Main Board Rules 12.11, 20.19A, 25.19A and 37.31(3) and GEM Rules 16.04C, 29.21A and 30.33(3) the references to making additional copies available in electronic format on the issuer's own website, since this is no longer optional, but mandatory. Only the making available of additional copies in electronic format on CD ROM will remain as an option.

Clarification of timing regarding publication of notice for general meeting

- XXVI. Main Board Rule 13.37 states that an issuer “shall ensure that notice of every annual general meeting is published in accordance with rule 2.07C on the same day as it is otherwise given to those entitled to receive the same”. Similarly, Main Board Rule 13.73 requires notice of every meeting of an issuer's shareholders or creditors concerning the issuer (e.g. for winding up petitions, schemes of arrangement or capital reduction) to be “published as an announcement in accordance with rule 2.07C on the same day as it is given to those entitled to receive it”.

- XXVII. Rule 2.07C deals with the submission of documents for publication on the Exchange website. It covers matters such as, among other things, mandatory use of the Exchange's e-Submission System, timing, language of documents and publication on the issuer's own website.

- XXVIII. Uncertainty has arisen as to the interaction of these Rules with Main Board Rule 2.07C(1)(b)(i) which requires the electronic copy of any corporate communication which is required by the Rules to be received by the Exchange “before the day on which it is sent to shareholders by the listed issuer”. “Corporate communication” is defined in Main Board Rule 1.01 as including a “notice of meeting”.
- XXIX. For greater clarity, the Exchange proposes to delete the reference in each of Main Board Rule 13.37 and 13.73 to a publication deadline and to retain only the reference to publication “in accordance with rule 2.07C”. In Main Board Rule 13.73, the Exchange also proposes to delete the words “by way of announcement”.
- XXX. The proposed amendments will make it clear that a notice of meeting would be published pursuant to Main Board Rule 2.07C as a corporate communication i.e. the electronic copy of the notice would need to be received by the Exchange “before the day on which it is sent to shareholders by the listed issuer”.
- XXXI. There is similar uncertainty regarding the interaction of GEM Rule 17.44 (which is similar to Main Board Rule 13.37 but deals with all notices of general meetings) and GEM Rule 17.46(2) (which is similar to Main Board Rule 13.73) with GEM Rule 16.17(2)(a) (which is similar to Main Board Rule 2.07C(1)(b)(i)). The Exchange therefore proposes to make equivalent amendments to GEM Rule 17.44 and GEM Rule 17.46(2).

Rectification of incorrect cross-references

- XXXII. The Exchange proposes to amend Main Board Rule 2.07C(4)(c) and GEM Rule 6A.24(5) to correct cross-referencing errors.

Application of Main Board Rule 2.07C to documents of Authorised Collective Investment Schemes

- XXXIII. The Exchange also proposes to amend Appendix 7G of the Main Board Rules (which is the Listing Agreement for Authorised Collective Investment Schemes listed under Chapter 20 of the Main Board Rules) to make it clear that Rule 2.07C applies to all documents required of the Scheme pursuant to its Authorisation Conditions, all documents sent by the Scheme to holders of interests in the Scheme and those which the Scheme may from time to time be required to publish under the Rules.

Removing reference to submitter’s signature from Share Buyback Report

- XXXIV. The form of the Share Buyback Report set out in Appendix 5G of the Main Board Rules and Appendix 8 of the GEM Rules makes provision for it to be signed by the submitter. Since the implementation of the Electronic Disclosure Project on 25 June 2007, the Report needs only to be submitted electronically via the Exchange’s Electronic Submission System; a signed, printed copy is no longer required.
- XXXV. The Exchange therefore proposes to remove the reference to a submitter’s signature. Only the submitter’s name and title will be required.
- XXXVI. The Exchange also proposes to remove the words “By Fax/Hand” from the Main Board form as well as make a few other clerical changes to the GEM form.

Alignment with new trading hours

XXXVII. The Exchange proposes to amend the Rules to align the operational hours of the Electronic Disclosure regime for publication of the majority of announcements with the new market trading hours upon the implementation of the closing auction session to be introduced in May 2008.

XXXVIII. The proposed amendments are to Main Board Rule 2.07C(4)(a) and Note 1 to Main Board Rule 13.45, and GEM Rule 16.18(3)(a).

Reduction in hard copies

XXXIX. We require listed issuers and new applicants to provide us with hard copies of certain documents in certain prescribed numbers. We propose to reduce the number of hard copies required and introduce a mechanism to vary such requirements in future as an administrative practice change rather than as a policy matter.

XL. Based on the current needs of the present recipients of hard copies having regard to the fact that the Exchange website now acts as the centralised location of issuers' regulatory documents, we propose to amend the number of hard copies required to be provided to us as follows:

- (a) for equity issuers (including Authorised Collective Investment Schemes):
 - (i) in the case of an announcement, notice or certified copy of a resolution, 1 copy;
 - (ii) in the case of a listed issuer's circular or listing document (including relevant application form), 2 copies;
 - (iii) in the case of a listed issuer's financial report, 1 copy; and
 - (iv) in the case of an IPO listing document (including relevant application form), 4 copies; and
- (b) for issuers of debt or structured products, 1 copy of the relevant document.

XLI. Please refer to the following provisions of the Main Board Rules:

New Rule 2.07(1A), Rule 9.14, Note 4 to Rule 13.46(1)(b), Note 3 to Rule 13.46(2)(c), Rule 13.48(3), Rule 13.54, Rule 14.35, Rule 14.79, Note 1 to Rule 14A.47(2), Rule 15A.21(1), Rule 15A.56(1), Rule 15A.61, Rule 15A.64(3), Rule 20.16, Rule 24.13, Rule 37.26, Appendix 7C - Note 7.4, Note 8.5 and Paragraph 18, Appendix 7D – Paragraph 7, Appendix 7E – Note 4.3 and Paragraph 12, Appendix 7G – Paragraph 9 and Appendix 7H – Paragraph 15.

XLII. Please refer to the following provisions of the GEM Board Rules:

New Rule 2.23A, Rule 12.24, Rule 17.57, Note 5 to Rule 18.03, Note to Rule 18.54, Note to Rule 18.67, Rule 19.35, Rule 19.79, Note 1 to Rule 20.47(2), Rule 28.14, Rule 30.28, Rule 31.21 and Note 4 to Rule 31.38.

Removing references to “broker participant”

XLIII. We propose to revise the relevant sections in Practice Note 8 of Main Board Listing Rules and GEM Rule 17.60 to align with the new Participanship regime of HKSCC which will no longer have a category of Broker Participants.

APPENDIX 1 DRAFT RULE AMENDMENTS REGARDING ISSUE 1

Proposed Main Board Rule amendments

- “2.07A (1) Subject to the provisions set out in this rule 2.07A, any requirement in these Exchange Listing Rules for a listed issuer to send, mail, dispatch, issue, publish or otherwise make available any corporate communication may, to the extent permitted under all applicable laws and regulations and the listed issuer’s own constitutional documents, be satisfied by the listed issuer sending or otherwise making available the corporate communication to the relevant holders of its securities using electronic means and any requirement in these Exchange Listing Rules that a corporate communication of a listed issuer must be in printed form may be satisfied by the corporate communication being in electronic format. ~~Notwithstanding the foregoing, all listed issuers availing themselves of the provisions of this rule 2.07A must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time in this regard under Hong Kong law for listed issuers incorporated in Hong Kong.~~
- (2) Other than as permitted under rule 2.07A(2A) in relation to a corporate communication published on the listed issuer’s own website pursuant to rule 2.07C(6), the corporate communication may be sent or otherwise made available by the listed issuer to a holder of its securities using electronic means or in electronic format only where the listed issuer has previously received from that holder an express, positive confirmation in writing that the holder wishes to receive or otherwise have made available to the holder the corporate communication by the means and in the manner format proposed by the listed issuer.
- (2A) (a) To the extent that:
- (i) the shareholders of the listed issuer have resolved in general meeting that the listed issuer may send or supply corporate communications to shareholders by making them available on the listed issuer’s own website; or
 - (ii) the listed issuer’s constitutional documents contain provision to that effect,
a holder of the listed issuer’s securities in relation to whom the following conditions are met is taken to have agreed that the listed issuer may send or supply corporate communications to him in that manner.
- (b) The conditions are that:
- (i) the holder has been asked individually by the listed issuer to agree that the listed issuer may send or supply corporate communications generally, or the corporate communication in question, to him by means of the listed issuer’s own website; and
 - (ii) the listed issuer has not received a response within the period of 28 days beginning with the date on which the listed issuer’s request was sent.
- (c) A holder is not taken to have so agreed if the listed issuer’s request:
- (i) did not state clearly what the effect of a failure to respond would be; or
 - (ii) was sent less than 12 months after a previous request made to him for the purposes of this rule 2.07A(2A) in respect of the same or a similar class of corporate communications.

- (d) The listed issuer must notify the intended recipient of:
- (i) the presence of the corporate communication on the website;
 - (ii) the address of the website;
 - (iii) the place on the website where it may be accessed; and
 - (iv) how to access the corporate communication.
- (3) A listed issuer which, availing itself of this rule 2.07A, sends or otherwise makes available a corporate communication to holders of its securities using electronic means must:
- (a) afford holders the right at any time by reasonable notice in writing served on the listed issuer to change their choice (whether actual or deemed under rule 2.07A(2A)) as to whether they wish to receive corporate communications in printed form or using electronic means. The listed issuer must set out in each such corporate communication the steps for notifying the listed issuer of any such change together with a statement expressly informing holders that:
 - (ai) holders may at any time choose to receive corporate communications either in printed form or using electronic means; and
 - (bii) holders who have chosen (or are deemed under rule 2.07A(2A) to have chosen) to receive the corporate communication using electronic means and who for any reason have difficulty in receiving or gaining access to the corporate communication will promptly upon request be sent the corporate communication in printed form free of charge; and
 - (b) without prejudice to their right to use any other written means of communication for such purpose, provide holders of its securities with the option of notifying the listed issuer by email of any change in their choice as to whether they wish to receive corporate communications in printed form or using electronic means or of any request to receive the corporate communication in printed form. The listed issuer must provide holders of its securities with an email address for this purpose.
- (4) ~~A listed issuer which, availing itself of this rule 2.07A, has made available a corporate communication to holders of its securities by publication on its website, must ensure that such corporate communication remains available on its website on a continuous basis for at least 5 years from the date of first publication.~~

Note: It is the sole responsibility of the listed issuer to ensure that any proposed arrangement is permitted under, and that the listed issuer will at all times comply with, all applicable laws and regulations and the listed issuer's own constitutional documents (including, in the case of a listed issuer incorporated outside Hong Kong, a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong as referred to in (1) above)."

Proposed GEM Rule amendments

- “16.04A (1) Subject to the provisions set out in this rule 16.04A, any requirement in the GEM Listing Rules for a listed issuer to send, mail, dispatch, issue, publish or otherwise make available any corporate communication may, to the extent permitted under all applicable laws and regulations and the listed issuer’s own constitutional documents, be satisfied by the listed issuer sending or otherwise making available the corporate communication to the relevant holders of its securities using electronic means and any requirement in the GEM Listing Rules that a corporate communication of a listed issuer must be in printed form may be satisfied by the corporate communication being in electronic format. ~~Notwithstanding the foregoing, all listed issuers availing themselves of the provisions of this rule 16.04A must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time in this regard under Hong Kong law for listed issuers incorporated in Hong Kong.~~
- (2) Other than as permitted under rule 16.04A(2A) in relation to a corporate communication published on the listed issuer’s own website pursuant to rule 16.19, the corporate communication may be sent or otherwise made available by the listed issuer to a holder of its securities using electronic means or in electronic format only where the listed issuer has previously received from that holder an express, positive confirmation in writing that the holder wishes to receive or otherwise have made available to the holder the corporate communication by the means and in the manner format proposed by the listed issuer.
- (2A) (a) To the extent that:
- (i) the shareholders of the listed issuer have resolved in general meeting that the listed issuer may send or supply corporate communications to shareholders by making them available on the listed issuer’s own website; or
 - (ii) the listed issuer’s constitutional documents contain provision to that effect a holder of the listed issuer’s securities in relation to whom the following conditions are met is taken to have agreed that the listed issuer may send or supply corporate communications to him in that manner.
- (b) The conditions are that:
- (i) the holder has been asked individually by the listed issuer to agree that the listed issuer may send or supply corporate communications generally, or the corporate communication in question, to him by means of the listed issuer’s own website; and
 - (ii) the listed issuer has not received a response within the period of 28 days beginning with the date on which the listed issuer’s request was sent.
- (c) A holder is not taken to have so agreed if the listed issuer’s request:
- (i) did not state clearly what the effect of a failure to respond would be; or
 - (ii) was sent less than 12 months after a previous request made to him for the purposes of this rule 16.04A(2A) in respect of the same or a similar class of corporate communications.

- (d) The listed issuer must notify the intended recipient of:
 - (i) the presence of the corporate communication on the website;
 - (ii) the address of the website;
 - (iii) the place on the website where it may be accessed; and
 - (iv) how to access the corporate communication.
- (3) A listed issuer which, availing itself of this rule 16.04A, sends or otherwise makes available a corporate communication to holders of its securities using electronic means must:
 - (a) afford holders the right at any time by reasonable notice in writing served on the listed issuer to change their choice (whether actual or deemed under rule 16.04A(2A)) as to whether they wish to receive corporate communications in printed form or using electronic means. The listed issuer must set out in each such corporate communication the steps for notifying the listed issuer of any such change together with a statement expressly informing holders that:
 - (ai) holders may at any time choose to receive corporate communications either in printed form or using electronic means; and
 - (bii) holders who have chosen (or are deemed under rule 16.04A(2A) to have chosen) to receive the corporate communication using electronic means and who for any reason have difficulty in receiving or gaining access to the corporate communication will promptly upon request be sent the corporate communication in printed form free of charge; and
 - (b) without prejudice to their right to use any other written means of communication for such purpose, provide holders of its securities with the option of notifying the listed issuer by email of any change in their choice as to whether they wish to receive corporate communications in printed form or using electronic means or of any request to receive the corporate communication in printed form. The listed issuer must provide holders of its securities with an email address for this purpose.
- (4) ~~All corporate communications which a listed issuer has, availing itself of this rule 16.04A, made available to holders of its securities by publication on its website must be made in accordance with the publication requirements contained in rule 16.19, which requirements shall apply to such corporate communications.~~

Note: It is the sole responsibility of the listed issuer to ensure that any proposed arrangement is permitted under, and that the listed issuer will at all times comply with, all applicable laws and regulations and the listed issuer's own constitutional documents (including, in the case of a listed issuer incorporated outside Hong Kong, a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong as referred to in (1) above)."

APPENDIX 2 DRAFT RULE AMENDMENTS REGARDING ISSUE 2

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“Information Gathering

2.12A An issuer must provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:

- (1) any information that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market; and
- (2) any other information or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Exchange Listing Rules.”

APPENDIX 3 DRAFT RULE AMENDMENTS REGARDING ISSUE 3

Proposed Main Board Rule amendments

~~“Qualified Accountant~~

- 3.24 Every listed issuer must ensure that, at all times, it employs an individual on a full-time basis. The responsibility of such individual must include oversight of the issuer and its subsidiaries in connection with its financial reporting procedures and internal controls and compliance with the requirements under the Exchange Listing Rules with regard to financial reporting and other accounting-related issues. The individual must be a member of the senior management of the listed issuer (preferably an executive director) and must be a qualified accountant and a certified public accountant registered with the Hong Kong Institute of Certified Public Accountants or a similar body of accountants recognised by that Institute for the purpose of granting exemptions from the examination requirement for membership of that Institute. This rule does not apply to a listed issuer of debt securities, the equity securities of which are not listed on the Exchange. ~~[Repealed *[insert date]*]~~

...

Practice Note 21

...

DUE DILIGENCE BY SPONSORS IN RESPECT OF INITIAL LISTING APPLICATIONS

...

15. Typical due diligence inquiries in relation to the new applicant’s accounting and management systems and in relation to the directors’ appreciation of their and the new applicant’s obligations include:

...

- b) interviewing all directors and senior managers with key responsibilities for ensuring compliance with the Exchange Listing Rules and other legal and regulatory requirements (including the chief financial officer, company secretary, ~~qualified accountant~~ and any compliance officers) to assess:
- (i) their individual and collective experience, qualifications and competence; and
 - (ii) whether they appear to understand relevant obligations under the Exchange Listing Rules and other relevant legal and regulatory requirements and the new applicant’s policies and procedures in respect of those obligations.

...

Appendix 1 Contents of Listing Documents Part A Equity Securities

...

42. The full name and professional qualification, if any, of the secretary of the issuer ~~and the qualified accountant of the issuer appointed pursuant to rule 3.24.~~

...

Appendix 1
Contents of Listing Documents
Part B
Equity Securities

...

35. The full name and professional qualification, if any, of the secretary of the issuer ~~and the qualified accountant of the issuer appointed pursuant to rule 3.24.~~

...

Appendix 14

CODE ON CORPORATE GOVERNANCE PRACTICES

...

- C.3.3 The terms of reference of the audit committee should include at least the following duties:-

...

- (e) In regard to (d) above:-

- (i) members of the committee must liaise with the issuer's board of directors; and senior management and ~~the person appointed as the issuer's qualified accountant~~ and the committee must meet, at least once a year, with the issuer's auditors; and
- (ii) the committee should consider any significant or unusual items that are, or may need to be, reflected in such reports and accounts and must give due consideration to any matters that have been raised by the issuer's ~~qualified~~ accountants, compliance officer or auditors;

...

Appendix 24
Headline Categories

...

Corporate Positions and Committees/Corporate Changes

...

Change in Financial Year End

~~Change in Qualified Accountant~~

...

Non-compliance with INED Requirements or INED Failing to Meet Independence Guidelines

~~Non-compliance with Qualified Accountant Requirements~~

...”

Proposed GEM Rule amendments

“Disciplinary procedures

...

3.11 The sanctions in rule 3.10 may be imposed or issued against any of the following:—

...

- (f) any professional adviser of a listed issuer or any of its subsidiaries;
- (g) ~~the person fulfilling the role of the listed issuer’s qualified accountant (as such role is prescribed in rule 5.15);~~
- (hg) any authorised representative of a listed issuer;
- (ih) any supervisor of a PRC issuer; and
- (ji) the guarantor of an issuer in the case of a guaranteed issue of debt securities.

...

Qualified Accountant

5.15 ~~Every issuer must ensure that, at all times, it employs an individual on a full time-basis. The responsibility of such individual must include oversight of the issuer and its subsidiaries in connection with its financial reporting procedures and internal controls and compliance with the requirements under the GEM Listing Rules with regard to financial reporting and other accounting-related issues. The individual must be a member of the senior management of the issuer (preferably an executive director) and must be a qualified accountant and a certified public accountant registered with the Hong Kong Institute of Certified Public Accountants or a similar body of accountants recognised by that Institute for the purpose of granting exemptions from the examination requirement for membership of that Institute.~~~~[Repealed [insert date]]~~

Note: This rule and rule 5.18 do not apply to an issuer of debt securities, the equity securities of which are not listed on GEM.

5.16 ~~The qualified accountant’s responsibilities must include, as a minimum, the following matters:—~~

- (1) ~~advising on and assisting the board of directors of the issuer in developing and implementing financial reporting, internal control and other procedures to provide the board with a reasonable basis for making proper judgments as to the financial position and prospects of the group; and~~
- (2) ~~unless he is otherwise a member of the audit committee of the issuer, liaising with the audit committee to assist it in monitoring the development and implementation of such procedures.~~~~[Repealed [insert date]]~~

5.17 ~~The person appointed as the qualified accountant should only terminate his appointment after first notifying the Exchange of such proposed termination and the reasons therefor; and except in exceptional circumstances the issuer should not terminate the appointment of any person as the qualified accountant until it has appointed a replacement. Where a person’s appointment as qualified accountant is terminated, both the issuer and the individual concerned should immediately notify the Exchange, in each case stating the reason why such appointment was terminated.~~~~[Repealed [insert date]]~~

5.18 ~~If, at any time, the issuer fails to retain an individual to take on the role of the qualified accountant, the issuer must immediately announce this matter in accordance with the publication requirements set out in Chapter 16, failing which the Exchange reserves the right to announce the same.~~~~[Repealed *[insert date]*]~~

...

11.07 The issuer must have persons appointed to the following offices and, or to perform the following roles and the issuer must ensure that such persons have satisfied the following rules prior to appointment:—

- (1) directors – rules 5.02, 5.05 and 5.13;
- (2) company secretary – rule 5.14;
- (3) ~~qualified accountant – rule 5.15;~~
- (43) compliance officer – rule 5.19;
- (54) authorised representatives – rule 5.24; and
- (65) members of the audit committee – rules 5.28 and 5.29.

....

Changes

17.50 An issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:-

...

- (3) any change in its share registrar (see rule 11.08) (including any change in overseas branch share registrar), secretary (see rule 5.14), ~~qualified accountant (see rule 5.15)~~ compliance officer (see rule 5.19) or member of the audit committee (see rule 5.28);

...

17.51 An issuer shall immediately inform the Exchange and publish an announcement containing the relevant details and reasons if:

...

- (1) there remains outstanding the appointment of any individual(s) to the position of ~~qualified accountant~~ and/or compliance officer as required pursuant to Chapter 5; or

...

18.44 The following information in respect of an issuer:-

- (1) the full name and professional qualifications (if any) of:-
 - (a) the company secretary of the issuer;
 - (b) ~~the qualified accountant of the issuer appointed pursuant to rule 5.15;~~ and
 - (be) the compliance officer of the issuer appointed pursuant to rule 5.19; and
- (2) a separate Corporate Governance Report prepared by the board of directors....

Practice Note 2

...

DUE DILIGENCE BY SPONSORS IN RESPECT OF INITIAL LISTING APPLICATIONS

...

15. Typical due diligence inquiries in relation to the new applicant's accounting and management systems and in relation to the directors' appreciation of their and the new applicant's obligations include:

...

- b) interviewing all directors and senior managers with key responsibilities for ensuring compliance with the GEM Listing Rules and other legal and regulatory requirements (including the chief financial officer, company secretary, ~~qualified accountant~~ and any compliance officers) to assess:
- (i) their individual and collective experience, qualifications and competence; and
 - (ii) whether they appear to understand relevant obligations under the GEM Listing Rules and other relevant legal and regulatory requirements and the new applicant's policies and procedures in respect of those obligations.

...

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part A

Equity Securities

...

42. (1) The full names and professional qualifications, if any, of:—
- (a) the secretary of the issuer;
 - (b) ~~the qualified accountant of the issuer appointed pursuant to rule 5.15;~~
 - (be) the compliance officer of the issuer appointed pursuant to rule 5.19.

....

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part B

Equity Securities

...

35. (1) The full names and professional qualifications, if any, of:—
- (a) the secretary of the issuer;
 - (b) ~~the qualified accountant of the issuer appointed pursuant to rule 5.15;~~ and
 - (be) the compliance officer to the issuer appointed pursuant to rule 5.19.

....

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part C

Debt Securities

...

47. (1) The full name and professional qualifications, if any of:—
- (a) the secretary of the issuer;
 - (b) ~~the qualified accountant of the issuer (if any);~~ and
 - (be) the compliance officer of the issuer (if any).

...

Appendix 15

CODE ON CORPORATE GOVERNANCE PRACTICES

...

C.3.3 The terms of reference of the audit committee should include at least the following duties:-

...

(e) In regard to (d) above:-

- (i) members of the committee must liaise with the issuer's board of directors; and senior management and ~~the person appointed as the issuer's qualified accountant~~ and the committee must meet, at least once a year, with the issuer's auditors; and
- (ii) the committee should consider any significant or unusual items that are, or may need to be, reflected in such reports and accounts and must give due consideration to any matters that have been raised by the issuer's ~~qualified,~~ accountants, compliance officer or auditors;

...

Appendix 17

Headline Categories

...

Corporate Positions and Committees/Corporate Changes

...

Change in Financial Year End

~~Change in Qualified Accountant~~

...

Non-compliance with INED Requirements or INED Failing to Meet Independence Guidelines

~~Non-compliance with Qualified Accountant Requirements~~

...”

APPENDIX 4 DRAFT RULE AMENDMENTS REGARDING ISSUE 4

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“3A.07 At least one sponsor of a new applicant must be independent ~~of from~~ the new applicant. A sponsor is not independent if any of the following circumstances exist ~~as at~~ any time from the earlier of the date when the sponsor agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of stabilisation period, whichever is the later. The sponsor is required to demonstrate to the Exchange its independence or lack of independence as at the time of making the declaration pursuant to rule 3A.13 statement pursuant to rule 3A.08:

...

Appendix 18

SPONSOR’S STATEMENT RELATING TO INDEPENDENCE

To: The Listing Division
The Stock Exchange of Hong Kong Limited

...../...../.....

We, (the “Firm”) are a / the *[cross out whichever is not applicable]* sponsor appointed by (the “Company”) for the purpose referred to in rule 3A.02 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”) and have offices located at

Pursuant to rule 3A.08 we declare to The Stock Exchange of Hong Kong Limited that as regards the Firm’s relationship with the Company *[clearly strike out whichever of the following does not apply]*:

- (a) pursuant to rule 3A.07, the Firm has been, is and expects to be independent; *[or]*
- (b) pursuant to rule 3A.07, the Firm has not been, is not and does not expect to be independent because, at the time it expects to make the declaration referred to in rule 3A.13:

[describe in some detail the circumstances that give rise to the lack of independence]

.....
.....
.....

...”

APPENDIX 5 DRAFT RULE AMENDMENTS REGARDING ISSUE 5

(Set out below are the proposed Main Board Rule amendments. The Exchange does not propose to make equivalent amendments to the GEM Rules at this stage.)

Issue 5A: Minimum level of public float

Rule amendments relating to Questions 5.1 and 5.2

“8.08 There must be an open market in the securities for which listing is sought. This will normally mean that: -

(1) (a) ...

(d) The Exchange ~~may, at its discretion,~~ will accept a lower percentage of public float to be established by reference to the expected market capitalisation of the issuer at the time of listing in accordance with the following table:-

Market capitalisation
(determined as at the time of listing)

Minimum prescribed percentage of
securities to be in public hands

Over HK\$10 billion but
not exceeding HK\$40 billion

The higher of: (i) the percentage that would
result in the market value of the securities to be
in public hands equal to HK\$2.5 billion
(determined as at the time of listing); and (ii)
15%

Over HK\$40 billion

The higher of: (i) the percentage that would
result in the market value of the securities to be
in public hands equal to HK\$6 billion
(determined as at the time of listing); and (ii)
10%

~~between 15% and 25% in the case of issuers with an expected market capitalisation at the time of listing of over HK\$10,000,000,000, where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market to operate properly with a lower percentage, and on condition that the issuer will make appropriate disclosure of the lower prescribed percentage of public float in the initial listing document and confirm sufficiency of public float in successive annual reports after listing (see rule 13.35). Additionally, a sufficient portion (to be agreed in advance with the Exchange) of any securities intended to be marketed contemporaneously within and outside Hong Kong must normally be offered in Hong Kong;~~

Note: The revised ~~lower~~ prescribed percentage of ~~between 15% and 25%~~ of public float shall not apply retrospectively nor amend arrangements in place before 31 March 2004 [date to be confirmed].”

Issue 5B: Constituents of “the public”

Rule amendments relating to Questions 5.4 and 5.5

“8.24 The Exchange will not regard ~~any connected person of the issuer~~ the following persons as a members of “the public” nor shares held by a connected such persons as being in “public hands”. ~~In addition the Exchange will not recognise as a member of “the public”:-~~

- (1) any person who is entitled to exercise, or controls the exercise of, 5% or more of the voting power at any general meeting of the issuer;
- (2) any connected person of the issuer;
- ~~(1)~~(3) any person whose acquisition of securities has been financed directly or indirectly by a connected person;
- ~~(2)~~(4) any person who is accustomed to take instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.”

APPENDIX 6 DRAFT RULE AMENDMENTS REGARDING ISSUE 6

Proposed Main Board Rule amendments

“8.08 There must be an open market in the securities for which listing is sought. This will normally mean that:-

- (1) (a) at least 25% of the issuer’s total issued share capital must at all times be held by the public.
...
- (2) in the case of a class of securities new to listing, at the time of listing there must be an adequate spread of holders of the securities to be listed, save where: (a) the securities to be listed are options, warrants or similar rights to subscribe or purchase shares; (b) such securities are offered to holders of the issuer’s shares by way of bonus issue; and (c) in the 5 years preceding the date of the announcement on the proposed bonus issue, there are no circumstances to indicate that the shares of an issuer may be concentrated in the hands of a few shareholders. The number will depend on the size and nature of the issue, but in all cases (save for an issuer which chooses to satisfy the alternative financial standard test under rule 8.05(3) - see rule 8.05(3)(f)) there must be a minimum of 300 shareholders; and
- (3) not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders, save where: (a) the securities to be listed are options, warrants or similar rights to subscribe or purchase shares; (b) such securities are offered to existing holders of the issuer’s shares by way of bonus issue; and (c) in the 5 years preceding the date of the announcement on the proposed bonus issue, there are no circumstances to indicate that the shares of an issuer may be concentrated in the hands of a few shareholders.”

Proposed GEM Rule amendments

“11.23 There must be an open market in the securities for which listing is sought. This will normally mean that:-

- (1) for any class of equity securities, at least the “minimum prescribed percentage” of such class of securities in issue from time to time must, at the time of listing and at all times thereafter, be in the hands of the public.
...
- (3) with regard to options, warrants or similar rights to subscribe or purchase shares (“warrants”) for which a listing is sought:-
...
 - (b) in the case of a listed issuer:-
 - (i) the market capitalisation of such warrants (determined as at the time of listing) must be at least HK\$6,000,000; and
 - (ii) save where: (a) such warrants are offered to existing holders of the issuer’s shares by way of bonus issue; and (b) in the 5 years preceding the date of the announcement on the proposed bonus issue, there are no circumstances to indicate that the shares of an issuer may be concentrated in the hands of a few shareholders, there must, as at the time of listing be an adequate spread of holders of such warrants. The number will depend on the size and nature of the issue but, as a guideline, the warrants in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose warrants are held through CCASS); ”

APPENDIX 7 DRAFT RULE AMENDMENTS REGARDING ISSUE 7

Proposed Main Board Rule amendments

“4.25 In the cases referred to in rule 4.01(3) concerning a circular in connection with a major transaction, the pro forma financial information required under rules 14.67(6)(4)(a)(ii) or 14.67(6)(4)(b)(ii) on the enlarged group (i.e. the issuer, its subsidiaries and any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (including but not limited to any business, company or companies being acquired)) must include all the information referred to in rule 4.29 in respect of such enlarged group.

...

5.02 In the case of an acquisition or realisation of any property, or a company whose assets consist solely or mainly of property, where any of the percentage ratios (as defined in rule 14.04(9)) of the transaction exceeds 25%, then a valuation of and information on such property must be included in the circular issued to shareholders in connection with the acquisition or realisation (see rules 14.66(11)(3) and 14.69(3)) unless the interest in the property is acquired from the Hong Kong Government at a public auction or by sealed tender. For the purposes of this rule and rule 5.03, a circular issued “in connection with an acquisition” includes a listing document issued on a rights issue, the proceeds of which are to be used to retire a debt with which the property or company had previously been acquired provided that such a listing document need not contain such a valuation report if a circular containing such a valuation report was issued to shareholders at the time of the acquisition of the property or company.

...

10.06 (1) (a) An issuer whose primary listing is on the Exchange may only purchase shares on the Exchange, either directly or indirectly, if:—

(i) ...

(b) the issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders’ meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

(i) ...

The Explanatory Statement must be reviewed by the Exchange prior to its dispatch to shareholders of the issuer and must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon See also note 3 to rule 13.54 for documents to be submitted to the Exchange together with the Explanatory Statement at the time when the statement is issued;

...

General obligation of disclosure

13.09 (1) ...

Notes: ...

5. *Any obligation to inform holders of the issuer's securities or the public will be satisfied by the information being published in an announcement in accordance with rule 2.07C except where this Chapter requires some other form of notification. ~~Certain such announcements must first have been reviewed by the Exchange in accordance with rule 13.52.~~*

...

13.23 (1) An issuer shall disclose details of acquisitions and realisations of assets and other transactions as required by Chapters 14 and 14A and, where applicable, shall circularise holders of its listed securities with details thereof and obtain their approval thereto.

(2) The issuer shall comply with the Takeovers Code and the Code on Share Repurchases.

Notes: 1 *Where the consideration under an offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document. ~~Whether the consideration under an offer comprises cash or securities (or a combination of both), drafts of all documents to be issued in connection with takeovers, mergers or offers must be submitted to the Exchange for review in accordance with rule 13.52.~~*

- 2 *The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers Code and Code on Share Repurchases directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.*

...

NOTIFICATION Changes

13.51 An issuer shall inform the Exchange immediately of any decision made and publish an announcement in accordance with rule 2.07C as soon as practicable in regard to:—

- (1) any proposed alteration of the issuer's memorandum or articles of association or equivalent documents, and in the case of a PRC issuer, any proposed request by the PRC issuer to a PRC competent authority to waive or otherwise modify any provision of the Regulations;

Notes: 1. *Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3 and, if relevant, Appendix 13.*

2. *An issuer shall not at any time permit or cause any amendment to be made to its memorandum or articles of association or bye-laws which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part A or Part B (where appropriate) of Appendix 13.*

3. *The circular for any amendments proposed by an issuer set out in rule 13.51(1) must contain an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. See also note 2 to rule 13.54 for documents to be submitted to the Exchange together with the circular at the time when the circular is issued.*

...

...

ANNOUNCEMENTS, CIRCULARS AND OTHER DOCUMENTS

Review of documents

13.52 In addition to the specific requirements set out in the Exchange Listing Rules, an issuer shall:—

- (1) submit to the Exchange copies of drafts, for review before they are issued, of any announcements or advertisements relating to the issue of new or further securities (other than pursuant to a capitalisation issue or a scrip dividend scheme) or any announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its listed securities (including a suspension of dealings);
- (2) submit to the Exchange copies of drafts, for review before they are issued, of any documents issued in connection with takeovers, mergers or offers;
- (3) submit to the Exchange copies of drafts for review before they are issued, of any proposed amendment to its memorandum or articles of association or equivalent documents; and
- (4) not issue any of such documents until the Exchange has confirmed to the issuer that it has no further comments thereon.

Subject to rule 13.52A, where an issuer is obliged to publish any documents for the purposes of the Exchange Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 13.52(1) or (2).

- (1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:
 - (a) listing document (including prospectus);
 - (b) circular relating to cancellation or withdrawal of listing of listed securities;
 - (c) circular relating to transaction or matter required under Chapter 14 of the Exchange Listing Rules;
 - (d) circular relating to connected transaction (including continuing connected transaction) required under Chapter 14A of the Exchange Listing Rules;
 - (e) circular to the issuer's shareholders seeking their approval of
 - (i) any transaction or arrangement under rule 13.36(1) or 13.39(7);
 - (ii) any matter relating to share option scheme required under Chapter 17 of the Exchange Listing Rules;

- (iii) any proposal to explore for natural resources as an extension to or change from the listed issuer's existing activities pursuant to rule 18.07; or
- (iv) any warrant proposal under paragraph 4(c) of Practice Note 4 to the Exchange Listing Rules; or
- (f) circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

- (2) The following transitional provisions apply to announcements set out in this rule and shall cease to have effect on such date as the Exchange may determine and promulgate.

An issuer shall submit to the Exchange copies of drafts of the following announcements for review before they are issued:

- (a) announcement for any major transaction, very substantial disposal, very substantial acquisition or reverse takeover under rules 14.34 and 14.35;
- (b) announcement for any transaction or arrangement under rules 14.89 to 14.91;
- (c) announcement for any matter relating to a cash company under rules 14.82 and 14.83; or
- (d) announcement for any connected transaction or continuing connected transaction under rules 14A.47 and 14A.56.

The issuer shall not issue such announcements until the Exchange has confirmed that it has no further comments thereon.

- Notes:
1. *Four copies of each document are required, which should be submitted in sufficient time for review and, if necessary, re-submission prior to final printing.*
 2. *In the case of documents issued in connection with takeovers, mergers or offers covered by the Takeovers Code, the Exchange will pass its comments on the document and, if appropriate, its confirmation that it has no further comments thereon in writing to the Commission who will notify the issuer of any such comments and the Exchange's confirmation that it has no further comments thereon. The issuer should ensure that the Commission furnishes it with a copy of the Exchange's letter confirming that it has no further comments thereon. the Exchange will pass its comments on the documents directly to the issuer and will at the same time provide a copy of such comments to the Commission.*
 3. *It is not necessary to submit a draft of an interim report or preliminary announcement of results so long as it conforms with Appendix 16 unless it contains any information falling within rule 13.52(1).*
 4. *Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3 and, if applicable, the additional requirements set out in Appendix 13.*

~~35-~~ *The Exchange reserves the right to require an issuer to issue a further announcement or document, and/or take other remedial action, particularly if the original announcement or document was not required by does not comply with the requirements of the Exchange Listing Rules to be reviewed by the Exchange, or if the original announcement or document is misleading or is likely to create a false or misinformed market.*

~~46-~~ *Where an announcement or advertisement of a new or further issue of securities contains a profit forecast, the provisions of rules 14.61 and 14.62 will apply.*

~~57-~~ *Every announcement or advertisement which has been reviewed by the Exchange in accordance with the provisions of rule 13.52(1) Any listing document, circular, announcement or notice issued by a listed issuer pursuant to the Exchange Listing Rules must contain on the front cover, or as a heading, on the top of the announcement or advertisement a prominent and legible disclaimer statement as follows:—*

“The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this ~~advertisement/announcement document~~, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this ~~advertisement/announcement document~~.”

13.52A In addition to the specified requirements set out in rule 13.52, the Exchange has the right to request to review any documents prior to publication in individual cases. In any such case, the Exchange will communicate to the issuer its direction to review the document prior to publication and the reasons for its decision. The issuer shall accordingly submit to the Exchange copies of drafts for review and shall not issue the document until the Exchange has confirmed that it has no further comments thereon.

13.52B An issuer proposing to publish a document pursuant to the Exchange Listing Rules shall observe the following provisions:

(1) Where the subject matter of the document may involve a change in or relate to or affect arrangements regarding trading in the issuer’s listed securities (including a suspension or resumption of dealings, and a cancellation or withdrawal of listing), the issuer must consult the Exchange before the document is issued. The document must not include any reference to a specific date or specific timetable in respect of such matter which has not been agreed in advance with the Exchange.

(2) If the issuer wishes to

(a) ascertain whether or to what extent any provisions in the Exchange Listing Rules apply to the document, or the transaction or matter to which it relates; or

(b) request a modification or dispensation with any requirements of the Exchange Listing Rules in respect of the document, or the transaction or matter to which it relates,

relevant details, including the reasons and circumstances that give rise to the issues concerned, must be submitted to the Exchange in sufficient time for its determination.

...

Forwarding of documents, circulars, etc.

13.54 An issuer (other than authorised Collective Investment Schemes) shall forward to the Exchange:—

- (1) 25 copies of each of the English language version and the Chinese language version of:
 - (a) all circulars to holders of securities;
 - (b) its annual report and accounts and, where applicable, its summary financial report; and
 - (c) the interim report and, where applicable, its summary interim report,

at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong;

In respect of a circular for any proposed alteration of the issuer's memorandum or articles of association or equivalent documents, and in the case of a PRC issuer, any proposed request by the PRC issuer to a PRC competent authority to waive or otherwise modify any provision of the Regulations, the issuer should submit the published version of the circular together with a letter from the issuer's legal advisers confirming that the proposed amendments comply with the requirements of the Exchange Listing Rules and the laws of the place where it is incorporated or otherwise established and there is nothing unusual about the proposed amendments for a company listed in Hong Kong.

In respect of a circular or notice containing an Explanatory Statement issued under rule 10.06(1)(b), the issuer should submit to the Exchange the published version of the statement together with (a) a confirmation from the issuer that the statement contains the information required under rule 10.06(1)(b) and that neither the statement nor the proposed share repurchase has unusual features; and (b) the undertaking from its directors to the Exchange according to rule 10.06(1)(b)(vi).

Note: Wherever practicable the issuer should provide the Exchange with such reasonable number of additional copies of these documents as the Exchange may request.

...

14.03 ~~All announcements, circulars and listing documents in relation to transactions under this Chapter must be reviewed by the Exchange and may only be issued after the Exchange has confirmed that it has no further comments thereon. [Repealed *[insert date]*]~~

...

14.33 The table below summarises the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

	Notification to Exchange	Publication of an announcement in accordance with rule 2.07C	Circular to shareholders	Shareholders' approval	Accountants' report
Share transaction	Yes	Yes	No	No ¹	No
Discloseable transaction	Yes	Yes	Yes No	No	No
Major transaction	Yes	Yes	Yes	Yes ²	Yes ³
Very substantial disposal	Yes	Yes	Yes	Yes ²	Yes ⁵
Very substantial acquisition	Yes	Yes	Yes	Yes ²	Yes ⁴
Reverse takeover	Yes	Yes	Yes	Yes ^{2,6}	Yes ⁴

Notes: 1 *No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to rule 13.36(2)(b) or rule 19A.38, to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*

2 *Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.*

3 *For acquisitions of businesses and/or companies only. The accountants' report is for the 3 preceding financial years on the business, company or companies being acquired (see also rule ~~14.67(6)~~14.67(4)).*

4 *An accountants' report for the 3 preceding financial years on any business, company or companies being acquired is required (see also rule 14.69(4)).*

5 *An accountants' report on the listed issuer's group is required (see also rule 14.68(2)).*

6 *Approval of the Exchange is necessary.*

Requirements for all transactions

Notification and announcement

14.34 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalised, the listed issuer must in each case:—

- (1) inform the Exchange; and

Note: Under rule 13.09, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) ~~send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must cause publish an such announcement to be published~~ in accordance with rule 2.07C as soon as possible. See also rule 14.37.

14.35 For a share transaction, the announcement must contain the information set out in rules 14.58 and 14.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 14.58 and 14.60. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 13.54, the listed issuer must forward to the Exchange seven copies of the announcement; ~~as cleared by the Exchange;~~ at the same time as it is issued.

...

Additional requirements for discloseable transactions

Circular

14.38 In addition to the requirements for all transactions set out in rules 14.34 ~~to 14.37~~, a listed issuer which has entered into a discloseable transaction falling within rule 18.07(1) must publish a further announcement in accordance with rule 2.07C ~~send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules within 21 days after publication of the announcement referred to in rule 14.34. The further announcement must contain the following information:~~ ~~The circular must contain the information required under rules 14.63, 14.64, 14.65 (for an acquisition only) and 14.70 (for a disposal only). The Exchange may waive the requirement in this rule to issue a circular where all of the following conditions are satisfied:~~

- (1) ~~the transaction is an acquisition where new shares will be issued by the listed issuer as consideration;~~
 - (2) ~~the acquisition is a discloseable transaction only because of the consideration ratio;~~
 - (3) ~~the consideration was calculated based on the fair value, being market value, of the equity capital;~~
~~and~~
 - (4) ~~all the other percentage ratios (i.e. the assets ratio, profits ratio, revenue ratio and equity capital ratio) are less than 5%.~~
- (1) the information specified in rule 18.09; and
 - (2) information regarding the expert statement contained in the further announcement, which is specified in paragraph 5 of Appendix 1, Part B.

Additional requirements for major transactions

Circular

14.38A In addition to the requirements for all transactions set out in rules 14.34 to 14.37, a listed issuer which has entered into a major transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules within 21 days after publication of the announcement. The circular must contain the information required under rules 14.63, 14.64, 14.65 (for an acquisition only) and 14.70 (for a disposal only). The Exchange may waive the requirement in this rule to issue a circular where all of the following conditions are satisfied:

- (1) the transaction is an acquisition where new shares will be issued by the listed issuer as consideration;
- (2) the acquisition is a discloseable transaction only because of the consideration ratio;
- (3) the consideration was calculated based on the fair value, being market value, of the equity capital; and
- (4) all the other percentage ratios (i.e. the assets ratio, profits ratio, revenue ratio and equity capital ratio) are less than 5%.

14.39 Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments. [Repealed [insert date/]]

Additional requirements for major transactions

Shareholders' approval

14.40 In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 14.34 to 14.39. In addition, a A major transaction must be made conditional on approval by shareholders.

...

Additional requirements for very substantial disposals and very substantial acquisitions

14.48 In the case of a very substantial disposal or a very substantial acquisition, the listed issuer must comply with the requirements for all transactions and for discloseable major transactions set out in rules 14.34 to 14.37 and 14.38A 14.39.

...

14.60A In addition to the information set out in rule 14.60, the announcement for a discloseable transaction which contains a profit forecast as referred to in rule 14.62 must contain the following information:

- (1) the information specified in paragraph 29(2) of Appendix 1, Part B; and
- (2) information regarding the expert statements contained in the announcement, which is specified in paragraph 5 of Appendix 1, Part B.

...

14.62 Where the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit the following additional information and documents to the Exchange by no later than the publication of at the same time as the draft announcement in accordance with rule 2.07C:—

(1) ...

Contents of circulars

General principles

14.63 A circular for a ~~discloseable transaction~~, major transaction, very substantial disposal or very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:—

(1) ...

Discloseable transaction circulars

14.64 ~~All circulars relating to discloseable transactions must contain the following:~~ [Repealed *[insert date]*]

(1) ~~.....~~

14.65 ~~In addition to the requirements set out in rule 14.64, a circular issued in relation to an acquisition constituting a discloseable major transaction must contain:~~ [Repealed *[insert date]*]

(1) ~~.....~~

Major transaction circulars

14.66 A circular relating to a major transaction must ~~also~~ contain the following:—

(1) ~~the information required under rule 14.64;~~

~~14.64~~ (1) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 14.88;

~~14.64~~ (2) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—

1- name

2- directors' responsibility

5- expert statements

29(2)- requirements if there is a profit forecast

33- litigation statement

35- details of secretary and other officers

36- address of registered office and head office

41- additional information on mineral companies (if applicable);

- ~~14.64~~ (3) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34 and 38 of Appendix 1, Part B, and Practice Note 5;
- ~~14.64~~ (4) information which is required to be included in the announcement under rule 14.60;
- ~~14.64~~ (5) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- ~~14.64~~ (6) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:—
- (a) the percentage of the issued share capital (if any) held by the listed issuer in that company after the acquisition or disposal; and
- (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- ~~14.64~~ (7) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer, or an appropriate negative statement;
- Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation (other than statutory compensation) need not be included.*
- ~~14.64~~ (8) information as to the competing interests (if any) of each of the directors of the listed issuer and his/her respective associates (as would be required to be disclosed under rule 8.10 if each of them were a controlling shareholder); ~~and~~
- ~~14.64~~ (9) any additional information requested by the Exchange;—
- (102) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
- 8A- procedures for demanding a poll by shareholders
- 28- indebtedness
- 29(1)(b)- financial and trading prospects
- 30- sufficiency of working capital
- 40- directors' and experts' interests in group assets
- 42- material contracts
- 43- documents on display;
- (113) where required by Chapter 5 of the Exchange Listing Rules, a valuer's report on the property being acquired or disposed of;
- (124) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:—
- (a) the statement has been made by the directors after due and careful enquiry; and
- (b) the persons or institutions providing finance have confirmed in writing that such facilities exist; and
- (5) [~~repealed 1 March 2006~~]
- (136) where applicable, the information required under rule 2.17.

14.67 In addition to the requirements set out in rule 14.66, a circular issued in relation to an acquisition constituting a major transaction must contain:—

- ~~(1)~~ ~~information required under rule 14.65;~~
- ~~14.65~~ (1) the information required under paragraphs 9 and 10 of Appendix 1, Part B, if the acquisition involves securities for which listing will be sought;
- ~~14.65~~ (2) the information required under paragraph 22(1) of Appendix 1, Part B, if new shares are to be issued as consideration; ~~and~~
- ~~14.65~~ (3) where the consideration for a transaction includes the listed issuer's shares or securities that are convertible into the listed issuer's shares, a statement whether the transaction will result in a change of control of the listed issuer;:-
- ~~(42)~~ the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1, Part B;
- ~~(53)~~ the information required under paragraph 34 of Appendix 1, Part B in relation to each new director and member of senior management joining the listed issuer in connection with the transaction;

Note: The fact that any director or proposed director is a director or employee of a company which has an interest or short position in the shares or underlying shares of the listed issuer which would fall to be disclosed to the listed issuer under the provisions in Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance need not be stated.

- ~~(64)~~ (a) on an acquisition of any business, company or companies:
 - (i) ...
- ~~(75)~~ a management discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in paragraph 32 of Appendix 16 for the period reported in the accountant's report.

...

Very substantial acquisition circulars and reverse takeover listing documents

14.69 A circular issued in relation to a very substantial acquisition or a listing document issued in relation to a reverse takeover must contain:—

- (1) in respect of a listing document issued in relation to a reverse takeover,
 - (a) the information required under rule ~~14.66~~~~14.64~~ (save for the information required under rules ~~14.64(2)~~ and ~~14.64(3)~~ ~~14.66(2)~~, ~~14.66(3)~~, ~~14.66(10)~~ and ~~14.66(11)~~) and under rules ~~14.67(3)~~~~14.65(3)~~, ~~14.66(4)~~ and ~~14.67(7)~~~~14.67(5)~~; and
 - (b) the information required under Appendix 1, Part A, if applicable, except paragraphs 8, 15(2) (in respect of the 12 months preceding the issue of the circular or listing document) and 20(1); and
 - (c) ~~the information required under rule 2.17; [Repealed [insert date]]~~

- (2) in respect of a circular issued in relation to a very substantial acquisition, the information required under rules 14.66 to 14.67 (save for the information required under rules 14.66(113) and 14.67(64)) and rule 2.17;
- (3) ...

Additional requirements for circulars in respect of disposals

14.70 In addition to the requirements set out in rules ~~14.64~~ and 14.66, a circular issued in relation to a disposal constituting a ~~discloseable transaction~~ or a major transaction must contain:—

- (1) ...

...

14.79 ~~If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. 7 copies of the final documents issued must be supplied to the Exchange at the time of issue. [Repealed *[insert date]*]~~

Note: The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers Code directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.

...

14A.47 Issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements must:—

- (1) notify the Exchange as soon as possible after the terms of the transaction have been agreed;

Note: Under rule 13.09, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) ~~send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must cause publish such announcement to be published~~ in accordance with rule 2.07C as soon as possible; and

Notes: 1 Pursuant to rule 13.54(2), the listed issuer must forward to the Exchange 7 copies of such announcement as cleared by the Exchange at the same time as it is issued.

2 Where the connected transaction is also a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, rule 14.37 (requirement for short suspension of dealings) also applies.

- (3) comply with rules 14A.45 or 14A.46 (the reporting requirements).

...

14A.50 ~~Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments. [Repealed *[insert date]*]~~

...

Despatch of circular and publication of announcement

- 17.06 ~~A draft of the scheme, the circular and/or the announcement as required under this chapter, in a reasonably advanced form, must be submitted to the Exchange for review as soon as possible. The listed issuer may not issue the circular or the announcement until the Exchange confirms that it has no further comments. The circular required under this chapter should be despatched to the shareholders no later than the date on which the listed issuer gives notice of the general meeting to approve the scheme or related matters as required under this chapter.~~

...

New Venture Listed Issuers

- 18.07 Where a listed issuer proposes to explore for natural resources as an extension to or change from its existing activities, ~~a circular, which must include~~ the information specified in rule 18.09, and in Chapter 14, where applicable, will be required to be included in a circular (or, in the case of a discloseable transaction falling within rule 18.07(1), published by way of an announcement in accordance with rule 2.07C) sent to shareholders in either of the following circumstances:—
- (1) where the proposal involves a very substantial acquisition, a major transaction or a discloseable transaction as defined in Chapter 14; or
 - (2) where the proposal involves a transaction which might be reasonably expected to result in either the diversion to exploration for natural resources of 10% or more of the consolidated total assets of the listed issuer or the contribution from such exploration of 10% or more to the consolidated pre-tax operating profits or consolidated revenue of the listed issuer as shown in its then latest published audited (consolidated) accounts. Any such transaction should be conditional on approval by the shareholders in general meeting.

...

Contents of Subsequent Listing Documents and Circulars of Listed Companies

- 18.10 In the case of a listed issuer whose activities include to a material extent exploration for natural resources, any listing document or circular required pursuant to Chapter 7 or rules 14.38A, 14.41, 14.51 or 14.57 must contain the following items of information in addition to those set out in Appendix 1 and rules 14.63 to 14.70 (where applicable):—
- (1) a description of deposits, estimate of economically exploitable reserves and expected period of working;
 - (2) an indication of the periods and main terms of concessions and the economic conditions for working them; and
 - (3) indications of the progress of actual working.

Where the information has been influenced by exceptional factors, that fact must be mentioned.

...

Practice Note 11

4. Restoration of dealings

In the interests of a fair and continuous market, the Exchange requires a suspension period to be kept as short as is reasonably possible. This means that an issuer ~~and its advisers must produce~~ publish an appropriate ~~draft announcement for review by the Exchange~~ as soon as possible after the suspension arises. Under normal circumstances, the Exchange will restore dealings as soon as possible following publication of an appropriate announcement, or after specific requirements have been met.

Failure by an issuer to make an announcement when required, may, if the Exchange feels it to be appropriate, result in the Exchange issuing its own announcement and a restoration of dealings without an announcement by the issuer.

The Exchange wishes to re-emphasise the importance of proper security within an issuer, and the responsibility of the directors to ensure a proper and timely disclosure of all information necessary to investors to establish a fair and realistic valuation of securities traded in the market.”

Proposed GEM Rule amendments

“7.27 In the cases referred to in rule 7.01(3) concerning a circular in connection with a major transaction, the pro forma financial information required under rules ~~19.67(6)(a)(ii)~~~~19.67(4)(a)(ii)~~ or ~~19.67(6)(b)(ii)~~~~19.67(4)(b)(ii)~~ on the enlarged group (i.e. the issuer, its subsidiaries and any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (including but not limited to any business, company or companies being acquired)) must include all the information referred to in rule 7.31 in respect of such enlarged group.

...

8.02 In the case of an acquisition or disposal of any property, or a company whose assets consist solely or mainly of property, where any of the percentage ratios (as defined in rule 19.04(9)) of the transaction exceeds 25%, then a valuation of and information on such property must be included in the circular issued to shareholders in connection with the acquisition or disposal (see rules 19.66(~~12~~)(3) and 19.69(3)), unless, in the case of an acquisition, the interest in the property is acquired from the Hong Kong Government (or, at the discretion of the Exchange, a body related to the Hong Kong Government), in any such case, at a public auction or by sealed tender.

Note: For the purposes of this rule and rule 8.03, a circular issued “in connection with an acquisition” includes a listing document issued on a rights issue, the proceeds of which are to be used to retire a debt with which the property or company had previously been acquired provided that such a listing document need not contain such a valuation report if a circular containing such a valuation report was issued to shareholders at the time of the acquisition of the property or company.

...

13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

(1) a statement of ...;

Notes: 1 The Explanatory Statement need not contain the statement set out in rule 2.20 concerning the characteristics of GEM nor information on the interests (if any) of the Compliance Adviser (as referred to in rule 6A.31) and all directors, management shareholders and their respective associates (as referred to in rule 11.04).

2 ~~The Explanatory Statement must be reviewed by the Exchange prior to its dispatch to shareholders of the issuer and must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon. See also note 2 to rule 17.57 for documents to be submitted to the Exchange together with the Explanatory Statement at the time when the statement is issued.~~

...

...

Changes

17.50 An issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:—

(1) any proposed alteration to the issuer's memorandum or articles of association or equivalent documents and, in the case of a PRC issuer, any proposed request by the PRC issuer or a PRC competent authority to waive or otherwise modify any provision of the Regulations;

Notes: 1 Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3 to the GEM Listing Rules and, in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 (including, for these purposes, the PRC), such changes must conform with Appendix 11.

2 The circular for any amendments proposed by an issuer set out in rule 17.50(1) must contain an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. See also note 1 to rule 17.57 for documents to be submitted to the Exchange together with the circular at the time when the circular is issued.

...

...

Announcements, circulars and other documents

Review of documents

17.53 In addition to the specific requirements set out in the GEM Listing Rules, the issuer shall:—

- (1) submit to the Exchange copies of drafts, for review before they are issued, of any announcements or advertisements relating to the issue of new or further securities (other than pursuant to a capitalisation issue or a scrip dividend scheme) or any announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its listed securities (including a suspension of dealings);
- (2) submit to the Exchange copies of drafts, for review before they are issued, of any documents issued in connection with takeovers, mergers or offers;
- (3) submit to the Exchange copies of drafts for review before they are issued, of any proposed amendment to its memorandum or articles of association;
- (4) submit to the Exchange copies of drafts, for review before they are issued, of any announcements, as required under rule 17.43, concerning the pledging or charging of interests in the securities of the issuer by any initial management shareholder or significant shareholder; and
- (5) not issue any of such documents until the Exchange has confirmed to the issuer that it has no further comments thereon.

Subject to rule 17.53A, where an issuer is obliged to publish any documents for the purposes of the GEM Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 17.53(1) or (2).

- (1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:
 - (a) listing document (including prospectus);
 - (b) circular relating to cancellation or withdrawal of listing of listed securities;
 - (c) circular relating to transaction or matter required under Chapter 19 of the GEM Listing Rules;
 - (d) circular relating to connected transaction (including continuing connected transaction) required under Chapter 20 of the GEM Listing Rules;
 - (e) circular to the issuer's shareholders seeking their approval of
 - (i) any transaction or arrangement under rule 17.39(1), 17.39(2), 17.40 or 17.47(7);
 - (ii) any matter relating to share option scheme required under Chapter 23 of the GEM Listing Rules; or
 - (iii) any warrant proposal under rule 21.07(3); or
 - (f) circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

- (2) The following transitional provisions apply to announcements set out in this rule and shall cease to have effect on such date as the Exchange may determine and promulgate.

An issuer shall submit to the Exchange copies of drafts of the following announcements for review before they are issued:

- (a) announcement for any major transaction, very substantial disposal, very substantial acquisition or reverse takeover under rules 19.34 and 19.35;
- (b) announcement for any transaction or arrangement under rules 19.88 to 19.90;
- (c) announcement for any matter relating to a cash company under rules 19.82 and 19.83; or
- (d) announcement for any connected transaction or continuing connected transaction under rules 20.47 and 20.56.

The issuer shall not issue such announcements until the Exchange has confirmed that it has no further comments thereon.

- Notes:
- 1 *4 copies of each document are required, which should be submitted in sufficient time for review and, if necessary, re-submission prior to dissemination or final printing.*
 - 2 *Upon submission, for review, of the first draft of any document by electronic means, the issuer or other responsible party, is required to notify the GEM Listing Division of such submission by telephone, facsimile or letter.*
 - 3 *In the case of documents issued in connection with takeovers, mergers or offers covered by the Takeovers Code, the Exchange will pass its comments on the document and, if appropriate, its confirmation that it has no further comments thereon in writing to the Commission who will notify the issuer of any such comments and the Exchange's confirmation that it has no further comments thereon. The issuer should ensure that the Commission furnishes it with a copy of the Exchange's letter confirming that it has no further comments thereon. the Exchange will pass its comments on the documents directly to the issuer and will at the same time provide a copy of such comments to the Commission.*
 - 4 *It is not necessary to submit a draft of a half-year, quarterly or other interim report or preliminary announcement of results so long as it conforms with the requirements of chapter 18, unless it contains any information falling within rule 17.53(1).*
 - 5 *Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3.*
 - 46. *The Exchange reserves the right to require an issuer to issue a further announcement or document and/or take other remedial action; particularly if the original announcement or document ~~was not required by~~ does not comply with the requirements of the GEM Listing Rules to be reviewed by the Exchange, or if the original announcement or document is misleading or is likely to create a false or misinformed market.*

17.53A In addition to the specified requirements set out in rule 17.53, the Exchange has the right to request to review any documents prior to publication in individual cases. In any such case, the Exchange will communicate to the issuer its direction to review the document prior to publication and the reasons for its decision. The issuer shall accordingly submit to the Exchange copies of drafts for review and shall not issue the document until the Exchange has confirmed that it has no further comments thereon.

17.53B An issuer proposing to publish a document pursuant to the GEM Listing Rules shall observe the following provisions:

- (1) Where the subject matter of the document may involve a change in or relate to or affect arrangements regarding trading in the issuer’s listed securities (including a suspension or resumption of dealings, and a cancellation or withdrawal of listing), the issuer must consult the Exchange before the document is issued. The document must not include any reference to a specific date or specific timetable in respect of such matter which has not been agreed in advance with the Exchange.
- (2) If the issuer wishes to
 - (a) ascertain whether or to what extent any provisions in the GEM Listing Rules apply to the document, or the transaction or matter to which it relates; or
 - (b) request a modification or dispensation with any requirements of the GEM Listing Rules in respect of the document, or the transaction or matter to which it relates,
relevant details, including the reasons and circumstances that give rise to the issues concerned, must be submitted to the Exchange in sufficient time for its determination.

17.53CA The Exchange shall be authorised by the issuer to file “applications” (as defined in section 2 of the Statutory Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the Statutory Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the Statutory Rules respectively and issuers shall be deemed to have agreed to the above by filing such applications and such corporate disclosure materials with the Exchange. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the issuer undertakes to execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

...

Forwarding of documents, circulars, etc.

17.57 An issuer shall forward to the Exchange:—

- (1) 25 copies of each of the English language version and the Chinese language version of:
 - (a) all circulars to holders of the issuer’s listed securities; and
 - (b) its annual report and accounts and, where applicable, its summary financial report; and
 - (c) its half-year report and, where applicable, its summary half-year report and quarterly report, at the same time as they are despatched to holders of the issuer’s listed securities with registered addresses in Hong Kong;

In respect of a circular for any proposed alteration of the issuer’s memorandum or articles of association or equivalent documents, and in the case of a PRC issuer, any proposed request by the PRC issuer to a PRC competent authority to waive or otherwise modify any provision of the Regulations, the issuer should submit the published version of the circular together with a letter from the issuer’s legal advisers confirming that the proposed amendments comply with the

requirements of the GEM Listing Rules and the laws of the place where it is incorporated or otherwise established and there is nothing unusual about the proposed amendments for a company listed in Hong Kong.

In respect of a circular or notice containing an Explanatory Statement issued under rule 13.08, the issuer should submit to the Exchange the published version of the statement together with (a) a confirmation from the issuer that the statement contains the information required under rule 13.08 and that neither the statement nor the proposed share repurchase has unusual features; and (b) the undertaking from its directors to the Exchange according to rule 13.08(6).

...

...

19.03 ~~All announcements, circulars and listing documents in relation to transactions under this Chapter must be reviewed by the Exchange and may only be issued after the Exchange has confirmed that it has no further comments thereon. [Repealed *[insert date]*]~~

...

19.33 The table below summarises the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

	Notification to Exchange	Publication of an announcement in accordance with rule 2.07C	Circular to shareholders	Shareholders' approval	Accountants' report
Share transaction	Yes	Yes	No	No ¹	No
Discloseable transaction	Yes	Yes	Yes No	No	No
Major transaction	Yes	Yes	Yes	Yes ²	Yes ³
Very substantial disposal	Yes	Yes	Yes	Yes ²	Yes ⁵
Very substantial acquisition	Yes	Yes	Yes	Yes ²	Yes ⁴
Reverse takeover	Yes	Yes	Yes	Yes ^{2,6}	Yes ⁴

- Notes: 1 *No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to rule 17.41(2), to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*
- 2 *Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.*
- 3 *For acquisitions of businesses and/or companies only. The accountants' report is for the 3 preceding financial years on the business, company or companies being acquired (see also rule ~~19.67(6)~~19.67(4)).*
- 4 *An accountants' report for the 3 preceding financial years on any business, company or companies being acquired is required (see also rule 19.69(4)).*
- 5 *An accountants' report on the listed issuer's group is required (see also rule 19.68(2)).*
- 6 *Approval of the Exchange is necessary.*

...

19.34 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalised, the listed issuer must in each case:—

- (1) inform the Exchange; and

Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) ~~send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must~~ submit the announcement to the Exchange to be published on the GEM website as soon as possible. See also rule 19.37.

19.35 For a share transaction, the announcement must contain the information set out in rules 19.58 and 19.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 19.58 and 19.60. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 17.57(2), the listed issuer must forward to the Exchange 10 copies of the announcement; ~~as cleared by the Exchange,~~ at the same time as it is issued.

...

Additional requirements for discloseable major transactions

Circular

- 19.38 In addition to the requirements for all transactions set out in rules 19.34 to ~~19.37~~, a listed issuer which has entered into a ~~discloseable major~~ transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement. ~~The circular must contain the information required under rules 19.63, 19.64, 19.65 (for an acquisition only) and 19.70 (for a disposal only). The Exchange may waive the requirement in this rule to issue a circular where all of the following conditions are satisfied:~~
- ~~(1) the transaction is an acquisition where new shares will be issued by the listed issuer as consideration;~~
 - ~~(2) the acquisition is a discloseable transaction only because of the consideration ratio;~~
 - ~~(3) the consideration was calculated based on the fair value, being market value, of the equity capital; and~~
 - ~~(4) all the other percentage ratios (i.e. the assets ratio, profits ratio, revenue ratio and equity capital ratio) are less than 5%.~~
- 19.39 ~~Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments. [Repealed *[insert date]*]~~

Additional requirements for major transactions

Shareholders' approval

- 19.40 ~~In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 19.34 to 19.39. In addition, a A major transaction must be made conditional on approval by shareholders.~~
- ...

Additional requirements for very substantial disposals and very substantial acquisitions

- 19.48 In the case of a very substantial disposal or a very substantial acquisition, the listed issuer must comply with the requirements for all transactions and for ~~discloseable major~~ transactions set out in rules 19.34 to ~~19.38~~19.39.
- ...

- 19.60A In addition to the information set out in rule 19.60, the announcement for a discloseable transaction which contains a profit forecast as referred to in rule 19.62 must contain the following information:

- (1) the information specified in paragraph 29(2) of Appendix 1, Part B; and
 - (2) information regarding the expert statements contained in the announcement, which is specified in paragraph 5 of Appendix 1, Part B.
- ...

- 19.62 Where the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit the following additional

information and documents to the Exchange ~~by no later than the publication of at the same time as the draft announcement:—~~

(1) ...

Contents of circulars

General principles

19.63 A circular for a ~~discloseable transaction~~, major transaction, very substantial disposal or very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:—

(1) ...

Discloseable transaction circulars

19.64 ~~All circulars relating to discloseable transactions must contain the following: [Repealed [insert date]]~~

(1) ~~... ..~~

19.65 ~~In addition to the requirements set out in rule 19.64, a circular issued in relation to an acquisition constituting a discloseable transaction must contain: [Repealed [insert date]]~~

(1) ~~... ..~~

Major transaction circulars

19.66 A circular relating to a major transaction must ~~also~~ contain the following:—

(1) ~~the information required under rule 19.64;~~

~~19.64~~ (1) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19;

~~19.64~~ (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;

~~19.64~~ (3) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—

1- name

2- directors' responsibility

5- expert statements

29(2)- requirements if there is a profit forecast

33- litigation statement

35- details of secretary and other officers

36- address of registered office and head office;

~~19.64~~ (4) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34, 38 and 38A of Appendix 1, Part B;

- ~~19.64~~ (5) information which is required to be included in the announcement under rule 19.60;
- ~~19.64~~ (6) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- ~~19.64~~ (7) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:-
- (a) the percentage of the issued share capital (if any) held by the listed issuer in that company after the acquisition or disposal; and
 - (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- ~~19.64~~ (8) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer, or an appropriate negative statement;
- Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation (other than statutory compensation) need not be included.*
- ~~19.64~~ (9) information as to the competing interests (if any) of the Compliance Adviser and each of the directors, employees and associates (as referred to in rule 6A.32) and each of the directors of the listed issuer and his/her respective associates (as would be required to be disclosed under rule 11.04 if each of them were a controlling shareholder); ~~and~~
- ~~19.64~~ (10) any additional information requested by the Exchange;:-
- (~~11~~2) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:-
 - 8A- procedures for demanding a poll by shareholders
 - 28- indebtedness
 - 29(1)(b)- financial and trading prospects
 - 30- sufficiency of working capital
 - 40- directors' and experts' interests in group assets
 - 42- material contracts
 - 43- documents on display;
 - (~~12~~3) where required by Chapter 8, a valuer's report on the property being acquired or disposed of;
 - (~~13~~4) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:-
 - (a) the statement has been made by the directors after due and careful enquiry; and
 - (b) the persons or institutions providing finance have confirmed in writing that such facilities exist; and
 - (~~14~~5) where applicable, the information required under rule 2.28.

19.67 In addition to the requirements set out in rule 19.66, a circular issued in relation to an acquisition constituting a major transaction must contain:-

- ~~(1)~~ ~~information required under rule 19.65;~~
- ~~19.65~~ (1) the information required under paragraphs 9 and 10 of Appendix 1, Part B, if the acquisition involves securities for which listing will be sought;
- ~~19.65~~ (2) the information required under paragraph 22(1) of Appendix 1, Part B, if new shares are to be issued as consideration; ~~and~~
- ~~19.65~~ (3) where the consideration for a transaction includes the listed issuer's shares or securities that are convertible into the listed issuer's shares, a statement whether the transaction will result in a change of control of the listed issuer;:-
- ~~(42)~~ the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1, Part B;
- ~~(53)~~ the information required under paragraph 34 of Appendix 1, Part B in relation to each new director and member of senior management joining the listed issuer in connection with the transaction;

Note: The fact that any director or proposed director is a director or employee of a company which has an interest or short position in the shares or underlying shares of the listed issuer which would fall to be disclosed to the listed issuer under the provisions in Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance need not be stated.

- ~~(64)~~ (a) on an acquisition of any business, company or companies:
 - (i) ...
- ~~(75)~~ a management discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in rule 18.41 for the period reported in the accountant's report.

...

Very substantial acquisition circulars and reverse takeover listing documents

19.69 A circular issued in relation to a very substantial acquisition or a listing document issued in relation to a reverse takeover must contain:-

- (1) in respect of a listing document issued in relation to a reverse takeover,
 - (a) the information required under rule 19.66~~19.64~~ (save for the information required under rules ~~19.64(3) and 19.64(4)~~ 19.66(3), 19.66(4), 19.66(11) and 19.66(12)) and under rule ~~19.67(3)~~19.65(3) ~~and 19.66(4)~~; and
 - (b) the information required under Appendix 1, Part A, if applicable, except paragraphs 8 and 15(3) (in respect of the 12 months preceding the issue of the circular or listing document) and 20(1); ~~and~~
 - (c) ~~[the information required under rule 2.28; Repealed [insert date]]~~

- (2) in respect of a circular issued in relation to a very substantial acquisition, the information required under rules 19.66 to 19.67 (save for the information required under rules 19.66(123) and 19.67(64)) and rule 2.28;
- (3) ...

Additional requirements for circulars in respect of disposals

19.70 In addition to the requirements set out in rules ~~19.64 and~~ 19.66, a circular issued in relation to a disposal constituting a ~~discloseable transaction or~~ a major transaction must contain:—

- (1) ...

...

19.79 ~~If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. 10 copies of the final documents issued must be supplied to the Exchange at the time of issue. [Repealed [insert date]]~~

Note: The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers Code directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.

...

20.47 Issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements must:—

- (1) notify the Exchange as soon as possible after the terms of the transaction have been agreed;

Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) ~~send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must submit the announcement to the Exchange to be published on the GEM website as soon as possible; and~~

Notes: 1 Pursuant to rule 17.57, the listed issuer must forward to the Exchange 10 copies of such announcement as cleared by the Exchange at the same time as it is issued.

2 Where the connected transaction is also a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, rule 19.37 (requirement for short suspension of dealings) also applies.

- (3) comply with rules 20.45 or 20.46 (the reporting requirements).

20.50 ~~Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments. [Repealed [insert date]]~~

...

Despatch of circular and publication of announcement

- 23.06 ~~A draft of the scheme, the circular and/or the announcement as required under this chapter, in a reasonably advanced form, must be submitted to the Exchange for review as soon as possible. The listed issuer may not issue the circular or the announcement until the Exchange confirms that it has no further comments. The circular required under this chapter should be despatched to the shareholders no later than the date on which the listed issuer gives notice of the general meeting to approve the scheme or related matters as required under this chapter.”~~

APPENDIX 8A DRAFT RULE AMENDMENTS REGARDING ISSUE 8

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“Changes in issued share capital

13.25A (1) In addition and without prejudice to specific requirements contained elsewhere in the Exchange Listing Rules, a listed issuer shall, whenever there is a change in its issued share capital as a result of or in connection with any of the events referred to in rule 13.25A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange’s website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.

(2) The events referred to in rule 13.25A(1) are as follows:

(a) any of the following:

(i) placing;

(ii) consideration issue;

(iii) open offer;

(iv) rights issue;

(v) bonus issue;

(vi) scrip dividend;

(vii) repurchase of shares or other securities;

(viii) exercise of an option under a share option scheme by a director of the listed issuer or any of its subsidiaries;

(ix) exercise of an option other than under a share option scheme by a director of the listed issuer or any of its subsidiaries;

(x) capital reorganisation; or

(xi) change in issued share capital not falling within any of the categories referred to in rule 13.25A(2)(a)(i) to (x) or rule 13.25A(2)(b); and

(b) subject to rule 13.25A(3), any of the following:

(i) exercise of an option under a share option scheme other than by a director of the listed issuer or any of its subsidiaries;

(ii) exercise of an option other than under a share option scheme not by a director of the listed issuer or any of its subsidiaries;

(iii) exercise of a warrant;

(iv) conversion of convertible securities; or

(v) redemption of shares or other securities.

- (3) The disclosure obligation for an event in rule 13.25A(2)(b) only arises where:
- (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 13.25B or last return under this rule 13.25A (whichever is the later), results in a change of 5% or more of the listed issuer's issued share capital; or
 - (b) an event in rule 13.25A(2)(a) has occurred and the event in rule 13.25A(2)(b) has not yet been disclosed in either a monthly return published under rule 13.25B or a return published under this rule 13.25A.
- (4) For the purposes of rule 13.25A(3), the percentage change in the listed issuer's issued share capital is to be calculated by reference to the listed issuer's total issued share capital as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under rule 13.25B or a return published under this rule 13.25A.

Monthly return

13.25B A listed issuer shall, by no later than 9:00 a.m. of the fifth business day next following the end of each calendar month, submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a monthly return in relation to movements in the listed issuer's equity securities, debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe (irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of equity securities, debt securities and any other securitised instruments, as applicable, issued and which may be issued pursuant to options, warrants, convertible securities or any other agreements or arrangements.

...

Announcement on grant of options

17.06A As soon as possible upon the granting by the listed issuer of an option under the scheme, the listed issuer must publish an announcement in accordance with rule 2.07C setting out the following details:

- (1) date of grant;
- (2) exercise price of options granted;
- (3) number of options granted;
- (4) market price of its securities on the date of grant;
- (5) where any of the grantees is a director, chief executive or substantial shareholder of the listed issuer, or an associate of any of them, the names of such grantees and the number of options granted to each of them; and
- (6) validity period of the options.

...

Appendix 7 Part G

...

- 4A. (1) Subject to Paragraph 4A(5) and in addition and without prejudice to specific requirements contained elsewhere in the Exchange Listing Rules, a Scheme shall, whenever there is a change in the number of units in the Scheme as a result of or in connection with any of the events referred to in Paragraph 4A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.
- (2) The events referred to in Paragraph 4A(1) are as follows:
- (a) any of the following:
- (i) placing;
 - (ii) consideration issue;
 - (iii) open offer;
 - (iv) rights issue;
 - (v) bonus issue;
 - (vi) scrip dividend;
 - (vii) repurchase of units;
 - (viii) exercise of an option under a unit option scheme by a director of the collective investment scheme operator or the collective investment scheme operator itself;
 - (ix) exercise of an option other than under a unit option scheme by a director of the collective investment scheme operator or the collective investment scheme operator itself; or
 - (x) change in the number of units in the Scheme not falling within any of the categories referred to in Paragraph 4A(2)(a)(i) to (ix) or Paragraph 4A(2)(b); and
- (b) subject to Paragraph 4A(3), any of the following:
- (i) exercise of an option under a unit option scheme other than by a director of the collective investment scheme operator or the collective investment scheme operator itself; or
 - (ii) exercise of an option other than under a unit option scheme not by a director of the collective investment scheme operator or the collective investment scheme operator itself;
 - (iii) exercise of a warrant;
 - (iv) conversion of convertible securities; or
 - (v) redemption of units.

- (3) The disclosure obligation for an event in Paragraph 4A(2)(b) only arises where:
- (a) the event, either individually or when aggregated with any other events described in that Paragraph which have occurred since the Scheme published its last monthly return under Paragraph 4B or last return under this Paragraph 4A (whichever is the later), results in a change of 5% or more of the number of units in the Scheme; or
 - (b) an event in Paragraph 4A(2)(a) has occurred and the event in Paragraph 4A(2)(b) has not yet been disclosed in either a monthly return published under Paragraph 4B or a return published under this Paragraph 4A.
- (4) For the purposes of Paragraph 4A(3), the percentage change in the number of units in the Scheme is to be calculated by reference to the number of units in the Scheme as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under Paragraph 4B or a return published under this Paragraph 4A.
- (5) This Paragraph 4A applies only to a collective investment scheme (including Real Estate Investment Trust) authorised by the Commission under its Code on Real Estate Investment Trusts listed under Chapter 20 of the Exchange Listing Rules with the exception of open-ended collective investment schemes.
- 4B. The Scheme shall, by no later than 9:00 a.m. of the fifth business day next following the end of each calendar month, submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange’s website a monthly return in relation to movements in the interests in the Scheme’s units, debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe (irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of the units in the Scheme.”

Draft Next Day Disclosure Return for Equity Issuers

**Next Day Disclosure Return
(Equity Issuer)**

Name of listed issuer: _____

Stock code: _____ Date submitted: _____

Issues of ordinary shares	No. of ordinary shares	Issued shares as a % of existing issued share capital before relevant share issue	Issue price per share (Note 1)	Closing market price per share	% discount of issue price to market price
Opening balance as at (Note 2)					
(Note 3)					
Closing balance as at (Note 4)					

Notes:

1. *Where shares have been issued at more than one issue price per share, a weighted average issue price per share should be given.*
2. *Please insert the closing balance date of the last Next Day Disclosure Return published pursuant to rule 13.25A or Monthly Return pursuant to rule 13.25B, whichever is the later.*
3. *Please set out all changes in issued share capital requiring disclosure pursuant to rule 13.25A together with the relevant dates of issue. Each category will need to be disclosed individually with sufficient information to enable the user to identify the relevant category in the listed issuer's Monthly Return. For example, multiple issues of shares as a result of multiple exercises of share options under the same share option scheme or of multiple conversions under the same convertible note must be aggregated and disclosed as one category. However, if the issues resulted from exercises of share options under 2 share option schemes or conversions of 2 convertible notes, these must be disclosed as 2 separate categories.*
4. *The closing balance date is the date of the last relevant event being disclosed.*
5. *The percentage change in the listed issuer's issued share capital is to be calculated by reference to the listed issuer's total issued share capital as it was immediately before the earliest relevant event which has not been disclosed in a Monthly Return or Next Day Disclosure Return.*
6. *References in this Next Day Disclosure Return to an issue of shares include, where the context permits, a repurchase or redemption of shares.*

Submitted by: _____
(Name)

Title: _____
(Director, Secretary or other duly authorised officer)

Draft Next Day Disclosure Return for Collective Investment Schemes listed under Chapter 20 other than listed open-ended Collective Investment Schemes

Next Day Disclosure Return

(Collective Investment Scheme listed under Chapter 20 of the Exchange Listing Rules other than listed open-ended Collective Investment Scheme)

Name of Scheme: _____

Stock code: _____ Date submitted: _____

Issues of units	No. of units	Issued units as a % of the existing number of issued units before relevant unit issue	Issue price per unit (Note 1)	Closing market price per unit	% discount of issue price to market price
Opening balance as at (Note 2)					
(Note 3)					
Closing balance as at (Note 4)					

Notes:

1. *Where units have been issued at more than one issue price per unit, a weighted average issue price per unit should be given.*
2. *Please insert the closing balance date of the last Next Day Disclosure Return published pursuant to paragraph 4A of the Listing Agreement or Monthly Return pursuant to paragraph 4B of the Listing Agreement, whichever is the later.*
3. *Please set out all changes in issued units requiring disclosure pursuant to paragraph 4A of the Listing Agreement together with the relevant dates of issue. Each category will need to be disclosed individually with sufficient information to enable the user to identify the relevant category in the Scheme's Monthly Return. For example, multiple issues of units as a result of multiple exercises of unit options under the same unit option scheme or of multiple conversions under the same convertible note must be aggregated and disclosed as one category. However, if the issues resulted from exercises of unit options under 2 unit option schemes or conversions of 2 convertible notes, these must be disclosed as 2 separate categories.*
4. *The closing balance date is the date of the last relevant event being disclosed.*
5. *The percentage change in the number of units in the Scheme is to be calculated by reference to the number of units in the Scheme as it was immediately before the earliest relevant event which has not been disclosed in a Monthly Return or Next Day Disclosure Return.*
6. *References in this Next Day Disclosure Return to an issue of units include, where the context permits, a repurchase or redemption of units.*

Submitted by: _____
(Name)

Title: _____
(Director, Secretary or other duly authorised officer)

Draft Revised Monthly Return for Equity Issuers



(Draftsman's note: Proposed changes to the existing form are highlighted)

Monthly Return of Equity Issuer on Movements in Securities

For the month ended (dd/mm/yyyy) : _____

To : Hong Kong Exchanges and Clearing Limited

Name of Issuer _____

Date Submitted _____

I. Movements in Authorised Share Capital

1. Ordinary Shares

(1) Stock code : _____	Description : _____		
	No. of ordinary shares	Par value <i>(State currency)</i>	Authorised share capital <i>(State currency)</i>
Balance at close of preceding month	_____	_____	_____
Increase/(decrease) (EGM approval date) ()	_____	_____	_____
Balance at close of the month	_____	_____	_____
(2) Stock code : _____	Description : _____		
	No. of ordinary shares	Par value <i>(State currency)</i>	Authorised share capital <i>(State currency)</i>
Balance at close of preceding month	_____	_____	_____
Increase/(decrease) (EGM approval date) ()	_____	_____	_____
Balance at close of the month	_____	_____	_____

2. Preference Shares

Stock code : _____	Description : _____		
	No. of preference shares	Par value <i>(State currency)</i>	Authorised share capital <i>(State currency)</i>
Balance at close of preceding month	_____	_____	_____
Increase/(decrease) (EGM approval date) ()	_____	_____	_____
Balance at close of the month	_____	_____	_____

3. Other Classes of Shares

Stock code : _____	Description : _____		
	No. of other classes of shares	Par value <i>(State currency)</i>	Authorised share capital <i>(State currency)</i>
Balance at close of preceding month	_____	_____	_____
Increase/(decrease) (EGM approval date) ()	_____	_____	_____
Balance at close of the month	_____	_____	_____

Total authorised share capital at the end of the month *(State currency)* : _____

.....

II. Movements in Issued Share Capital

	No. of ordinary shares		No of preference shares	No. of other classes of shares
	(1)	(2)		
Balance at close of preceding month	_____	_____	_____	_____
Increase/ (decrease) during the month	_____	_____	_____	_____
Balance at close of the month	_____	_____	_____	_____

III. Details of Movements in Issued Share Capital

Share Options (under Share Option Schemes of the Issuer)

Particulars of share option scheme and total no. of options outstanding at close of preceding month	Movement during the month				No. of new shares of issuer issued during the month pursuant thereto	Total no. of options outstanding at close of the month	No. of new shares of issuer which may be issued pursuant thereto as at close of the month
	Granted	Exercised	Cancelled	Lapsed			
1. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
2. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
3. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
				Total	A.	_____	_____
Total amount received during the month from exercise of options (State currency) _____							

Warrants to Issue Shares of the Issuer which are to be Listed

Description of warrants (Date of expiry - dd/mm/yyyy)	Currency of nominal value	Nominal value at close of preceding month	Exercised during the month	Nominal value at close of the month	No. of new shares of issuer issued during the month pursuant thereto	No. of new shares of issuer which may be issued pursuant thereto as at close of the month
1.						

(_____)						
Stock code (if listed) _____						
Subscription price _____						
2.						

(_____)						
Stock code (if listed) _____						
Subscription price _____						
3.						

(_____)						
Stock code (if listed) _____						
Subscription price _____						
4.						

(_____)						
Stock code (if listed) _____						
Subscription price _____						
					Total B. _____	

Convertibles (i.e. Convertible into Shares of the Issuer which are to be Listed)

Class and description	Currency of amount outstanding	Amount at close of preceding month	Converted during the month	Amount at close of the month	No. of new shares of issuer issued during the month pursuant thereto	No. of new shares of issuer which may be issued pursuant thereto as at close of the month
1. _____ _____ _____ _____ _____ _____						
Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
2. _____ _____ _____ _____ _____ _____						
Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
3. _____ _____ _____ _____ _____ _____						
Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
4. _____ _____ _____ _____ _____ _____						
Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
					Total C.	_____

Any other Agreements or Arrangements to Issue Shares of the Issuer which are to be Listed, including Options (other than under Share Option Schemes)

Full particulars:	No. of new shares of issuer issued during the month pursuant thereto	No. of new shares of issuer which may be issued pursuant thereto as at close of the month
1.		
2.		
3.		
Total D.		

Other Movements in Issued Share Capital

Type of Issue				No. of new shares of issuer issued during the month pursuant thereto	No. of new shares of issuer which may be issued pursuant thereto as at close of the month
1.	Rights issue	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
2.	Open offer	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
3.	Placing	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
4.	Bonus issue			Issue and allotment date : (dd/mm/yyyy) ()	
5.	Scrip dividend	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
6.	Repurchase of shares			Cancellation date : (dd/mm/yyyy) ()	
7.	Redemption of shares			Redemption date : (dd/mm/yyyy) ()	
8.	Consideration issue	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
9.	Capital reorganisation			Issue and allotment date : (dd/mm/yyyy) ()	
10.	Other (Please specify)	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()	
				Total E.	

Total increase / (decrease) during the month (i.e. Total of A to E):

(This figure should be the same as the "balance at close of month" under II above ("Movements in Issued Share Capital").)

Draft Revised Monthly Return for Collective Investment Schemes listed under Chapter 20 other than listed open-ended Collective Investment Schemes



Monthly Return for Collective Investment Scheme listed under Chapter 20 of the Exchange Listing Rules (other than listed open-ended Collective Investment Scheme) on Movements in Units

For the month ended (dd/mm/yyyy) : _____

To : Hong Kong Exchanges and Clearing Limited

Name of Issuer _____

Date Submitted _____

Stock Code _____

I. Movements in Interests

	No. of units	
	(1)	(2)
Balance at close of preceding month	_____	_____
Increase/ (decrease) during the month	_____	_____
Extraordinary general meeting approval date	_____	_____
Balance at close of the month	_____	_____

II. Details of Movements in Units

Unit Options (under Unit Option Schemes of the Scheme)

Particulars of unit option scheme and total no. of options outstanding at close of preceding month	Movement during the month				No. of new units in Scheme issued during the month pursuant thereto	Total no. of options outstanding at close of the month	No. of new units in Scheme which may be issued pursuant thereto as at close of the month
	Granted	Exercised	Cancelled	Lapsed			
1. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
2. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
3. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
				Total	A. _____		
Total amount received during the month from exercise of options (State currency) _____							

Warrants to Issue Units in the Scheme which are to be Listed

Description of warrants (Date of expiry - dd/mm/yyyy)	Currency of nominal value	Nominal value at close of preceding month	Exercised during the month	Nominal value at close of the month	No. of new units in Scheme issued during the month pursuant thereto	No. of new units in Scheme which may be issued pursuant thereto as at close of the month
1. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____
()						
Stock code (if listed)	_____					
Subscription price	_____					
2. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____
()						
Stock code (if listed)	_____					
Subscription price	_____					
3. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____
()						
Stock code (if listed)	_____					
Subscription price	_____					
4. _____ _____ _____ _____ _____	_____	_____	_____	_____	_____	_____
()						
Stock code (if listed)	_____					
Subscription price	_____					
				Total B.	_____	

Convertibles (i.e. Convertible into Units in the Scheme which are to be Listed)

Class and description	Currency of amount outstanding	Amount at close of preceding month	Converted during the month	Amount at close of the month	No. of new units in Scheme issued during the month pursuant thereto	No. of new units in Scheme which may be issued pursuant thereto as at close of the month
1.						

Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
2.						

Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
3.						

Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
4.						

Stock code (if listed)	_____	_____	_____	_____	_____	_____
Subscription price	_____	_____	_____	_____	_____	_____
					Total C.	_____

Any other Agreements or Arrangements to Issue Units in the Scheme which are to be Listed, including Options (other than under Unit Option Schemes)

Full particulars:	No. of new units in Scheme issued during the month pursuant thereto	No. of new units in Scheme which may be issued pursuant thereto as at close of the month
1. _____		

2. _____		

3. _____		

Total	D. _____	_____

Other Movements in Units

Type of Issue					No. of new units in Scheme issued during the month pursuant thereto	No. of new units in Scheme which may be issued pursuant thereto as at close of the month
1.	Rights issue	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
2.	Open offer	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
3.	Placing	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
4.	Bonus issue			Issue and allotment date : (dd/mm/yyyy) ()		
5.	Scrip dividend	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
6.	Repurchase of shares			Cancellation date : (dd/mm/yyyy) ()		
7.	Redemption of shares			Redemption date : (dd/mm/yyyy) ()		
8.	Consideration issue	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
9.	Other (Please specify)	At price :	State currency	Issue and allotment date : (dd/mm/yyyy) ()		
					Total E.	

Total increase / (decrease) during the month (i.e. Total of A to E):

(This figure should be the same as the "balance at close of month" under I above ("Movements in Units").)

Draft Revised Monthly Return for Open-ended Collective Investment Schemes listed under Chapter 20



Monthly Return On Movement of Open-ended Collective Investment Scheme listed under Chapter 20 of the Exchange Listing Rules

For the month ended (dd/mm/yyyy) : _____

To : Hong Kong Exchanges and Clearing Limited

.....

Name of Issuer _____

Date Submitted _____

.....

Stock Code: _____

	No. of Units
Balance at close at preceding month:	_____
<i>Increase</i>	
Further Issues:	_____
Others (please specify _____):	_____
<i>(Decrease)</i>	
Repurchase/cancellation:	_____
Others (please specify _____):	_____
Balance at close of the month:	_____

Remarks:

Submitted by: _____

Title: _____
(Director, Secretary or other duly authorised officer)

APPENDIX 9 DRAFT RULE AMENDMENTS REGARDING ISSUE 9

Proposed Main Board Rule amendments

“7.21 (1) In every rights issue the issuer may make arrangement to: -

- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounces by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
- (b) dispose of securities not subscribed by allottees under provisional letters of allotment in the market, if possible, for the benefit of the persons to whom they were offered by way of rights.

The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular.

...

7.26A (1) In every open offer the issuer may make arrangement to dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis. The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular.

Issue of securities ~~under a general mandate~~

13.28 Where the directors agree to issue securities for cash ~~under the authority of a general mandate granted to them by the shareholders~~ in accordance with rule 13.36(1)(a)(i) or 13.36(2)(b), an issuer shall publish an announcement in accordance with rule 2.07C as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day, containing the following information:–

- (1) the name of the issuer;
- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:

- (a) the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; and*
- (b) the maximum number of shares that could be issued upon exercise of the conversion/subscription rights.*

- (3) the total funds to be raised and the proposed use of the proceeds;
- (4) the issue price of each security and the basis for determining the same;
- (5) the net price to the issuer of each security;
- (6) the reasons for making the issue;
- (7) the names of the allottees, if less than six in number and, in the case of six or more allottees, a brief generic description of them. The Exchange reserves the right to require submission of such further information (on an electronic spreadsheet or such other format as it may request) on the allottees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership;
- (8) the market price of the securities concerned on a named date, being the date on which the terms of the issue were fixed; ~~and~~
- (9) the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed issue of securities, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount;
- (10) where applicable, the name of the underwriter/placing agent and the principal terms of the underwriting/placing arrangements;
- (11) a statement whether the issue is subject to shareholders' approval;
- (12) where the securities are issued under a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b), details of the mandate;
- (13) where the securities are issued by way of a rights issue or an open offer, the information set out in paragraph 18 of Appendix 1, Part B;
- (14) conditions to which the issue is subject or a negative statement if applicable; and
- (15) any other material information with regard to the issue (including any restrictions on the ability of the issuer to issue further securities or any restrictions on the ability of existing shareholders to dispose of their securities arising in connection with the allotment).

13.29 Where the securities are issued for cash under the authority of a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b) and at a discount of 20% or more to the benchmarked price set out in rule 13.36(5), the issuer shall publish a separate announcement in accordance with rule 2.07C as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day immediately following the day on which the relevant agreement involving the proposed issue of securities is signed. ...”

Proposed GEM Rule amendments

“10.31 (1) In every rights issue, the issuer may make arrangements to:—

...

The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular.

...

10.42 (1) In every open offer the issuer may make arrangements to dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis. The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular.

Announcement of issues of securities

17.30 Where the directors agree to issue securities for cash ~~under the authority of a general mandate granted to them by the shareholders~~ in accordance with rule 17.39(1) or 17.41(2), an issuer shall publish an announcement as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day, containing the following information:—

- (1) the name of the issuer;
- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:

- (a) the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; and*
- (b) the maximum number of shares that could be issued upon exercise of the conversion/subscription rights.*

...

- (10) where applicable, the name of the underwriter/placing agent and the principal terms of the underwriting/placing arrangements;
- (11) a statement whether the issue is subject to shareholders' approval;
- (12) where the securities are issued under a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2), details of the mandate;
- (13) where the securities are issued by way of a rights issue or an open offer, the information set out in paragraph 18 of Appendix 1, Part B;
- (14~~0~~) the conditions to which the issue is subject or a negative statement if applicable; and
- (15~~+~~) any other material information with regard to the issue (including any restrictions on the ability of the issuer to issue further securities or any restrictions on the ability of the allottees to dispose of shares issued to them or any restrictions on the ability of existing shareholders to dispose of their securities arising in connection with the allotment).

17.30A Where the securities are issued for cash under the authority of a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2) and at a discount of 20% or more to the benchmarked price set out in rule 17.42B, an issuer shall publish a separate announcement as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day immediately following the day on which the relevant agreement involving the proposed issue of securities is signed. ...”

APPENDIX 10 DRAFT RULE AMENDMENTS REGARDING ISSUE 10

Proposed Main Board Rule amendments

“Pre-emptive rights

- 13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to:-
- (i) allotting, issuing or granting:-
 - (iA) shares;
 - (iiB) securities convertible into shares; or
 - (iiiC) options, warrants or similar rights to subscribe for any shares or such convertible securities;~~and.~~
 - (ii) ~~any major subsidiary of the issuer making any such allotment, issue or grant so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary.~~

Notes: ~~1.~~ *Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 13.36(2) and (3).*

~~2.~~ *The restriction in rule 13.36(1)(a)(ii) does not apply if the subsidiary is itself listed because it is then bound by rule 13.36(1)(a). The issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the issuer's shareholders. In the case of a rights issue, if the issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the issuer's shareholders so that they can thus avoid a material dilution in their percentage equity interests.*

~~3.~~ *For the purposes of rule 13.36(1)(a)(ii), a “major subsidiary” has the same meaning as in rule 13.25(2).*

~~4.~~ *Dilution in a subsidiary is taken to be material where:-*

(a) the subsidiary will cease to be consolidated in the accounts of the issuer following an allotment of new shares; or

(b) any of the percentage ratios under rule 14.04(9) is 5% or more.

5: ~~The Exchange may be prepared to grant a waiver from treating dilution in a subsidiary referred to in Note 4 to rule 13.36(1)(a)(ii) as a material dilution in the subsidiary where:-~~

~~(a) the subsidiary is itself a listed issuer; and~~

~~(b) an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or the relevant member of the issuer's group) has elected to receive a cash alternative which results in the issuer (or the relevant member of the issuer's group) ceasing to hold a majority interest in the subsidiary.~~

~~For such a waiver to be granted, it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.~~

...

Pre-emptive rights

19A.38 The requirements of rule 13.36(1) and (2) are replaced in their entirety by the following provisions:

“13.36 (1)(a) Except in the circumstances mentioned in rule 13.36(2), the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting, and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer's articles of association, prior to:-

(i) allotting, issuing or granting: -

~~(iA)~~ shares;

~~(iiB)~~ securities convertible into shares; or

~~(iiiC)~~ options, warrants or similar rights to subscribe for any shares or such convertible securities; ~~and,~~

(ii) ~~any major subsidiary of the PRC issuer making any such authorisation, allotment, issue or grant so as materially to dilute the percentage equity interest of the PRC issuer and its shareholders in such subsidiary.~~

Notes: ~~±~~ *Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 13.36(2).*

2. ~~The restriction in rule 13.36(1)(a)(ii) does not apply if the subsidiary is itself listed because it is then bound by rule 13.36(1)(a). The PRC issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the PRC issuer's shareholders. In the case of a rights issue, if the PRC issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the PRC issuer's shareholders so that they can thus avoid a material dilution in their percentage equity interests.~~
3. ~~For the purposes of rule 13.36(1)(a)(ii), a "major subsidiary" has the same meaning as in rule 13.25(2).~~
4. ~~Dilution in a subsidiary is taken to be material where:-~~
 - (a) ~~the subsidiary will cease to be consolidated in the accounts of the issuer following an allotment of new shares; or~~
 - (b) ~~any of the percentage ratios under rule 14.04(9) is 5% or more.~~
5. ~~The Exchange may be prepared to grant a waiver from treating dilution in a subsidiary referred to in Note 4 to rule 13.36(1)(a)(ii) as a material dilution in the subsidiary where:-~~
 - (a) ~~the subsidiary is itself a listed issuer; and~~
 - (b) ~~an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or the relevant member of the issuer's group) has elected to receive a cash alternative which results in the issuer (or the relevant member of the issuer's group) ceasing to hold a majority interest in the subsidiary.~~

~~For such a waiver to be granted, it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.~~

...

Practice Note 15

...

3. Principles

...

(e) *Shareholder approval of the spin-off*

- (1) At present, under the Exchange Listing Rules, as well as where the connected transaction provisions are applicable, shareholder approval will be required ~~in two situations:~~
 - (i) where, under rule 14.07, any of the percentage ratios of the transaction is 25% or more; ~~and,~~
 - (ii) ~~where, under rule 13.36, Newco is a “major subsidiary” of the Parent and is making a new issue of shares “so as materially to dilute” the Parent’s interest. A “major subsidiary” means a subsidiary where the value of its total assets, profits or revenue represents 5% or more under any of the percentage ratios as defined under 14.04(9). “Material dilution” is as defined in Note 4 to rule 13.36(1)(a)(ii) or rule 19A.38.~~
- (2) The Exchange is of the view that the approval of shareholders of the Parent must be sought for the proposal if it falls within (1)(i) ~~or (1)(ii)~~ above, and that the controlling shareholder and its associates must abstain from voting if the controlling shareholder has a material interest in the proposal.

...”

Proposed GEM Rule amendments

“Pre-emptive rights

- 17.39 Except in the circumstances mentioned in rule 17.41, the directors of an issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of shareholders in general meeting prior to:—
- (1) allotting, issuing or granting:-
 - (1a) shares;
 - (2b) securities convertible into shares; or
 - (3c) options, warrants or similar rights to subscribe for any shares or such convertible securities; ~~and,~~
 - (2) ~~any major subsidiary of the issuer making any such allotment, issue or grant so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary.~~

- Notes: †
- 1 *Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 17.41 and 17.42.*
 - 2 *The restriction in rule 17.39(2) does not apply if the subsidiary is itself listed in Hong Kong because it is then bound by rule 17.39(1) or its equivalent provision on the Main Board. The issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the issuer's shareholders. In the case of a rights issue, if the issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the issuer's shareholders so that they can thus avoid a material dilution in their percentage equity interests.*
 - 3 *For the purposes of rule 17.39(2), a "major subsidiary" has the same meaning as set out in rule 17.27(2).*
 - 4 *Dilution in a subsidiary is taken to be material:*
 - (a) *where, following an allotment of shares, the subsidiary will cease to be consolidated in the accounts of the issuer; or*
 - (b) *where any of the percentage ratios under rule 19.04(9) is 5% or more.*
 - 5 *If the subsidiary is itself a listed issuer and an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or issuer's group) has elected to receive a cash alternative which results in the issuer (or issuer's group) ceasing to hold a majority interest in the subsidiary, the Exchange may be prepared to grant a waiver from treating this as a material dilution of interest. For such a waiver to be granted it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.*

...

Pre-emptive rights

25.23 The requirements of rules 17.39 to 17.41 are replaced in their entirety by the following provision:-

“17.39 Except in the circumstances mentioned in rule 17.41, the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer’s articles of association, prior to:-

(1) authorising, allotting, issuing or granting:-

(1a) shares;

(1b) securities convertible into shares; and

(1c) options, warrants or similar rights to subscribe for any shares or such convertible securities; and

(2) ~~any major subsidiary of the PRC issuer making any such authorisation, allotment, issue or grant so as materially to dilute the percentage equity interest of the PRC issuer and its shareholders in such subsidiary.~~

Notes: † Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro-rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro-rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rule 17.41.

- 2 ~~The restriction in rule 17.39(2) does not apply if the subsidiary is itself listed on GEM because it is then, itself, bound by the pre-emptive provisions of the GEM Listing Rules. The PRC issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the PRC issuer's shareholders. In the case of a rights issue, if the PRC issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the PRC issuer's shareholders so that they can thus avoid a material dilution in their percentage equity interests.~~
- 3 ~~For the purposes of rule 17.39(2), a "major subsidiary" has the same meaning as in rule 17.27(2).~~
- 4 ~~Dilution in a subsidiary is taken to be material:~~
- ~~(a) where, following an allotment of shares, the subsidiary will cease to be consolidated in the accounts of the issuer; or~~
- ~~(b) where any of the percentage ratios under rule 19.04(9) is 5% or more.~~
- 5 ~~If the subsidiary is itself a listed issuer and an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or issuer's group) has elected to receive a cash alternative which results in the issuer (or issuer's group) ceasing to hold a majority interest in the subsidiary, the Exchange may be prepared to grant a waiver from treating this as a material dilution of interest. For such a waiver to be granted it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary."~~

APPENDIX 11 SUMMARY OF THE EXCHANGE'S FINDINGS ON THE USE OF GENERAL MANDATES REGARDING ISSUE 11

Sample size covered

The Exchange carried out a review of general mandates, refreshments of general mandates and specific mandates obtained by issuers listed on the Exchange for the period from: (i) the last annual general meeting or one year before 31 March 2004; and (ii) 31 March 2004 (i.e. the effective date of the 2004 Rule amendments) up to 10 June 2005.

The review covered 554 (51%) of listed issuers in Hong Kong at the end of May 2005, made up of 500 Main Board issuers which included the then 33 HSI issuers and 22 S&P/HKEx LargeCap issuers and 54 GEM issuers. The review covered 56% of Main Board issuers and 26% of GEM issuers.

The sample of 554 listed issuers (the Selected Sample) was selected as follows:

- (a) all the then 33 HSI issuers;
- (b) all listed issuers for which the Exchange received complaints in relation to share issues and convertible securities during the period from 1 January 2003 to June 2005; and
- (c) listed issuers which had significant movements in the issued share capital during the period from May 2003 to May 2005.

Source of information

The information was extracted from relevant announcements, annual reports and circulars published on the Exchange websites.

The Exchange's findings (together with notes to the findings) are set out below.

Findings

A	General Mandates
1	General mandates obtained
	<p>a) In the Selected Sample, not all issuers obtained a general mandate to issue securities (see A1(b)). More issuers obtained general mandates in the year after the implementation of the 2004 Rule amendments on 31 March 2004. Of the Selected Sample, 505 listed issuers obtained a general mandate in the year before 31 March 2004 and 543 listed issuers obtained a general mandate in the year after 31 March 2004. This represents an increase of 38 (8%) general mandates/issuers (31 Main Board and 7 GEM).</p> <p>b) No general mandate:</p> <p>In the Selected Sample, 49 issuers did not have any general mandate in the year before 31 March 2004. This number fell to 11 in the following year, representing a decrease of 78%.</p> <p>c) Reasons given for obtaining general mandates:</p> <p>Most issuers in the Selected Sample did not give reasons for obtaining general mandates, with a few issuers stating general reasons such as it being in the best interests of the issuer and its shareholders. The reasons given for issuing securities utilising the obtained general mandates were to strengthen capital and shareholders' base, for general working capital, for investment, acquisition of assets and business development, and for repayment of debts.</p>

2	Utilisation of general mandates
	<p>a) A significant portion of general mandates obtained by the Selected Sample was not utilised. Although more general mandates were obtained by the Selected Sample in the year after 31 March 2004 than the year before 31 March 2004 (see A1(a)), more general mandates were not utilised (from 337 to 421, an increase of 25%) to issue securities in the year after 31 March 2004.</p> <p>b) As for the general mandates obtained and utilised by the Selected Sample to issue securities, a relatively large percentage (51% in the year before 31 March 2004 and 39% in the year after 31 March 2004) of such mandates was utilised to the extent of 50% - 100%. During the same periods, 23% and 34% of the respective mandates were utilised to the extent of 100%, whilst 26% and 27% of the respective mandates were utilised to less than 50%.</p>
B	Refreshments of General Mandates
1	Number of issuers that obtained refreshments of general mandates
	<p>a) There was a decrease of 23 (34%) from 68 in the year before 31 March 2004 to 45 issuers that obtained refreshments of general mandates after the implementation of the 2004 Rule amendments on 31 March 2004. The decrease in issuers was in respect of Main Board issuers.</p>
2	Number of refreshments of general mandates obtained
	<p>a) The total number of refreshments of general mandates obtained by issuers also decreased by 37 (41%) from 90 in the year before 31 March 2004 to 53 in the year after 31 March 2004.</p> <p>b) The majority of (75% in the year before 31 March 2004 and 84% in the year after 31 March 2004) issuers that sought to refresh their general mandates obtained 1 refreshment in each of the two years.</p> <p>c) The number of specific mandates obtained by issuers increased by 46% in the year after the implementation of the 2004 Rule amendments on 31 March 2004 (see C2(a)), indicating a shift on the part of issuers towards obtaining specific mandates rather than refreshments of general mandate upon the implementation of the 2004 Rule amendments.</p>
3	Utilisation of refreshments of general mandates
	<p>a) Although the number of refreshments of general mandates obtained by issuers decreased in the year after implementation of the 2004 Rule amendments on 31 March 2004, the utilisation of these refreshments of general mandates so obtained did not increase. The number of refreshments of general mandates obtained but not utilised increased by 7% (from 63% to 70%).</p> <p>b) Of the refreshments of general mandates obtained that were utilised in the year before and after 31 March 2004, a higher proportion (45% in the year before 31 March 2004 to 50% in the year after 31 March 2004) of these mandates was fully utilised to issue securities.</p>
C	Specific Mandates
1	Number of issuers that obtained specific mandates
	<p>a) In the Selected Sample, there was an increase of 17 issuers (from 80 to 97, representing a 21% increase) that obtained specific mandates after the implementation of the 2004 Rule amendments on 31 March 2004.</p> <p>b) The increase of 17 issuers was in respect of 11 Main Board and 6 GEM issuers.</p> <p>c) Most (>90%) of the issuers of the Selected Sample that sought specific mandates still had unused (parts/all) of general mandates or refreshments of general mandates.</p>

2	Number of specific mandates obtained
	<p>a) The total number of specific mandates obtained by issuers also increased by 47 mandates (from 103 mandates in the year before 31 March 2004 to 150 mandates in the year after 31 March 2004, representing an increase of 46%) in the year after 31 March 2004.</p> <p>b) The increase of 47 specific mandates was in respect of 31 Main Board and 16 GEM issuers.</p> <p>c) In the period from 31 March 2005 to 10 June 2005, the total number of specific mandates obtained by issuers was 60, representing an annualised number of 240 specific mandates. Given that, in the year to 31 March 2005, the total number of specific mandates obtained by issuers was 150, the number of specific mandates obtained by issuers was continuing to increase.</p>
3	Use of specific mandates obtained
	<p>a) The total number of transactions involving the issue of securities under the specific mandates obtained by issuers also increased by 50 (from 114 transactions to 164 transactions, representing an increase of 44% transactions in the year after 31 March 2004.</p> <p>b) A relatively large percentage (>43%) of transactions was for cash issues through share placing, followed by convertible securities issue, consideration shares, options/rights/warrant issues.</p> <p>c) Reasons given for obtaining specific mandates: The reasons given by issuers were for investment and acquisition of assets and development of business, for general working capital, to strengthen capital and shareholders' bases, and for 16 issuers in the year before 31 March 2004 and 17 issuers in the year after 31 March 2004, the repayment of debts.</p>
4	Size of specific mandates
	<p>a) A large portion (73 (71%) mandates in the year before 31 March 2004 and 105 (70%) mandates in the year after 31 March 2004) of specific mandates obtained was for ≤50% of issued shared capital. The specific mandates obtained within the range of >0-10%, 10-20% and 20-50% of issued share capital were of roughly the same size.</p>

D	Discount of Issue Price to Market Price
1	General mandates and refreshments of general mandates
	<p>a) Not all transactions were made at a discount. 53 (28%) transactions and 55 (38%) transactions in the year before and after 31 March 2004 respectively involved the issue of securities at the market price/a premium under general mandates. 13 (32%) transactions and 2 (11%) transactions in the year before and after 31 March 2004 respectively involved the issue of securities at the market price/a premium under refreshments of general mandates.</p> <p>b) Most of the securities issues (82% of transactions in the year before 31 March 2004 and 94% in the year after 31 March 2004) under the general mandates and (75% of transactions in the year before 31 March 2004 and 100% in the year after 31 March 2004) refreshments of general mandates were made at a discount of less than 20% to the market price. This included small (market capitalisation < HK\$9 billion), medium (market capitalisation ≥ HK\$9 billion <HK\$20 billion) and large issuers (market capitalisation ≥ HK\$20 billion).</p> <p>c) As for securities issued at a discount before 31 March 2004:</p> <ul style="list-style-type: none"> • Large size issuers generally issued securities at less than 10% discount to the market price. • Medium size issuers mostly issued securities at less than 15% discount to the market price. • Small size issuers showed the highest percentage of transactions (45% of transactions) involving the issue of securities at less than 10% discount to the market price. 21% of transactions were at a range of 10-15% discount. 15% of transactions were at a range 15-20% discount. <p>d) As for securities issued at a discount after 31 March 2004:</p> <ul style="list-style-type: none"> • Large size issuers all issued securities at less than 10% discount to the market price. • Medium size issuers all issued securities at less than 15% discount to the market price. • Small size issuers showed the highest percentage of transactions (53% of transactions) involving the issue of securities at less than 10% discount to the market price. 17% of transactions were at a range 10-15% discount. 24% of transactions were at a range 15-20% discount.

2	Specific mandates
	<p>a) Not all transactions were made at a discount. 33 (29%) transactions and 57 (35%) transactions in the year before and after 31 March 2004 respectively involved the issue of securities at the market price/a premium under specific mandates.</p> <p>b) Most of the securities issues (58% of transactions and 54% of transactions in the year before and after 31 March 2004 respectively) under the specific mandates were made at a discount of above 20% to the market price. This included small (market capitalisation < HK\$9 billion), medium (market capitalisation ≥ HK\$9 billion < HK\$20 billion) and large issuers (market capitalisation ≥ HK\$20 billion).</p> <p>c) As for securities issued at a discount before 31 March 2004:</p> <ul style="list-style-type: none"> • Large size issuers (100% of transactions) issued securities at less than 10% discount to the market price. • Medium size issuers issued securities at less than 15% discount to the market price. • Small size issuers showed the highest percentage of transactions (57% of transactions) involving the issue securities at 25 -100% discount to the market price. 41% of transactions were at a range below 20% discount. 2% of transactions were at a range 20-25% discount. <p>d) As for securities issued at a discount after 31 March 2004:</p> <ul style="list-style-type: none"> • Large size issuers (100% of transactions) issued securities at less than 5% discount to the market price. • Medium size issuers mostly (80% of transactions) issued securities at 25-100% discount to the market price followed by the range of 15-20% discount (20% of transactions). • Small size issuers issued securities about evenly at 25-100% discount (45% of transactions) and below 20% discount to the market price (45% of transactions). The balance 10% of transactions were at a range of 20-25% discount.

Notes to findings

(These notes adopt the same paragraph numbering as in the Observations table above.)

A	General Mandates
1	General mandates obtained
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before the implementation of the 2004 Rule amendments on 31 March 2004, the number of general mandates obtained by Main Board issuers under review was 458 (including the then 32 HSI issuers) which increased to 489 (including the then 33 HSI issuers) in the following year, representing an increase of 31 issuers or 7%. • In the year before 31 March 2004, the number of general mandates obtained by GEM issuers was 47, which increased by about 15% to 54 in the following year.
2	Utilisation of general mandates
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, 168 (33%) of the 505 general mandates obtained (including 4 mandates of HSI issuers) were used to issue securities and 337 (67%) of such mandates (including 28 mandates of HSI issuers) were not utilised. • Of the 543 general mandates obtained in the year after 31 March 2004, only 122 (22%) of such mandates (including 2 mandates of HSI issuers) were used to issue securities and 421 (78%) of such mandates (including 31 mandates of HSI issuers) were not utilised. • Thus the number of general mandates obtained but not utilised increased by 84 (25%). <p>Notes to (b):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, 86 (51%) of general mandates obtained were utilised to the extent of <u>50% - 100%</u> of such mandates. In the year after 31 March 2004, 48 (39%) of general mandates obtained were utilised to the same extent. • As for the remaining general mandates that were utilised, 44 (26%) of the general mandates obtained were utilised to the extent of <u>less than 50%</u> of such mandates in the year before 31 March 2004 and 33 (27%) of the general mandates obtained were utilised to the same extent in the following year. • The number of general mandates obtained and fully utilised to issue securities by the Selected Sample was 38 (23%) in the year before 31 March 2004 and 41 (34%) in the year after 31 March 2004.

B	Refreshments of General Mandates
1	Number of issuers that obtained refreshments of general mandates
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, of the Selected Sample, 68 (12%) issuers obtained refreshments of the general mandate and 486 (88%) issuers did not obtain any refreshments of the general mandate. • In the year after 31 March 2004, of the Selected Sample, 45 (8%) issuers obtained refreshments of the general mandate and 509 (92%) issuers did not obtain any refreshments of the general mandate. • No HSI issuer obtained refreshments of general mandates in the two years. • The number of Main Board issuers that obtained refreshments of general mandates was 62 in the year before 31 March 2004 and 38 in the following year, representing a decrease of 24 (39%) issuers. • The number of GEM issuers that obtained refreshments of general mandates was 6 in the year before 31 March 2004 and 7 in the following year, representing an increase of 1 (17%) issuer.
2	Number of refreshments of general mandates obtained
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, the 68 issuers in B3(a) obtained a total of 90 refreshments of the general mandate. • In the year after 31 March 2004, the 45 issuers in B3(a) obtained a total of 53 refreshments of the general mandate. <p>Notes to (b):</p> <ul style="list-style-type: none"> • 51 (75%) issuers in the year before 31 March 2004 and 38 (84%) issuers in the following year obtained 1 refreshment of the general mandate. • 13 (19%) issuers in the year before 31 March 2004 and 6 (13%) issuers in the following year obtained 2 refreshments of general mandates. • 3 (4%) issuers in the year before 31 March 2004 and 1 (3%) issuer in the following year obtained 3 refreshments of general mandates. • 1 (2%) issuer in the year before 31 March 2004 and no issuer in the following year obtained 4 refreshments of general mandates.

3	<p>Utilisation of refreshments of general mandates</p> <p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, of the 90 refreshments of general mandates obtained, 33 (37%) were utilised and 57 (63%) were not utilised. • In the year after 31 March 2004, of the 53 refreshments of general mandates obtained, only 16 (30%) were utilised and 37 (70%) were not utilised. • Therefore the number of refreshments of general mandates obtained but not utilised increased from the 63% in the year before 31 March 2004 to 70% in the year after the implementation of the 2004 Rule amendments on 31 March 2004, representing an increase of 7%. <p>Notes to (b):</p> <ul style="list-style-type: none"> • 100% utilisation of refreshments of general mandates: <p>In the year before 31 March 2004, of the 33 refreshments of general mandates obtained and utilised, 15 (45%) were fully utilised to issue securities. In the year after 31 March 2004, of the 16 refreshments of general mandates obtained and utilised, 8 (50%) were fully utilised.</p> • 50% - 100% utilisation of refreshments of general mandates: <p>In the year before 31 March 2004, 11 (33%) of the refreshments of general mandates obtained were utilised to issue securities. In the year after 31 March 2004, 11 (38%) of the refreshments of general mandates obtained were utilised.</p> • Below 50% utilisation of refreshments of general mandates: <p>In the year before 31 March 2004, 7 (21%) of the refreshments of general mandates obtained were utilised to issue securities. In the year after 31 March 2004, 2 (13%) of the refreshments of general mandates obtained were utilised.</p>
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C	Specific Mandates
1	Number of issuers that obtained specific mandates
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, of the Selected Sample, 80 (15%) issuers (including 1 HSI issuer) obtained specific mandates and 474 (85%) issuers did not obtain any specific mandate. • In the year after 31 March 2004, of the Selected Sample, 97 (18%) issuers (including 4 HSI issuers) obtained specific mandates and 457 (82%) issuers did not obtain any specific mandate. <p>Notes to (b):</p> <ul style="list-style-type: none"> • The number of Main Board issuers that obtained specific mandates was 71 in the year before 31 March 2004 and 82 in the following year, representing an increase of 11 issuers or 15%. • The number of GEM issuers that obtained specific mandates was 9 in the year before 31 March 2004 and 15 in the following year, representing an increase of 6 issuers or 67%. <p>Note to (c):</p> <p>The number of issuers in respect of which parts of general mandates or refreshments of general mandates were not utilised but which sought specific mandates was 72 (90%) in the year before 31 March 2004 and 93 (96%) in the following year, representing an increase of 21 issuers or 29%.</p>
2	Number of specific mandates obtained
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, the 80 issuers (including 3 issuers that each obtained 3 or more specific mandates) obtained a total of 103 specific mandates. • In the year after 31 March 2004, the 97 issuers (including 11 issuers that each obtained 3 or more specific mandates) obtained a total of 150 specific mandates. • Of the 3 issuers (all Main Board), 2 (67%) issuers obtained 3 specific mandates and 1 (33%) issuer obtained 4 specific mandates in the year before 31 March 2004. In the following year, of the 11 issuers (8 Main Board and 3 GEM), 10 (91%) issuers obtained 3 specific mandates and 1 Main Board (9%) issuer obtained 4 specific mandates. <p>Notes to (b):</p> <ul style="list-style-type: none"> • The number of specific mandates obtained by Main Board issuers was 93 in the year before 31 March 2004 and 124 in the following year, representing an increase of 31 (33%) specific mandates. • The number of specific mandates obtained by GEM issuers was 10 in the year before 31 March 2004 and 26 in the following year, representing an increase of 16 (160%) specific mandates.

3	<p>Use of specific mandates obtained</p> <p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, there were 114 transactions to issue securities under the 103 specific mandates obtained by issuers. • In the year after 31 March 2004, there were 164 transactions to issue securities under the 150 specific mandates obtained by issuers. <p>Notes to (b):</p> <p>A relatively large percentage of transactions were for cash issues through share placing.</p> <ul style="list-style-type: none"> • As for cash issues through share placing: <ul style="list-style-type: none"> – In the year before 31 March 2004, of the 114 transactions, there were 51 transactions for cash issues through share placing, representing 45% of all transactions in that year. – In the year after 31 March 2004, of the 164 transactions, there were 71 transactions for cash issues through share placing, representing 43% of all transactions in that year. – This represented an increase of 20 (39%) transactions. • As for the issue of convertibles: <ul style="list-style-type: none"> – The number of transactions involving the issue of convertibles securities by issuers was 20 (18%) in the year before 31 March 2004 and 42 (26%) in the following year, representing an increase of 22 (110%) transactions. • As for the issue of consideration shares: <ul style="list-style-type: none"> – The number of transactions involving the issue of consideration shares by issuers was 22 (19%) in the year before 31 March 2004 and 28 (17%) in the following year, representing an increase of 6 (27%) transactions. • As for the issue of options/rights/warrants: <ul style="list-style-type: none"> – The number of transactions involving the issue options/rights/warrants by issuers was 21 (18%) in the year before 31 March 2004 and 23 (14%) in the following year, representing an increase of 2 (10%) transactions.
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4	Size of specific mandates
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • In the year before 31 March 2004, of the 103 specific mandates obtained: <ul style="list-style-type: none"> – 27 (26%) were within >0-10% of issued share capital; – 21 (21%) were within 10-20% of issued share capital; – 25 (24%) were within 20-50% of issued share capital; – 16 (15%) were within 50-100% of issued share capital; and – 14 (14%) were within >100% of issued share capital. • In the year after 31 March 2004, of the 150 specific mandates obtained: <ul style="list-style-type: none"> – 37 (25%) were within >0-10% of issued share capital; – 33 (22%) were within 10-20% of issued share capital; – 35 (23%) were within 20-50% of issued share capital; – 26 (17%) were within 50-100% of issued share capital; and – 19 (13%) were within >100% of issued share capital.
D	Discount of Issue Price to Market Price
1	General mandates and refreshments of general mandates
	<p>Notes to (a):</p> <ul style="list-style-type: none"> • General mandates: <p>In the year before 31 March 2004, the 168 general mandates referred to in A2(a) were utilised for 190 transactions, of which 137 (72%) transactions involved the issue of securities at a discount to the market price. In the following year, the 122 general mandates referred to in A2(a) were utilised for 145 transactions, of which 90 (62%) transactions involved the issue of securities at a discount to the market price. The change from 72% in the year before 31 March 2004 to 62% in the year after 31 March 2004 represented a decrease of 10% in transactions.</p> • Refreshments of general mandates: <p>In the year before 31 March 2004, the 33 refreshments of general mandates referred to in B3(a) were utilised for 41 transactions, of which 28 (68%) transactions involved the issue of securities at a discount to the market price. In the following year, the 16 refreshments of general mandates referred to in B3(a) were utilised for 18 transactions, of which 16 (89%) transactions involved the issue of securities at a discount to the market price. The change from 68% in the year before 31 March 2004 to 89% in the year after 31 March 2004 represented an increase of 21% in transactions.</p>

2	Specific mandates
	<p>Note to (a):</p> <p>In the year before 31 March 2004, the 103 specific mandates referred to in C2(a) were utilised for 114 transactions, of which 81 (71%) transactions involved the issue of securities at a discount to the market price. In the following year, the 150 specific mandates referred to in C2(a) were utilised for 164 transactions, of which 107 (65%) transactions involved the issue of securities at a discount to the market price. The change from 71% in the year before 31 March 2004 to 65% in the year after 31 March 2004 represented a decrease of 6% in transactions.</p>

APPENDIX 12 INTENTIONALLY LEFT BLANK

APPENDIX 13 DRAFT RULE AMENDMENTS REGARDING ISSUE 13

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules except in respect of Main Board Rule 13.51(2)(m)(ii). The proposed amendments to Main Board Rule 13.51(2)(m)(ii) require no equivalent GEM Rule amendments.)

“NOTIFICATION

Changes

13.51 An issuer shall inform the Exchange immediately of any decision made and publish an announcement in accordance with rule 2.07C as soon as practicable in regard to:—

...

- (2) any changes in its directorate or supervisory committee, and shall procure that each new director or supervisor or member of its governing body shall sign and lodge with the Exchange as soon as practicable after their appointment a declaration and undertaking in the form set out in Form B, H or I, where applicable in Appendix 5.

Where a new director or supervisor is appointed or the resignation or re-designation of a director or supervisor takes effect, the Exchange must be informed immediately thereafter. The issuer must simultaneously make arrangements to ensure that an announcement of the appointment, resignation or re-designation of the director or supervisor is published in accordance with rule 2.07C as soon as practicable. The issuer shall include the following details of any newly appointed or re-designated director or supervisor in the announcement of his appointment or re-designation:—

...

- (c) ~~previous~~ experience including (i) other directorships held ~~in listed public companies~~ in the last three years in public companies the securities of which are listed on any securities market in Hong Kong or overseas, and (ii) other major appointments and professional qualifications;

...

- (m) subject to the provisions of the Rehabilitation of Offenders Ordinance or comparable legislation of other jurisdictions, full particulars of any conviction for any offence ~~of the following offences~~ (including details of each such offence, the court by which he was convicted, the date of conviction and the penalty imposed):
- (i) involving fraud, dishonesty or corruption;
 - (ii) under the Companies Ordinance, the Bankruptcy Ordinance, the Banking Ordinance, the Securities and Futures Ordinance, the repealed Protection of Investors Ordinance, the repealed Securities Ordinance, the repealed Securities (Disclosure of Interests) Ordinance, the Commodity Exchanges (Prohibition) Ordinance, the repealed Securities and Futures Commission Ordinance, the repealed Commodities Trading Ordinance, the repealed Stock Exchanges Unification Ordinance, the repealed Securities and Futures (Clearing Houses) Ordinance, the repealed Exchanges and Clearing Houses (Merger) Ordinance, the repealed Securities (Insider Dealing) Ordinance, ~~and~~ or any Ordinance relating to taxation, and any comparable legislation of other jurisdictions; ~~and~~ or

- (iii) in respect of which he has, within the past 10 years, been sentenced as an adult to a period of imprisonment of six months or more, including suspended or commuted sentences;

...

- (u) except where such disclosure is prohibited by law, where he is currently subject to (i) any investigation, hearing or proceeding brought or instituted by any securities regulatory authority, including the Hong Kong Takeovers Panel or any other securities regulatory commission or panel, or (ii) any judicial proceeding in which violation of any securities law, rule or regulation is or was alleged, full particulars of such investigation, hearing or proceeding;
- (v) except where such disclosure is prohibited by law, where he is a defendant in any current criminal proceeding involving an offence which may be material to an evaluation of his character or integrity to be a director or supervisor of the issuer, full particulars of such proceeding;

...

Inclusion of stock code in documents

13.51A An issuer shall set out its stock code in a prominent position on the cover page or, where there is no cover page, the first page of all announcements, circulars and other documents published by it pursuant to these Exchange Listing Rules.

Provision of information in respect of and by directors and supervisors

- 13.51B (1) Subject to paragraph (2), where there is a change in any of the information required to be disclosed pursuant to paragraphs (a) to (v) of rule 13.51(2) or where there is any other matter that needs to be brought to the attention of holders of securities of the issuer during the course of the director's or supervisor's term and up to and including the date of resignation of the director or supervisor, the issuer must immediately inform the Exchange and simultaneously make arrangements to ensure that an announcement setting out the change and including the new information regarding the director or supervisor is published in accordance with rule 2.07C as soon as practicable.
- (2) The disclosures required to be made by an issuer pursuant to paragraph (1) are subject to the following exceptions and modifications:
- (a) in respect of rule 13.51(2)(d), an issuer need disclose only the proposed term of office of the director or supervisor;
 - (b) in respect of rule 13.51(2)(h), an issuer need not disclose any sanction imposed by the Exchange;
 - (c) in respect of rule 13.51(2)(k), an issuer need not disclose the particulars of any unsatisfied judgments or court orders of continuing effect until the relevant judgment or court order becomes final.

13.51C Directors and supervisors of an issuer must procure and/or assist the issuer to comply with rule 13.51(2) and rule 13.51B including, but not limited to, by immediately informing the issuer of the information referred to in paragraphs (a) to (x) of rule 13.51(2) and any change in the information referred to in paragraphs (a) to (w) of rule 13.51(2) which information concerns the director or supervisor. In procuring and/or assisting the issuer in the publication of an announcement in accordance with rule 2.07C for purposes of this rule, such directors and supervisors to whom the announcement relates must accept responsibility for the accuracy of the information in the announcement.”

...

“Appendix 1

Contents of Listing Documents

Part A

....

41. (1) The full name, residential or business address of every director and senior manager or proposed director and senior manager. In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include no less name, age, positions held with the issuer and other members of the issuer’s group, length of service with the issuer and the group, relevant management expertise and experience including current and past directorships in other listed public companies in the last three years, and such other information of which shareholders should be aware, pertaining to the ability or integrity of such persons.
- (Note 7)

...

NOTES

...

Note 7 For the purposes of paragraph 41 “other listed public companies” means other public companies the securities of which are listed on any securities market in Hong Kong (including but not limited to the Main Board and GEM) or overseas.”

“Appendix 1

Contents of Listing Documents Part B

...

34. The full name, residential or business address of every director and senior manager or proposed director and senior manager. In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include name, age, positions held with the issuer and other members of the issuer’s group, length of service with the issuer and the group including current and past directorships in other listed public companies in the last three years and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons. Where any of the directors or senior managers are related, having with any other director or senior manager any one of the relationships set out below, that fact should be stated. The relationships are spouse; any person cohabiting with the director or senior manager as a spouse; and any relative meaning a child or step-child regardless of age, a parent or stepparent, a brother, sister, step-brother or a step-sister, a mother-in-law, a father-in law, son-in-law, daughter-in-law, brother-in-law or sister-in-law. Where any director or proposed director is a director or employee of a company which has an interest or short position in the shares and underlying shares of the issuer which would fall to be disclosed to the issuer under the provisions of Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance, that fact shall be stated.

It is the responsibility of the directors of the issuer to determine which individual or individuals constitute senior management. Senior management may include directors of subsidiaries and heads of divisions, departments or other operating units within the group as senior management as, in the opinion of the issuer’s directors, is appropriate.

(Note 5)

...

NOTES

...

Note 5 For the purposes of paragraph 34 “other listed public companies” means other public companies the securities of which are listed on any securities market in Hong Kong (including but not limited to the Main Board and GEM) or overseas.

...”

APPENDIX 14 DRAFT RULE AMENDMENTS REGARDING ISSUE 14

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“Meetings of Shareholders

13.39 (4) Any vote of shareholders taken at a general meeting to approve the following transactions or arrangements must be taken on a poll:

- (a) connected transactions pursuant to Chapter 14A;
- (b) transactions that are subject to independent shareholders’ approval pursuant to the Exchange Listing Rules;

Note: “Independent shareholders” means any shareholders other than controlling shareholders of the issuer and their associates or, where there are no controlling shareholders, any shareholders other than directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates.

- (c) granting of options to a substantial shareholder or an independent non-executive director of the issuer, or any of their respective associates, as required under rule 17.04(1); ~~and~~
- (d) any other transactions in which a shareholder has a material interest and is therefore required to abstain from voting at the general meeting.; and
- (e) General Property Acquisition Mandate pursuant to Chapter 14A (see rules 14A.74 and 14A.75).

Definitions

14.04 For the purposes of this Chapter:—

- (1) any reference to a “transaction” by a listed issuer:
 - (g) to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer;

Notes: ...

2 *Any transaction involving the acquisition and disposal of properties will generally not be considered to be of a revenue nature unless such transactions are carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer. For the purpose of determining whether property development is a principal activity of a listed issuer for it to be a Qualified Issuer (as defined in rule 14.04(10B)), consideration will be given to the following factors:*

- (a) Clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of the issuer’s latest published annual financial statements;*
- (b) Property development activity is being reported as a separate and continuing business segment (if not the only segment) in the issuer’s latest published financial statements; and*

(c) *The issuer's (primary or secondary) format for reporting segmental information is in business segments, and its latest published annual financial statements have fully complied with the requirements of Hong Kong Accounting Standard 14 or International Accounting Standard 14, as appropriate, which require, amongst others, reporting of segment revenue and segment expense.*

...

- (10) a “property company” means a company or other entity whose non-cash assets consist solely or mainly of properties or interests in properties or interests in companies or entities whose non-cash assets consist solely or mainly of properties and whose income is mainly derived from those properties;
- (10A) “Qualified Connected Person” means any person that is a connected person, (defined in Rule 14A.11), of the Qualified Issuer, solely because such person is a substantial shareholder with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;
- (10B) “Qualified Issuer(s)” means listed issuer(s) actively engaged in property development as a principal business activity;
- (10C) “Qualified Property Acquisition(s)” means acquisition(s) of Qualified Property Project(s) [that contain a capital element]/[that contain a capital element which does not exceed 50 per cent of the total investment costs of the Qualified Property Project(s), forecast at the time of entering into the transaction]. Depending on the percentage ratios, Qualified Property Acquisition may fall into one of the classifications set out in rule 14.06;
- (10D) “Qualified Property Projects” means land or property development projects acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders;
- (10EA) a “securities house” means a corporation which is licensed or registered under the Securities and Futures Ordinance for Type 1 (dealing in securities) or Type 8 (securities margin financing) regulated activity;

[Draftsman's note: The renumbering of the existing Rule 14.04(10A) will necessitate consequential cross-referencing amendments. For the sake of brevity, these are not reproduced here.]

...

Exemptions for Qualified Property Acquisitions

14.33A The table below summarises the notification, publication and shareholders' approval requirements for a Qualified Issuer pursuant to a Qualified Property Acquisition.

	<u>Notification to Exchange</u>	<u>Publication of an announcement in accordance with rule 2.07C</u>	<u>Circular to shareholders</u>	<u>Shareholders' approval</u>	<u>Report in next published annual report and accounts</u>
<u>Qualified Property Acquisition undertaken on a sole basis that contain a capital element¹</u>	<u>Yes³</u>	<u>Yes³</u>	<u>Yes³</u>	<u>No¹</u>	<u>Yes⁴</u>
<u>Qualified Property Acquisition undertaken with non-connected person²</u>	<u>Yes³</u>	<u>Yes³</u>	<u>Yes³</u>	<u>No²</u>	<u>Yes⁵</u>

Notes:

1. The conditions for the exemption from shareholders' approval requirement under rules 14.40 to 14.53 are stated in Rule 14.33A(2) below.
 2. The conditions for the exemption from shareholders' approval requirement under rules 14.40 to 14.53 are stated in Rule 14.33A(4) below.
 3. Notification, announcement and circularisation requirements under chapter 14 apply as usual.
 4. Annual reporting requirements are further described in rule 14.33A(2)(c) below.
 5. Annual reporting requirements are further described in rule 14.33A(4)(g) below.
- (1) Rule 14.33A applies to Qualified Issuers (as defined in rule 14.04(10B)), engaging in acquisition of Qualified Property Project(s) (as defined in rule 14.04(10D)).
 - (2) Qualified Property Acquisition(s) (as defined in rule 14.04(10C)) undertaken on a sole basis, which is in the ordinary and usual course of business of the Qualified Issuer, is exempted from shareholders' approval requirement under rules 14.40 to 14.53, provided that all of the following conditions are satisfied:
 - (a) a Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of its bid for a Qualified Property Project. For this purpose all requirements regarding announcements under chapter 14 apply in accordance with the classification and percentage ratios as usual;
 - (b) a Qualified Issuer must send to holders of its listed securities a circular with details of a successful Qualified Property Acquisition as in any other transactions falling under chapter 14; and
 - (c) a Qualified Issuer must include appropriate details of each successful Qualified Property Acquisition and brief description of the status of each and every Qualified Property Acquisition in its next published annual report and accounts.

- (3) For the purpose of chapters 14 and 14A, Qualified Property Acquisition undertaken by a Qualified Issuer on a joint venture basis can be categorised as follows:
- (a) joint venture with non-connected person(s);
 - (b) joint venture with “Qualified Connected Person(s)”; or
 - (c) joint venture with connected person(s) other than “Qualified Connected Person(s)”.
- (4) Shareholders’ approval requirement under rules 14.40 to 14.53 is exempted for situations falling within rule 14.33A(3)(a) as described above, provided that all of the following conditions are satisfied:
- (a) the project(s) will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document;
 - (b) each joint venture arrangement must be in the ordinary and usual course of business of the Qualified Issuer, on an arm’s length basis and on normal commercial terms;
 - (c) without prejudice to any other necessary consent, the joint venture agreement must contain clause(s) to the effect that the entity may not, without the joint venture partners’ unanimous consent:
 - (i) change the nature or scope of its business, and if there are changes then such changes must still be consistent with the scope or purpose specified in the auction or tender document; or
 - (ii) enter into any transactions which are not on an arm’s length basis, whether with a connected person or not;
 - (d) the joint venture agreement must specify that a Qualified Issuer and its joint venture partner(s) will provide financing in the form of equity, shareholders’ loan and/or financial commitments to, or on behalf of, the joint venture on a several basis and in proportion to their respective equity interests;
 - (e) the joint venture agreement must specify that for the purpose of distribution of profit, the net proceeds from the sale and/or leasing of the land or property to be developed, redeveloped or refurbished after repayment of borrowings and payment of other costs and liabilities will be distributed in full to the joint venture partners in proportion to their respective equity interests, as also for repayment of shareholders’ loans and as distribution of the joint venture’s profit, if any;
 - (f) a Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of a bid by a joint venture for a Qualified Property Acquisition and circularise details regarding each successful Qualified Property Acquisition. For this purpose all requirements regarding announcement and circular under chapter 14 applies in accordance with the classification and percentage ratios as usual; and
 - (g) a Qualified Issuer must publish, in its annual report and accounts issued subsequent to the successful bid of each and every Qualified Property Acquisition undertaken together with non-connected person(s) in a joint venture, at least the following details:
 - (i) the terms of the joint venture;
 - (ii) the status of the joint venture, including details of the successful Qualified Property Acquisitions made during the financial period;

- (iii) the dividend and distribution policy of the joint venture; and
 - (iv) the [financial/capital] commitment of the joint venture and the Qualified Issuer's share therein.
- (5) Requirements relating to situations falling within rule 14.33A(3)(b) are dealt with in chapter 14A under rules 14A.72 to 14A.79.

Note: Situations falling within rule 14.33A(3)(c) are treated as in any normal connected transaction under chapter 14A without any exemption for shareholders' approval.

Circular for specific types of companies

14.71A Where a discloseable transaction, major transaction or very substantial acquisition involves a Qualified Property Acquisition entered into pursuant to a General Property Acquisition Mandate as defined and described in rule 14A.10 and rule 14A.74, the Qualified Issuer shall comply with additional circularisation, announcement and reporting requirements with details as described in chapter 14A under rules 14A.75 to 14A.78.

General matters concerning definitions and interpretation

14A.10 In this Chapter:

...

(4A) “General Property Acquisition Mandate” means an authority granted to a Qualified Issuer in advance by its shareholders in an annual general meeting to engage in Qualified Property Acquisitions;

...

(10A) “Qualified Connected Person” means any person that is a connected person, (defined in Rule 14A.11), of the Qualified Issuer, solely because such person is a substantial shareholder with or without representation on the board in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific;

(10B) “Qualified Issuer(s)” means listed issuer(s) actively engaged in property development as a principal business activity;

(10C) “Qualified Property Acquisition(s)” means acquisition(s) of Qualified Property Project(s) [that contain a capital element]/[that contain a capital element which does not exceed 50 per cent of the total investment costs of the Qualified Property Project(s), forecast at the time of entering into the transaction]. Depending on the percentage ratios, Qualified Property Acquisition may fall into one of the classifications set out in rule 14.06;

(10D) “Qualified Property Projects” means land or property development projects acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders;

...

- (13) a “transaction” by an issuer, whether or not it is of a revenue nature in the ordinary and usual course of business as defined in rule 14.04(1)(g), includes:

...

- (i) ...; **and**
- (j) ...; **and**
- (k) a Qualified Property Acquisition.

...

14A.13 A connected transaction is:

...

Joint ventures

- (6) the entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement by a listed issuer and a connected person (see rule 14A.10(13)(f)). Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is governed by rules 14A.72 to 14A.79. In this case, the size of a listed issuer’s financial commitment will be calculated in the manner set out in rule 14.15(2).

Connected transactions (other than those involving financial assistance or, the granting of options) or Qualified Property Acquisitions under a General Property Acquisition Mandate) exempt from the independent shareholders’ approval requirements

14A.32 ...

Qualified Property Acquisitions and General Property Acquisition Mandate

General

14A.72 The table below summarises the notification, publication and shareholders’ approval requirements for a Qualified Issuer pursuant to a Qualified Property Acquisition undertaken with a Qualified Connected Person.

	<u>Notification to Exchange</u>	<u>Publication of announcement in accordance with rule 2.07C</u>	<u>Circular to shareholders</u>	<u>Shareholder’s approval and Independent shareholders’ approval</u>	<u>Report in next published annual report and accounts</u>
<u>Qualified Property Acquisition undertaken with Qualified Connected Person</u>	<u>Yes</u> ³	<u>Yes</u> ^{1,2}	<u>Yes</u> ²	<u>General Property Acquisition Mandate obtained in advance from shareholders in annual general meeting</u>	<u>Yes</u> ⁴

Notes:

1. A Qualified Issuer shall announce the result of the vote by poll of the resolution proposing a General Property Acquisition Mandate in an annual general meeting in accordance with rule 13.39(5)(see rule 14A.75(3) below).
2. See rule 14A.75 and 14A.76 below for details.
3. Notification to the Exchange under rule 14.34 applies when the General Property Acquisition Mandate has been approved by a vote of shareholders taken by poll at an annual general meeting as well as when the Qualified Issuer is advised of the success of a bid by the joint venture for a Qualified Property Acquisition.
4. Details of the annual reporting requirements are stated in rule 14A.77.

Exempt from shareholders' approval requirements

but subject to requirements for notification, circularisation, reporting, announcement and General Property Acquisition Mandate

14A.73 A Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person where a Qualified Issuer has previously obtained a General Property Acquisition Mandate is exempted from shareholders' approval requirement under rules 14.40 to 14.53 [and independent shareholders' approval requirements under rules 14A.18 to 14A.20], but is subject to notification, circularisation, reporting and announcement requirements as described under chapter 14 and chapter 14A, where applicable, as well as, pursuant to the General Property Acquisition Mandate, additional notification, announcement, circularisation and reporting requirements as described under rules 14A.74 to 14A.79 below.

Conditions for General Property Acquisition Mandate

- 14A.74 (1) For situations described in rule 14A.73 above, and for a Qualified Issuer to be eligible for prior shareholders' approval by way of a General Property Acquisition Mandate, Qualified Property Project(s) set up with Qualified Connected Person(s) in a joint venture arrangement must satisfy the conditions set out under (a) to (e) below:
- (a) The project(s) will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document.
 - (b) Each joint venture arrangement must be in the ordinary and usual course of business of the Qualified Issuer, on an arm's length basis and on normal commercial terms.
 - (c) Without prejudice to any other necessary consent, the joint venture agreement must contain clause(s) to the effect that the entity may not, without the joint venture partners' unanimous consent:
 - (i) change the nature or scope of its business, and if there are changes then such changes must still be consistent with the scope or purpose specified in the auction or tender document; or
 - (ii) enter into any transactions which are not on an arm's length basis, whether with a connected person or not;

- (d) The joint venture agreement must specify that a Qualified Issuer and its joint venture partner(s) will provide financing in the form of equity, shareholders' loan and/or financial commitments to, or on behalf of, the joint venture on a several basis and in proportion to their respective equity interests; and
- (e) The joint venture agreement must specify that for the purpose of distribution of profit, the net proceeds from the sale and/or leasing of the land or property to be developed, redeveloped or refurbished after repayment of borrowings and payment of other costs and liabilities will be distributed in full to the joint venture partners in proportion to their respective equity interests, as also for repayment of shareholders' loans and as distribution of the joint venture's profit, if any.
- (2) Any proposed "Annual Cap" must be set on a maximum aggregate annual basis in relation to the Qualified Issuer's attributable portion of [financial/capital] commitment in respect of the formation of one or more property joint ventures for Qualified Property Acquisitions under a General Property Acquisition Mandate. In this case, the size of a Qualified Issuer's [financial/capital] commitment therein will be calculated in the manner set out in rule 14.15(2).
- (3) Any proposed Annual Cap must be expressed in terms of monetary value rather than a percentage of the issuer's annual revenue as derived from its latest published audited accounts or where consolidated accounts have been prepared, its latest published audited consolidated accounts (*see 14A.35(2) for reference*).
- (4) Both the independent board committee (as referred to in rules 13.39(6), 13.39(7) and 14A.58 (3) (c)) and the independent financial adviser (as referred to in rules (13.39(7) (b) and 14A.22) must have opined affirmatively that the proposed Annual Cap and the underlying assumptions are reasonable for the proposed General Property Acquisition Mandate to be voted upon.
- (5) The General Property Acquisition Mandate, including the maximum monetary value to be attached to a proposed Annual Cap, must be approved by shareholders in annual general meeting by poll. No written shareholders' approval will be accepted in lieu of holding a general meeting, and shareholders' meeting waiver under rules 14.44 or 14A.43 is not applicable for this purpose.

Circular and Announcement regarding General Property Acquisition Mandate

- 14A.75 (1) Where a General Property Acquisition Mandate is proposed as a resolution in an annual general meeting of a Qualified Issuer, the circular to shareholders should contain information as described under rules 14A.58 to 14A.62, where applicable, and must also contain the following:
- (a) a separate letter from the independent board committee;
 - (b) a separate letter from the independent financial adviser;
 - (c) a confirmation statement that both the independent board committee and the independent financial adviser have opined affirmatively that the proposed Annual Cap and the underlying assumptions are reasonable for the proposed General Property Acquisition Mandate to be voted upon;
 - (d) a statement that the duration of the General Property Acquisition Mandate and the Annual Cap would continue to be in force only until:

- (i) the conclusion of the first annual general meeting of the Qualified Issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions, or
- (ii) revoked or varied by ordinary resolution of the shareholders in a general meeting, whichever occurs first;
- (e) the purpose and intended use of the General Property Acquisition Mandate, including a statement that the General Property Acquisition Mandate is only applicable to a Qualified Issuer proposing to enter into one or more Qualified Property Acquisition(s) undertaken with Qualified Connected Person(s);
- (f) a statement that the conditions that are required to be fulfilled as set out in rule 14A.74 (1)(a) to (e) above have been met;
- (g) in relation to the proposed Annual Cap, the circular must contain:
 - (i) detailed description of the proposed Annual Cap for the purpose of the General Property Acquisition Mandate and an explanation of how and the basis upon which it was calculated; and
 - (ii) details of the assumptions upon which the proposed Annual Cap was based must be stated.

Note: See rules 14A.74(2) to (3) above.

- (h) a statement by the directors of the Qualified Issuer that in their opinion the working capital available to the group will be sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary in light of the expected Qualified Property Acquisitions and the Annual Cap proposed.
- (2) A Qualified Issuer must notify the Exchange in accordance with rule 14.34 when the General Property Acquisition Mandate has been approved by a vote of shareholders taken by poll at an annual general meeting.
- (3) A Qualified Issuer shall announce the results of the vote by poll in accordance with rule 13.39(5).

*Announcement and circular requirements following notification
of a successful Qualified Property Acquisition*

- 14A.76 (1) A Qualified Issuer must notify the Exchange in accordance with rule 14.34 when it has been notified of the success of a bid for a Qualified Property Acquisition undertaken together with Qualified Connected Person(s) under a General Property Acquisition Mandate. The notification must be made immediately upon the bid becoming legally binding.
- (2) A Qualified Issuer must publish an announcement in accordance with rule 2.07C upon notification of the success of a bid by a joint venture for a Qualified Property Acquisition and circularise details regarding each successful Qualified Property Acquisition. For this purpose all requirements regarding announcement and circular under chapter 14 apply in accordance with the classification and percentage ratios as usual.

- (3) A Qualified Issuer must submit to the Exchange written confirmation, upon the successful Qualified Property Acquisition being legally binding, that the controlling shareholder(s) of the Qualified Issuer and the associates (as defined in Rule 14A.11(4)) of the controlling shareholder(s) do not have any material business dealings or relationships with the joint venture partner(s) or its controlling shareholder(s) or its/their associates. For this purpose, any material business dealings or relationships with the joint venture partner(s), its controlling shareholder(s) or its/their associates do not include existing property joint venture arrangement(s) with the joint venture partner(s) or its controlling shareholder(s) or its/their associates that would meet the conditions of the exemption.

Reporting and reviewing requirements in annual report and accounts

14A.77 (1) A Qualified Issuer must publish, in its annual report and accounts issued subsequent to the passing of a resolution approving a General Property Acquisition Mandate, at least the following:

- (a) detailed description of the General Property Acquisition Mandate and the pertaining Annual Cap, and an explanation of how and the basis upon which the Annual Cap was calculated;
 - (b) details of the assumptions upon which the Annual Cap was based;
 - (c) the remaining and used up Annual Cap expressed in terms of monetary value, rather than a percentage of the Qualified Issuer's annual revenue or other relative measures; and
 - (d) the remaining and used up Annual Cap stated on an aggregate annual basis in relation to the attributable portion of [financial/capital] commitment in respect of the formation of one or more property joint ventures for Qualified Property Acquisitions by the Qualified Issuer. In this case, the size of a Qualified Issuer's [financial/capital] commitment therein will be calculated in the manner set out in rule 14.15(2).
- (2) A Qualified Issuer must publish, in its annual report and accounts issued subsequent to the successful bid of each and every Qualified Property Acquisition undertaken with a Qualified Connected Person in a joint venture, at least the following details:
- (a) the terms of the joint venture;
 - (b) the status of the joint venture, including details of the successful Qualified Property Acquisitions made during the financial period;
 - (c) the dividend and distribution policy of the joint venture;
 - (d) the [financial/capital] commitment of the joint venture and the Qualified Issuer's share therein]; and
 - (e) [the amount of Annual Cap remaining after each successful joint venture committed within the valid duration of a General Property Acquisition Mandate.]

14A.78 Each year the independent board committee of the Qualified Issuer must review each and every Qualified Property Acquisition entered into during the financial year together with a Qualified Connected Person in a joint venture, and confirm in the annual report and accounts that:

- (1) they have considered an opinion letter from an independent financial adviser (see 14A.22);

- (2) they have reviewed each and every transaction under joint venture arrangements entered into during the year by the Qualified Issuer with Qualified Connected Person(s) and confirm that:
 - (a) the successful transaction has been carried out in accordance with the initial purpose of the joint venture;
 - (b) the relevant agreement(s) governing the successful transaction are based on terms that are fair and reasonable and in the interests of the shareholders of the Qualified Issuer as a whole; and
 - (c) the conditions and requirements set out in rules 14A.72 to 14A.79, where applicable, have been complied with by the Qualified Issuer.

Refreshment of the General Property Acquisition Mandate

14A.79 Where a Qualified Issuer has obtained a General Property Acquisition Mandate from its shareholders pursuant to the conditions as set out in rules 14A.74 to 14A.78:

- (1) any refreshments of the General Property Acquisition Mandate and the Annual Cap before the next annual general meeting must be approved by shareholders in a general meeting. For this purpose, no written shareholders' approval will be accepted in lieu of holding a general meeting and shareholders' meeting waiver under rules 14.44 or 14A.43 is not applicable; and
- (2) the relevant circular to shareholders proposing early refreshment of another General Property Acquisition Mandate must contain the following information:
 - (a) information as set out in rule 14A.75(1), but for the new proposed mandate;
 - (b) information relating to the usage of the existing mandate;
 - (c) the Qualified Issuer's history of refreshments of General Property Acquisition Mandate since the last annual general meeting when the existing mandate was approved; and
 - (d) details and status of each of the qualified property joint ventures that were formed under the existing General Property Acquisition Mandate."

APPENDIX 15 DRAFT RULE AMENDMENTS REGARDING ISSUE 15

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“14.04 For the purpose of this Chapter:-

- (1) any reference to a “transaction” by a listed issuer:
 - (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;
 -
 - (g) to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes:
 - (i) any transaction of a revenue nature and in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer; and
 - (ii) any construction of a fixed asset by the listed issuer for its own use (as referred to in rule 14.04(13)) in the ordinary and usual course of business of the listed issuer;

...

- (13) In determining whether a fixed asset is constructed by the listed issuer for its own use as referred to in rule 14.04(1)(g)(ii), the Exchange will have regard to the following:
 - (a) whether the listed issuer has the expertise to undertake the construction of the fixed asset (for example, property, plant and machinery);
 - (b) whether the listed issuer is most relevant and responsible for bringing the fixed asset to the location and condition necessary for it to be capable of operating in the intended manner; and
 - (c) whether the fixed asset so constructed is intended for the enduring benefit of the listed issuer’s business.”

APPENDIX 16 DRAFT RULE AMENDMENTS REGARDING ISSUE 16

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“Non-access to information for compiling circulars for major transactions or very substantial acquisitions

14.67A (1) Where a listed issuer has made a takeover offer constituting a major transaction or a very substantial acquisition, and the listed issuer does not have access or only limited access to the non-public information on the offeree company that would be required for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under rules 14.66 and 14.67 (for a major transaction) or rule 14.69 (for a very substantial acquisition), then the listed issuer may defer complying with certain of the disclosure requirements in the manner set out in paragraphs (2) and (3) below, provided that the following conditions are satisfied:

- (a) the unavailability of non-public information is caused by the lack of co-operation of the board of directors in the offeree company (such as in the case of a hostile takeover) and/or legal restrictions on providing non-public information to the listed issuer;
- (b) the offeree company is listed on another regulated, regularly operating, open stock exchange recognised for this purpose by the Exchange; and
- (c) the offeree company will become a subsidiary of the listed issuer.

(2) Subject to the conditions in paragraphs (1)(a), (b) and (c) being satisfied, the listed issuer may defer complying with the disclosure requirements for certain non-public information relating to the offeree company and/ or the enlarged group. In such circumstances, the listed issuer must despatch an initial circular in partial compliance with rules 14.66 and 14.67 or rule 14.69 within the time frames stipulated in rules 14.41 and 14.42 or rules 14.51 and 14.52. The initial circular shall include, as a minimum, the following:

- (a) material public information (and other available information of which the listed issuer is aware and is free to disclose) of the offeree company to enable shareholders to make an informed voting decision with respect to the proposed acquisition under the takeover offer. This would include:
 - (i) published audited financial information of the offeree company for the preceding three years (and the latest published unaudited interim accounts) together with a qualitative explanation of the principal differences, if any, between the offeree company’s accounting standards and those of the listed issuer’s which may have a material impact on the financial statements of the offeree company; and
 - (ii) other information of the offeree company and its group of companies in the public domain or made available by the offeree company and which the listed issuer is aware and free to disclose;
- (b) where information required for the enlarged group is not available, to include the following information regarding the listed issuer:
 - (i) statement of indebtedness (see rule 14.66(2), paragraph 28 and Note 2 to Appendix 1, Part B);
 - (ii) statement of sufficiency of working capital (see rule 14.66(2), paragraph 30 and Note 2 to Appendix 1, Part B);

- (iii) valuation report on land and/or buildings (this is applicable only to very substantial acquisitions, see rule 14.69(3));
 - (iv) management discussion and analysis of results (this is applicable only to very substantial acquisitions, see rule 14.69(7));
 - (v) statement as to the financial and trading prospects (see rule 14.66(2), paragraph 29(1)(b) and Note 2 to Appendix 1, Part B);
 - (vi) particulars of any litigation or claims of material importance (see rule 14.64(2), paragraph 33 and Note 2 to Appendix 1, Part B);
 - (vii) particulars of directors' or experts' interests in group assets (see rule 14.66(2), paragraph 40 and Note 2 to Appendix 1, Part B);
 - (viii) material contracts and documents for inspection (see rule 14.66(2), paragraph 42, 43 and Note 2 to Appendix 1, Part B); and
- (c) the reasons why access to books and records of the offeree company has not been granted to the listed issuer.
- (3) Where an initial circular has been despatched by a listed issuer under paragraph (2) above, the listed issuer must despatch a supplemental circular at a later date which contains: (i) all the prescribed information under rules 14.66 and 14.67 or rule 14.69 which has not been previously disclosed in the initial circular; and (ii) any material changes to the information previously disclosed in the initial circular. The supplemental circular must be despatched to shareholders within 45 days of the earlier of: the listed issuer being able to gain access to the offeree company's books and records for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under rules 14.66 and 14.67 or rule 14.69; and the listed issuer being able to exercise control over the offeree company."

APPENDIX 17 DRAFT RULE AMENDMENTS REGARDING ISSUE 17

(Set out below are the proposed Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules. The proposed amendment to the GEM Rules relating to *Question 17.4* is set out below.)

Issue 17A: Streamlining disclosure of director's and supervisor's information through an issuer's announcement

Rule amendments relating to Questions 17.1 and 17.2

[Draftsman's note: This is a new form entirely. Changes from the current form have not been marked up. This new form does not show the text of the undertakings under Part 2. A marked-up version of the undertakings is set out under the rule amendments relating to Issues 17B and 17C.]

Appendix 5 附錄五

Declaration and Undertaking with regard to Directors

董事的聲明及承諾

Form B

B 表格

Part 1

第一部分

DECLARATION

聲明

“1. State:- 請填報：	in English 英文	in Chinese 中文
(a) present surname and any former surname(s)* 現時姓氏及任何前度姓氏 *
(b) alias, if any * 別名，如有 *
(c) present forename(s) and any former forename(s) * 現時名字及任何前度名字
(d) date of birth 出生日期
(e) residential address 住址
(f) nationality and former nationality, if any 國籍及前度國籍，如有

- | | | | | |
|-----|------|--|-------|-------|
| (g) | (i) | Hong Kong ID card number
香港身份證號碼 | | |
| | (ii) | in the case of a non-Hong Kong ID cardholder,
passport number or any identification document
number and name of issuing authority
如為非香港身份證持有人，請列明護照號碼或
任何身份識別文件號碼，以及簽發機構名稱 | | |
| (h) | | name of issuer (i.e. the new applicant / listed issuer)
發行人（新申請人／上市發行人）名稱 | | |

* *As set out in the Hong Kong ID card, or any relevant identification document referred to in 1(g) above.*
 * 香港身份證或上文 1(g) 所述的任何有關身份識別文件上所示者。

2. The relevant document that sets out my personal details in the manner described in paragraph 41(1) of Appendix 1A or rule 13.51(2), as the case may be, of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited from time to time in force (the “Listing Rules”) is:
 按不時生效的《香港聯合交易所有限公司證券上市規則》（《上市規則》）附錄一 A 第 41(1) 段或第 13.51(2) 條所述方式（視情況而定）載有本人的個人資料的有關文件為：

(Tick as appropriate)
 （請在適當方格內加上√號）

In the case of new applicant:
 如屬新申請人：

- the listing document dated _____ which has been duly registered with the Companies Registry.
 日期為_____ 並已正式在公司註冊處登記的上市文件。

In the case of listed issuer:
 如屬上市發行人：

- the announcement dated _____ by the issuer as required under Listing Rule 13.51(2) with regards to my appointment / re-designation as a director of the issuer.
 發行人按《上市規則》第 13.51(2) 條的規定，就委任／調任本人為發行人董事的公告（公告日期為_____年_____月_____日）。

Part 2
第二部分

UNDERTAKING
承諾

The particulars referred to in this Part 2 are:-
此第二部分所述的資料為：

- (a) in the exercise of my powers and duties as a director of the issuer I, the undersigned, shall:-
在行使發行人董事的權力及職責時，本人（簽署人）須：

.....

- (g)

I, _____ [Insert Chinese characters, if any]:
本人 _____ [請填上中文姓名（如有）]：

- (a) solemnly and sincerely declare that all particulars about me that appear in Part 1(1) of this Form B and in the document referred to in Part 1(2) of this Form B are true, complete and accurate, that I accept responsibility for the truthfulness, accuracy and completeness of the foregoing particulars, that I have not made any statements or omissions which would render such particulars untrue or misleading, that I understand the possible consequences of giving information which is false or misleading in a material particular including those as set forth in Note 1 hereto, and that I understand that The Stock Exchange of Hong Kong Limited may rely upon the foregoing particulars in assessing my suitability to act as a director of the issuer; and

謹以至誠鄭重聲明，在本 B 表格第一部分 (1) 及本 B 表格第一部分 (2) 所述文件所示有關本人的所有詳細資料均為真實、完整及準確，且本人對上述資料的真實性、準確性及完整性承擔責任，而本人亦無作出任何聲明或遺漏，致使有關資料不真實或具誤導性，本人亦明白在要項上（包括本表格附註 1 所載事項）提供虛假或具誤導性的資料可能引致的後果，以及本人並明白，香港聯合交易所有限公司或會倚賴上述資料來評估本人是否適合出任發行人董事；及

- (b) undertake with The Stock Exchange of Hong Kong Limited in the terms set out in Part 2 of this Form B.
按本 B 表格第二部分所載的條款向香港聯合交易所有限公司作出承諾。

Signature 簽署： _____

Name 姓名： _____

Dated 日期： _____

Certified as the true signature of
由以下人士證明為真實簽署： _____

By： _____

Signature (Secretary / Director)
簽署 (秘書 / 董事) _____

Name (Secretary / Director)
姓名 (秘書 / 董事) _____

Part 3
第三部分

(A) *If the issuer is a new applicant or continues to retain a sponsor, the following sponsor's certification must be completed:-*

如發行人為新申請人或會持續聘用保薦人，下列的保薦人證明亦須填報：

SPONSOR'S CERTIFICATION

保薦人證明

We, _____, are the sponsor for the issuer appointed for the purpose referred to in Listing Rule 3A.02 and have offices located at _____. We hereby certify that we have read the particulars provided by _____ [Insert name of director] in and any document referred to in Part 1 (1) and (2) of this Form B and we are not aware of any information that would lead a reasonable person to inquire further concerning the truthfulness, completeness or accuracy of any of the particulars so provided.

我們 _____，乃為《上市規則》第3A.02條所提及的目的而委任的發行人的保薦人，辦事處設於_____。我們茲證明，我們已閱讀_____〔填入董事的姓名〕在B表格第一部份(1)及(2)所作及所述任何文件內作出的回答，我們並不知悉任何資料，足以使一名合理的人士，就如此填報的資料的真實性、完整性及準確性作進一步的查詢。

Executed this _____ day of _____, 20_____, in _____
本證明於20_____年_____月_____日在_____簽立。

(Signed 簽署) _____

- (B) *The following solicitor's certification must be completed whenever this Form is required to be lodged with The Stock Exchange of Hong Kong Limited:-*

按規定須向香港聯合交易所有限公司呈報本表格的，均須填報下列律師證明：

SOLICITOR'S CERTIFICATION 律師證明

We, _____, are a firm of solicitors qualified to advise on Hong Kong law with offices located at _____ We hereby certify that we have explained all applicable requirements and procedures for completing and executing this Form B and the documents referred to in this Form B, and the possible consequences of making any false declaration or giving false information, to _____ [Insert name of director]. Further, we hereby certify that _____ [Insert name of director] has acknowledged to us that he / she understands the foregoing.

我們， _____，為一家有資格就香港法律提供意見的律師行，辦事處設於 _____。我們茲證明，我們已向 _____〔填入董事的姓名〕解釋填報及簽立本 B 表格及本 B 表格所指的文件的所有適用規定和程序，以及作出任何虛假聲明或提供虛假信息所可能引致的後果。此外，我們茲證明 _____〔填入董事的姓名〕已向我們承認其了解上述各項。

Executed this _____ day of _____ 20 _____, in _____
本證明於 20 _____ 年 _____ 月 _____ 日在 _____ 簽立。

(Signed 簽署) _____

- Notes 附註：
- (1) *The failure of any person required to lodge this Form to complete Part 1 of this Form B truthfully, completely and accurately, or the failure to execute Part 2 of this Form or to observe any of the undertakings made under that Part, constitutes a breach of the Listing Rules. In addition, every director of the issuer supplying information sought or referred to in this Form B, should note that such information constitutes information which is provided to the Exchange in purported compliance with a requirement to provide information under the "relevant provisions" (as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance, Cap 571) and is likely to be relied upon by the Exchange. In relation to this, you should be aware that giving to the Exchange any information which is false or misleading in a material particular will render the relevant person liable for prosecution for an offence under section 384 of the Securities and Futures Ordinance. If you have any queries you should consult the Exchange or your professional adviser immediately.*

按規定須呈交本表格的任何人士，若未能真實、完整及準確地填妥本B表格第一部分，或未能簽立本表格第二部分又或未能遵守該部分所作的任何承諾，均構成違反《上市規則》。此外，凡提供本B表格所要求或所述資料的發行人董事均應注意，該等資料構成為遵守「有關條文」（定義見香港法例第571章《證券及期貨條例》附表一第1部）關於提供資料的規定而向本交易所提供的資料，本交易所或會依賴該等資料。就此，閣下應注意，根據《證券及期貨條例》第384條，在要項上向本交易所提供虛假或具誤導性的資料，有關人士即屬犯罪，會遭檢控。若閣下有任何疑問，應立即諮詢本交易所或閣下的專業顧問。

- (2) *To the extent that this form is required to be signed by the sponsor, the Exchange expects that it would usually be signed by the Principal/s who has/have been most actively involved in the work undertaken by the sponsor. However, irrespective of who signs this form on behalf of the sponsor, the Management (as defined in the Commission's Guidelines for Sponsors and Compliance Advisers) of the sponsor will be ultimately responsible for supervision of the work carried out by the sponsor firm and quality assurance in respect of that work. The Exchange reminds sponsors of their obligations to have effective internal systems and controls and proper supervision and oversight including but not limited to those obligations under the Commission's Guidelines for Sponsors and Compliance Advisers.*

就保薦人須按規定簽署本表格而言，本交易所預期通常由最積極參與保薦人工作的主事人簽署。然而，不論是誰代表保薦人簽署本表格，保薦人的【管理人員】（定義見證監會的《適用於保薦人和合規顧問的指引》）將最終負責監察保薦人公司進行的工作及有關工作的質素保證。本交易所提醒保薦人，其有責任設置有效的內部系統及監控以及作適當的監察及監督，其中包括（但不限於）其在證監會的《適用於保薦人和合規顧問的指引》下的責任。

...”

[Draftsman's note: This is a new form entirely. Changes from the current form have not been marked up. This new form does not show the text of the undertakings under Part 2. A marked-up version of the undertakings is set out under the rule amendments relating to Issues 17B and 17C.]

Appendix 5 附錄五

Declaration and Undertaking with regard to Directors of an Issuer incorporated in the People's Republic of China (PRC)

在中華人民共和國（「中國」）註冊成立的發行人的
董事的聲明及承諾

Form H H 表格

Part 1 第一部分 DECLARATION 聲明

	in English 英文	in Chinese 中文
“1. State:- 請填報：		
(a) present surname and any former surname(s)* 現時姓氏及任何前度姓氏 *
(b) alias, if any * 別名，如有 *
(c) present forename(s) and any former forename(s) * 現時名字及任何前度名字
(d) date of birth 出生日期
(e) residential address 住址
(f) nationality and former nationality, if any 國籍及前度國籍，如有
(g) (i) Hong Kong ID card number 香港身份證號碼		

- (ii) in the case of a non-Hong Kong ID cardholder,
 passport number or any identification document
 number and name of issuing authority
 如為非香港身份證持有人，請列明護照號碼或
 任何身份識別文件號碼，以及簽發機構名稱
- (h) name of issuer (i.e. the new applicant / listed issuer)
 發行人（新申請人／上市發行人）名稱

* As set out in the Hong Kong ID card, or any relevant identification document referred to in 1(g) above.
 * 香港身份證或上文 1(g) 所述的任何有關身份識別文件上所示者。

2. The relevant document that sets out my personal details in the manner described in paragraph 41(1) of Appendix 1A or rule 13.51(2), as the case may be, of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited from time to time in force (the “Listing Rules”) is:
 按不時生效的《香港聯合交易所有限公司證券上市規則》（《上市規則》）附錄一 A 第 41(1) 段或第 13.51(2) 條所述方式（視情況而定）載有本人的個人資料的有關文件為：

(Tick as appropriate)
 (請在適當方格內加上√號)

In the case of new applicant:
 如屬新申請人：

- the listing document dated _____ which has been duly registered with the Companies Registry.
 日期為 _____ 並已正式在公司註冊處登記的上市文件。

In the case of listed issuer:
 如屬上市發行人：

- the announcement dated _____ by the issuer as required under Listing Rule 13.51(2) with regards to my appointment / re-designation as a director of the issuer.
 發行人按《上市規則》第 13.51(2) 條的規定，就委任／調任本人為發行人董事的公告（公告日期為 _____ 年 _____ 月 _____ 日）。

Part 2
第二部分

UNDERTAKING
承諾

The particulars referred to in this Part 2 are:-
此第二部分所述的資料為：

- (a) in the exercise of my powers and duties as a director of the issuer I, the undersigned, shall:-
在行使發行人董事的權力及職責時，本人（簽署人）須：

.....

- (f)

I, _____ [Insert Chinese characters, if any]:
本人 _____ [請填上中文姓名（如有）]：

- (a) solemnly and sincerely declare that all particulars about me that appear in Part 1(1) of this Form H and in the document referred to in Part 1(2) of this Form H are true, complete and accurate, that I accept responsibility for the truthfulness, accuracy and completeness of the foregoing particulars, that I have not made any statements or omissions which would render such particulars untrue or misleading, that I understand the possible consequences of giving information which is false or misleading in a material particular including those as set forth in Note 1 hereto, and that I understand that The Stock Exchange of Hong Kong Limited may rely upon the foregoing particulars in assessing my suitability to act as a director of the issuer; and

謹以至誠鄭重聲明，在本H表格第一部分(1)及本H表格第一部分(2)所述文件所示有關本人的所有詳細資料均為真實、完整及準確，且本人對上述資料的真實性、準確性及完整性承擔責任，而本人亦無作出任何聲明或遺漏，致使有關資料不真實或具誤導性，本人亦明白在要項上(包括本表格附註1所載事項)提供虛假或具誤導性的資料可能引致的後果，本人並明白，香港聯合交易所有限公司或會倚賴上述資料來評估本人是否適合出任發行人董事；及

- (b) undertake with The Stock Exchange of Hong Kong Limited in the terms set out in Part 2 of this Form H.
按本 H 表格第二部分所載的條款向香港聯合交易所有限公司作出承諾。

Signature 簽署： _____

Name 姓名： _____

Dated 日期： 20 _____

Certified as the true

Signature of

由以下人士證明為真實簽署： _____

By： _____

Signature 簽署

(Secretary / Director): _____

(秘書 / 董事)

Signature 簽署

(Secretary / Director): _____

(秘書 / 董事)

Part 3
第三部分

(A) *If the issuer is a new applicant or continues to retain a sponsor, the following sponsor's certification must be completed: -*

如發行人為新申請人或會持續聘用保薦人，下列的保薦人證明亦須填報：

SPONSOR'S CERTIFICATION
保薦人證明

We, _____, are the sponsor for the issuer appointed for the purpose referred to in Listing Rule 3A.02 and have offices located at _____. We hereby certify that we have read the particulars provided by [Insert name of director] in and any document referred to in Part 1 (1) and (2) of this Form H and we are not aware of any information that would lead a reasonable person to inquire further concerning the truthfulness, completeness or accuracy of any of the particulars so provided.

我們 _____，乃為《上市規則》第3A.02條所提及的目的而委任的發行人的保薦人，辦事處設於 _____。我們茲證明，我們已閱讀 _____〔填入董事的姓名〕在H表格第一部份(1)及(2)所作及所述任何文件內作出的回答，我們並不知悉任何資料，足以使一名合理的人士，就如此填報的資料的真實性、完整性及準確性作進一步的查詢。

Executed this day _____ of _____, 20 _____, in _____

本證明於20 _____年 _____月 _____日在 _____簽立。

(Signed 簽署) _____

(B) *The following solicitor's certification must be completed whenever this Form is required to be lodged with The Stock Exchange of Hong Kong Limited:-*

按規定須向香港聯合交易所有限公司呈報本表格的，均須填報下列律師證明：

SOLICITOR'S CERTIFICATION
律師證明

We, _____, are a firm of solicitors qualified to advise on Hong Kong law with offices located at _____. We hereby certify that we have all applicable requirements and procedures for completing and executing this Form H or the documents referred to in this Form H, and the possible consequences of making a false declaration or giving false information, to _____ [Insert name of director]. Further, we hereby certify that _____ [Insert name of director] has acknowledged to us that he / she understands the foregoing.

我們， _____，為一家有資格就香港法律提供意見的律師行，辦事處設於 _____。我們茲證明，我們已向 _____〔填入董事的姓名〕解釋填報及簽立本 H 表格及本 H 表格所指的文件的適用規定和程序，以及作出虛假聲明或提供虛假信息所可能引致的後果。此外，我們茲證明 _____〔填入董事的姓名〕已向我們承認其了解上述各項。

Executed this day _____ of _____, 20 _____, in _____
本證明於 20 _____ 年 _____ 月 _____ 日在 _____ 簽立。

(Signed 簽署) _____

Notes 附註： (1) *The failure of any person required to lodge this Form to complete Part 1 of this Form H truthfully, completely and accurately, or the failure to execute Part 2 of this Form H or to observe any of the undertakings made under that Part, constitutes a breach of the Listing Rules. In addition, every director of the issuer supplying information sought or referred to in this Form H, should note that such information constitutes information which is provided to the Exchange in purported compliance with a requirement to provide information under the "relevant provisions" (as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance, Cap 571) and is likely to be relied upon by the Exchange. In relation to this, you should be aware that giving to the Exchange any information which is false or misleading in a material particular will render the relevant person liable for prosecution for an offence under section 384 of the Securities and Futures Ordinance. If you have any queries you should consult the Exchange or your professional adviser immediately.*

按規定須呈交本表格的任何人士，若未能真實、完整及準確地填妥本H表格第一部分，或未能簽立本H表格第二部分又或未能遵守該部分所作的任何承諾，均構成違反《上市規則》。此外，凡提供本H表格所要求或所述資料的發行人董事均應注意，該等資料構成為遵守「有關條文」（定義見香港法例第571章《證券及期貨條例》附表一第1部）關於提供資料的規定而向本交易所提供的資料，本交易所或會依賴該等資料。就此，閣下應注意，根據《證券及期貨條例》第384條，在要項上向本交易所提供虛假或具誤導性的資料，有關人士即屬犯罪，會遭檢控。若閣下有任何疑問，應立即諮詢本交易所或閣下的專業顧問。

- (2) *To the extent that this form is required to be signed by the sponsor, the Exchange expects that it would usually be signed by the Principal/s who has/have been most actively involved in the work undertaken by the sponsor. However, irrespective of who signs this form on behalf of the sponsor, the Management (as defined in the Commission's Guidelines for Sponsors and Compliance Advisers) of the sponsor will be ultimately responsible for supervision of the work carried out by the sponsor firm and quality assurance in respect of that work. The Exchange reminds sponsors of their obligations to have effective internal systems and controls and proper supervision and oversight including but not limited to those obligations under the Commission's Guidelines for Sponsors and Compliance Advisers.*

就保薦人須按規定簽署本表格而言，本交易所預期通常由最積極參與保薦人工作的主事人簽署。然而，不論是誰代表保薦人簽署本表格，保薦人的【管理人員】（定義見證監會的《適用於保薦人和合規顧問的指引》）將最終負責監察保薦人公司進行的工作及有關工作的質素保證。本交易所提醒保薦人，其有責任設置有效的內部系統及監控以及作適當的監察及監督，其中包括（但不限於）其在證監會的《適用於保薦人和合規顧問的指引》下的責任。

...”

[Draftsman’s note: This is a new form entirely. Changes from the current form have not been marked up. This new form does not show the text of the undertakings under Part 2. A marked-up version of the undertakings is set out under the rule amendments relating to Issues 17B and 17C.]

Appendix 5 附錄五

Declaration and Undertaking with regard to Supervisors of an Issuer incorporated in the People’s Republic of China (“PRC”)

在中華人民共和國（「中國」）註冊成立的發行人的
監事的聲明及承諾

Form I I 表格

Part 1 第一部分 DECLARATION 聲明

	in English 英文	in Chinese 中文
“1. State:- 請填報：		
(a) present surname and any former surname(s)* 現時姓氏及任何前度姓氏 *
(b) alias, if any * 別名，如有 *
(c) present forename(s) and any former forename(s) * 現時名字及任何前度名字 *
(d) date of birth 出生日期
(e) residential address 住址
(f) nationality and former nationality, if any 國籍及前度國籍，如有
(g) (i) Hong Kong ID card number 香港身份證號碼
(ii) in the case of a non-Hong Kong ID cardholder, passport number or any identification document number and name of issuing authority 如為非香港身份證持有人，請列明護照號碼或 任何身份識別文件號碼，以及簽發機構名稱

(h) name of issuer (i.e. the new applicant / listed issuer)
 發行人（新申請人／上市發行人）名稱

* As set out in the Hong Kong ID card, or any relevant identification document referred to in 1(g) above.
 * 香港身份證或上文 1(g) 所述的任何有關身份識別文件上所示者。

2. The relevant document that sets out my personal details in the manner described in paragraph 41(1) of Appendix 1A or rule 13.51(2), as the case may be, of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited from time to time in force (the “Listing Rules”) is:
 按不時生效的《香港聯合交易所有限公司證券上市規則》（《上市規則》）附錄一 A 第 41(1) 段或第 13.51(2) 條所述方式（視情況而定）載有本人的個人資料的有關文件：

(Tick as appropriate)
 (請在適當方格內加上√號)

In the case of new applicant:
 如屬新申請人：

the listing document dated _____ which has been duly registered with the Companies Registry.
 日期為 _____ 並已正式在公司註冊處登記的上市文件。

In the case of listed issuer:
 如屬上市發行人：

the announcement dated _____ by the issuer as required under Listing Rule 13.51(2) with regards to my appointment / re-designation as a supervisor of the issuer.
 發行人按《上市規則》第 13.51(2) 條的規定，就委任／調任本人為發行人監事的公告（公告日期為 _____ 年 _____ 月 _____ 日）。

Part 2
第二部分

UNDERTAKING
承諾

The particulars referred to in this Part 2 are:-
此第二部分所述的資料為：

- (a) in the exercise of my powers and duties as a supervisor of the issuer I, the undersigned, shall: ?
在行使發行人監事的權力及職責時，本人（簽署人）須：

.....

- (c)

I, _____ [Insert Chinese characters, if any]:
本人 _____ [請填上中文姓名（如有）]：

- (a) solemnly and sincerely declare that all particulars about me that appear in Part 1(1) of this Form I and in the document referred to in Part 1(2) of this Form I are true, complete and accurate, that I accept responsibility for the truthfulness, accuracy and completeness of the foregoing particulars, that I have not made any statements or omissions which would render such particulars untrue or misleading, that I understand the possible consequences of giving information which is false or misleading in a material particular including those as set forth in Note 1 hereto, and that I understand that The Stock Exchange of Hong Kong Limited may rely upon the foregoing particulars in assessing my suitability to act as a supervisor of the issuer; and

謹以至誠鄭重聲明，在本I表格第一部分(1)及本I表格第一部分(2)所述文件所示有關本人的所有詳細資料均為真實、完整及準確，且本人對上述資料的真實性、準確性及完整性承擔責任，而本人亦無作出任何聲明或遺漏，致使有關資料不真實或具誤導性，本人亦明白在要項上(包括本表格附註1所載事項)提供虛假或具誤導性的資料可能引致的後果，本人並明白，香港聯合交易所有限公司或會倚賴上述資料來評估本人是否適合出任發行人監事；及

- (b) undertake with The Stock Exchange of Hong Kong Limited in the terms set out in Part 2 of this Form I.
按本 I 表格第二部分所載的條款向香港聯合交易所有限公司作出承諾。

Signature 簽署： _____

Name 姓名： _____

Dated 日期： 20 _____

Certified as the true

Signature of

由以下人士證明為真實簽署： _____

By： _____

Signature 簽署

(Secretary / Director)： _____

(秘書 / 董事)

Signature 簽署

(Secretary / Director)： _____

(秘書 / 董事)

- Notes 附註： (1) *The failure of any person required to lodge this Form to complete Part 1 of this Form I truthfully, completely and accurately, or the failure to execute Part 2 of this Form I or to observe any of the undertakings made under that Part, constitutes a breach of the Listing Rules. In addition, every supervisor of the issuer supplying information sought or referred to in this Form I, should note that such information constitutes information which is provided to the Exchange in purported compliance with a requirement to provide information under the “relevant provisions” (as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance, Cap 571) and is likely to be relied upon by the Exchange. In relation to this, you should be aware that giving to the Exchange any information which is false or misleading in a material particular will render the relevant person liable for prosecution for an offence under section 384 of the Securities and Futures Ordinance. If you have any queries you should consult the Exchange or your professional adviser immediately.”*

按規定須呈交本表格的任何人士，若未能真實、完整及準確地填妥本I表格第一部分，或未能簽立本I表格第二部分又或未能遵守該部分所作的任何承諾，均構成違反《上市規則》。此外，凡提供本I表格所要求或所述資料的發行人監事均應注意，該等資料構成為遵守「有關條文」（定義見香港法例第571章《證券及期貨條例》附表一第1部）關於提供資料的規定而向本交易所提供的資料，本交易所或會依賴該等資料。就此，閣下應注意，根據《證券及期貨條例》第384條，在要項上向本交易所提供虛假或具誤導性的資料，有關人士即屬犯罪，會遭檢控。若閣下有任何疑問，應立即諮詢本交易所或閣下的專業顧問。

...

“3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—

...

An independent non-executive director shall submit to the Exchange a written confirmation ~~in respect of the above which must state:~~

- (a) his independence as regards each of the factors concerning his independence referred to in rule 3.13(1) to (8);
- (b) his past or present financial or other interest in the business of the issuer or its subsidiaries or any connection with any connected person (as such term is defined in the Listing Rules) of the issuer, if any; and
- (c) that there are no other factors that may affect his independence at the same time as the submission of his declaration and undertaking in Form B or H of Appendix 5 ~~and.~~

Each independent non-executive director shall inform the Exchange as soon as practicable if there is any subsequent change of circumstances which may affect his independence. ~~Each independent non-executive director~~ and must provide an annual confirmation of his independence to the listed issuer. The listed issuer must confirm in each of its annual reports whether it has received such confirmation and whether it still considers the independent non-executive director to be independent.

Note: The factors set out in rule 3.13 are included for guidance only and are not intended to be exhaustive. The Exchange may take account of other factors relevant to a particular case in assessing independence.”

Rule amendments relating to Question 17.3

Proposed GEM Rule amendments

“Changes

17.50 An issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:—

...

- (2) any changes in its directorate (and, in the case of a PRC issuer, its supervisory committee), and shall procure that each new director or member of its governing body and, in the case of a PRC issuer, supervisor shall sign and lodge with the Exchange ~~no later than 14 business days prior to the proposed~~ as soon as practicable after the date of his appointment a declaration, undertaking and acknowledgement in the relevant form set out in Appendix 6.

Where a new director is appointed or the resignation or re-designation of a director (and, in the case of a PRC issuer, a supervisor) takes effect, the Exchange must be informed immediately thereafter. ~~The Exchange must be informed of any proposed appointment of a director (and, in the case of a PRC issuer, a supervisor) at least 14 business days in advance.~~

The issuer must simultaneously make arrangements to ensure that the appointment, resignation or re-designation of the director (and, in the case of a PRC issuer, the supervisor) is announced as soon as practicable.

The issuer shall include the following details of any newly appointed or re-designated director (and, in the case of a PRC issuer, any newly appointed supervisor) in the announcement of his appointment or re-designation:-

- (a) the full name (which should normally be the same as that stated in his declaration, undertaking and acknowledgement in the form set out in Appendix 6 to the GEM Listing Rules) and age;
- (b) positions held with the issuer and other members of the issuer’s group;
- (c) ~~previous~~ experience including (i) other directorships held ~~in listed public companies~~ in public companies the securities of which are listed on any securities market in Hong Kong or overseas; and (ii) and other major appointments and qualifications;

...

- (x) where there is no information to be disclosed pursuant to any of the requirements of this rule 17.50(2), an appropriate negative statement to that effect.

The issuer shall also disclose in the announcement of resignation of a director (and in the case of a PRC issuer, a supervisor) the reasons given by the director (and in the case of a PRC issuer, the supervisor) for his resignation (including, but not limited to, any information relating to his disagreement with the board, and a statement as to whether or not there are any matters that need to be brought to the attention of holders of securities of the issuer).

The issuer must notify the Exchange and publish an announcement on any important change in the holding of an executive office, including changes to any important functions or executive responsibilities of a director.”

...

Rule amendments relating to *Question 17.4*

Appendix 1

Part A

...

“41. (1) The full name, residential or business address of every director and senior manager or proposed director and senior manager. In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include name, age, positions held with the issuer and other members of the issuer’s group, length of service with the issuer and the group, relevant management expertise and experience including current and past directorships in other listed public companies in the last three years, and such other information of which shareholders should be aware, pertaining to the ability or integrity of such persons. As regards the biographical details in respect of each director, proposed director, supervisor and proposed supervisor, such details must not be less than those required to be disclosed in an announcement relating to the appointment, resignation or re-designation of the director or supervisor pursuant to rule 13.51(2).”

...

Appendix 1

Part C

46. The full name, residential or business address and description (being his qualifications or area of expertise or responsibility) of every director or proposed director (or any such person who performs an important administrative, management or supervisory function) and particulars of the principal functions performed by each of them within the group if significant to the group. In addition, brief biographical details in respect of every director or proposed director (or any person who performs an important administrative, management or supervisory function) must be provided. Such details must not be less than those required to be disclosed in an announcement relating to the appointment, resignation or re-designation of the director pursuant to rule 13.51(2).

...”

Rule amendments relating to Question 17.5

“3A.15 Having made reasonable due diligence inquiries, each sponsor must confirm that it has reasonable grounds to believe and does believe that:

- (1) ~~the answers provided by each director or proposed director of the new applicant in the director’s declaration(s) in the form at Appendix [5B] are true and do not omit any material information;~~~~[Repealed [insert date]]~~

...

- 9.11 The following documents must be lodged with the Exchange for initial review, in the case of (1) to ~~(3)~~(3a) below at the time of submission of Form A1 in accordance with rule 9.03, in the case of (4) to (6) at least 20 clear business days before the expected hearing date, in the case of (7) and (8) at least 15 clear business days before the expected hearing date and in the case of (9) to (15) below, at least 10 clear business days prior to the expected hearing date:—

Together with the Form A1

- (1) in case of a new applicant, six drafts or proofs of the listing document in reasonably advanced state marked in the margin to indicate where the relevant items from Chapter 11 and/or Part A of Appendix 1 and the Companies Ordinance have been met, together with, in respect of each sponsor to the application for listing, an undertaking pursuant to rule 3A.03 in the terms set out in rule 3A.04 and in the form in Appendix 17 and a statement pursuant to rule 3A.08 addressing the matters set out in rule 3A.07 and in the form of Appendix 18, both duly signed on the sponsor’s behalf;

...

(3a) in the case of a new applicant, a written confirmation and undertaking signed by each director/supervisor and proposed director/supervisor to the following effect:

- (a) that the listing document referred to in rule 9.11(1) above contains all information about the biographical details of such director/supervisor or proposed director/supervisor as set out in rule 13.51(2) and that those details are true, accurate and complete;
- (b) in the case of any changes to the biographical details as set out in rule 9.11(3a)(a) above, to inform the Exchange as soon as practicable of such changes; and
- (c) to lodge with the Exchange in accordance with rule 9.16(13) a declaration, in the form set out in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor.

In the case of a listed issuer, the same written confirmation must be submitted if specifically requested by the Exchange.

If the director/supervisor or proposed director/supervisor is appointed after the submission of Form A1, then such director/supervisor or proposed director/supervisor must submit a duly signed written confirmation and undertaking referred to in this sub-rule as soon as he is appointed. The reference to the listing document referred to in rule 9.11(1) above in the confirmation and undertaking shall be read as a reference to the relevant draft listing document that contains the biographical details of such director/supervisor or proposed director/supervisor;

At least 15 clear business days before the expected hearing date

(7) ~~in the case of a new applicant, a formal declaration relating to any other business activities and undertaking, in the form set out in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor. In the case of a listed issuer, the same declaration and undertaking must be submitted if specifically requested by the Exchange; [Repealed [insert date]]~~

...

9.16 As soon as practicable after the issue of the listing document but before dealings commence, the following documents must be lodged with the Exchange as a condition for granting listing approval:—

...

(13) in the case of a new applicant, a written declaration, in the form set out in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor. In the case of a listed issuer, the same declaration must be submitted if specifically requested by the Exchange.

...

19.07 The following modifications apply:—

- (1) in rules 9.09, 9.11~~(7)~~(3a) and 9.12(10) the references to “directors” should be read as references to members of the overseas issuer’s governing body;

...

- (3) the declaration and undertaking to be lodged under rule 9.11~~(7)~~(3a) may require adjustment by virtue of the laws to which the overseas issuer is subject.

...

19.33 The following modifications apply:—

- (1) in rule 9.09, 9.11~~(7)~~(3a) and 9.12(10) the references to “directors” should be read as references to members of the overseas issuer’s governing body;

- (2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 9.14(1)(a) may be signed by two members of the overseas issuer’s governing body or by their agents authorised in writing rather than by or on behalf of every director or proposed director; and

- (3) the declaration and undertaking to be lodged under rule 9.11~~(7)~~(3a) may require adjustment by virtue of the laws to which the overseas issuer is subject.

...

19A.22 In addition to the documentary requirements of rules 9.11 to 9.15, the following documents must be lodged with the Exchange for initial review, in the case of (1) to (4) below at least 20 clear business days prior to the expected hearing date, in the case of (5) below at least 15 clear business days prior to the expected hearing date and in the case of (6) below at least 10 clear business days prior to the expected hearing date:

...

- (5) ~~for the purpose of the declaration and undertaking under rule 9.11(7), a formal declaration relating to any other business activities and undertaking, in the form set out in Form H in Appendix 5 a written confirmation and undertaking pursuant to rule 9.11(3a), duly signed by each director and, proposed director, supervisor and proposed supervisor and in the form set out in Form I in Appendix 5, duly signed by each supervisor and proposed supervisor (or promptly after any supervisor is elected); and...~~

...

24.11 The following documents must be lodged with the Exchange in the case of a new applicant at least three clear business days prior to the date of hearing of the application by the Listing Committee and in the case of a listed issuer at least two clear business days prior to the date on which the listing document is to be bulk print:-

- (2) (a) four copies of the final proof of the listing document, where applicable;

...

- (9) ~~a declaration and undertaking in the form set out in Form B in Appendix 5, duly signed by each director or member of the issuer's governing body or by his agent authorised in writing.~~

a written confirmation and undertaking signed by each director and member of the issuer's governing body to the following effect:

- (a) that the listing document referred to in rule 24.11(2)(a) above contains all information about the biographical details of such director or member of the issuer's governing body as set out in rule 13.51(2) and that those details are true, accurate and complete;
- (b) in the case of any changes to the biographical details as set out in rule 24.11(9)(a) above, to inform the Exchange as soon as practicable of such changes; and
- (c) to lodge with the Exchange in accordance with rule 24.14(9) a declaration, in the form set out in Form B in Appendix 5, duly signed by such director or member of the issuer's governing body.

If the director or the member of the issuer's governing body is appointed after the submission of Form C2, then the director/member of the issuer's governing body must submit a duly signed written confirmation and undertaking referred to in this sub-rule as soon as he is appointed. The reference to the listing document referred to in rule 24.11(2)(a) above in the confirmation and undertaking shall be read as a reference to the relevant draft listing document that contains the biographical details of such director or member of the issuer's governing body;

...

- 24.14 As soon as practicable after the issue of the listing document, the following documents must be lodged with the Exchange as a condition for granting listing approval:—

...

- (9) in the case of a new applicant, a written declaration, in the form set out in Form B in Appendix 5, duly signed by each director/member of the issuer's governing body. In the case of a listed issuer, the same declaration must be submitted if specifically requested by the Exchange.

...

Appendix 5

Formal Application (For Equity Securities)

Form C1

This form, suitably adapted for an issuer which is not a company, must be lodged duly completed, in the case of a new applicant, at least **FOUR CLEAR BUSINESS DAYS** prior to the hearing of the application by the Listing Committee and in every other case, at least **TWO CLEAR BUSINESS DAYS** prior to the date on which the listing document is to be bulk printed.

To: The Head of the Listing Division
The Listing Division,
The Stock Exchange of Hong Kong Limited,

_____ 20_____

Dear Sir,

1. We [_____ [Limited] hereby apply]/[are instructed by _____ [Limited] to make an application] for the listing of and for permission to deal in the securities referred to in paragraph 3 below subject to the listing rules of The Stock Exchange of Hong Kong Limited entitled “Rules Governing the Listing of Securities ” (the “Listing Rules”). (Note 1)

...

11. We undertake to lodge with you ~~a declaration~~ the documents as required by rule 9.16 as appropriate of the Listing Rules in due course, in particular, in the case of a new applicant, to procure each director, proposed director, supervisor and proposed supervisor (in the case of a PRC issuer) to lodge with you as soon as practicable after the listing document is published a duly signed declaration in the form set out in Form B/H/I in Appendix 5. In the case of a listed issuer, the same declaration must be submitted if specifically requested by the Exchange;

...

Appendix 5

Formal Application (For Debt Securities)

Form C2

This form, suitably adapted for an issuer which is not a company, must be lodged duly completed (by reference to the Notes hereto), in the case of a new applicant, at least **THREE CLEAR BUSINESS DAYS** prior to the hearing of the application by the Exchange, and in every other case, at least **TWO CLEAR BUSINESS DAYS** prior to the date on which the listing document is to be bulk printed.

To: The Head of the Listing Division,
The Listing Division
The Stock Exchange of Hong Kong Limited.

_____ 20_____

Dear Sir,

1. We [Limited] hereby apply for the listing of and for permission to deal in the securities referred to in paragraph 3 below subject to the listing rules of The Stock Exchange of Hong Kong Limited entitled “Rules Governing the Listing of Securities” (the “Listing Rules”). (Note 1)

...

10. We undertake to lodge with you ~~a declaration~~ the documents as required by rule ~~24.15~~ 24.14 of the Listing Rules in due course (Note 7), in particular, in the case of a new applicant, to procure each director/member of the issuer’s governing body to lodge with you as soon as practicable after the listing document is published a duly signed declaration in the form set out in Form B in Appendix 5. In the case of a listed issuer, the same declaration must be submitted if specifically requested by the Exchange.

...

Appendix 19

Sponsor's Declaration

To: The Listing Division
The Stock Exchange of Hong Kong Limited

_____ / _____ / _____

We, _____, are a / the [cross out whichever is not applicable] sponsor appointed by _____ (the "Company") for the purpose referred to in rule 3A.02 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules") and have offices located at _____.

Pursuant to rule 3A.13 we declare to The Stock Exchange of Hong Kong Limited (the "Exchange") that:

...

(b) having made reasonable due diligence inquiries, we have reasonable grounds to believe and do believe that:

(i) ~~the answers provided by each director or proposed director of the Company in the director's declaration(s) in the form at Appendix [5B] are true and do not omit any material information;~~[Repealed [insert date]]

..."

Issues 17B and 17C: Information gathering powers of the Exchange and service of disciplinary proceedings on directors

Appendix 5 附錄五

Declaration and Undertaking with regard to Directors 董事的聲明及承諾

Form B B 表格

Part 2 第二部分

UNDERTAKING 承諾

...

「(c) I shall;
本人將：

- (i) provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:
盡快或根據交易所設定的時限內向交易所提供：
 - (1) any information and documents that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market; and
交易所認為可保障投資者或確保市場運作暢順的任何資料及文件；及
 - (2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Listing Rules; and
交易所可為核實遵守《上市規則》事宜而合理要求的任何其他資料及文件或解釋；
及
- (ii) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of The Stock Exchange of Hong Kong Limited, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear ;
在香港聯合交易所有限公司上市科及 / 或上市委員會所進行的任何調查中給予合作，包括及時及坦白地答覆向本人提出的任何問題，及時地提供任何有關文件的正本或副本，並出席本人被要求出席的任何會議或聽證會；

(d) ...

- (e) ~~I shall provide to The Stock Exchange of Hong Kong Limited, immediately upon my resignation as a director of the issuer, my up-to-date contact information, including my address for correspondence from the service of notices and other documents by The Stock Exchange of Hong Kong Limited and telephone number; and I shall, for so long as I remain a director of the issuer and for a further period of 3 years from the date on which I cease to be a director of the issuer, inform The Stock Exchange of Hong Kong Limited, by notice in writing to the Head of the Listing Division, of any change to my contact address for correspondence from and service of notices and other documents by The Stock Exchange of Hong Kong Limited as soon as reasonably practicable and in any event within 28 days of such change. I acknowledge and agree that a document or notice, for whatever purposes, including but not limited to the service of notice of disciplinary proceedings, shall be deemed to have been validly and adequately served on me by The Stock Exchange of Hong Kong Limited when the document or notice is served personally on me or is sent by post or facsimile to the address I provide to The Stock Exchange of Hong Kong Limited. I agree and acknowledge that I am responsible for keeping The Stock Exchange of Hong Kong Limited informed of my up-to-date contact address. I acknowledge that, if I fail to provide The Stock Exchange of Hong Kong Limited with my up-to-date contact address or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by The Stock Exchange of Hong Kong Limited ;~~

本人將在辭去發行人董事職務後，立即向香港聯合交易所有限公司提供本人最新的聯絡資料，包括供本人接收香港聯合交易所有限公司發出的書信、送達的通知書及其他文件的地址和電話號碼；以及在本人出任發行人董事期間以至辭去發行人董事職務之日起計三年內，若本人用以接收香港聯合交易所有限公司發出的書信、送達的通知書及其他文件的聯絡地址有任何變動，本人將會在合理可行的情況下盡快及在任何情況下於有關變動出現後28日內，向上市科總監發出書面通知，知會香港聯合交易所有限公司有關變動。本人確認及同意，若有任何文件或通知(不論其目的，包括(但不限於)送達紀律程序的通知)面交本人，或以郵寄或傳真方式送達本人向香港

聯合交易所有限公司提供的地址，該文件或通知即被視為香港聯合交易所有限公司已有效及充分地送達本人。本人同意及確認，本人有責任向香港聯合交易所有限公司提供本人最新的聯絡地址。本人確認，若本人未能向香港聯合交易所有限公司提供本人最新的聯絡地址，或未有為送呈本人的通知、文件或書信提供轉送安排，本人或會不知悉香港聯合交易所有限公司向本人展開的任何程序。

- (f) I hereby give my authority to the Head of the Listing Division of The Stock Exchange of Hong Kong Limited, or to any person authorised by him, to disclose any of the foregoing particulars given by me to members of the Listing Committee and, with the approval of the Chairman or a Deputy Chairman of The Stock Exchange of Hong Kong Limited, to such other persons, as the said Head of the Listing Division may from time to time think fit; and

本人茲授權香港聯合交易所有限公司上市科總監、或其授權的任何人士，將本人提供的上述資料向上市委員會委員披露；並在香港聯合交易所有限公司主席或一位副主席批准的情況下，向上市科總監不時認為適當的其他人士披露~~一~~；及

- (g) In so far as this Undertaking is amended by The Stock Exchange of Hong Kong Limited, I agree and acknowledge that I shall be deemed to have made a further undertaking with the amended terms as and when the amendment is made.

若香港聯合交易所有限公司修訂此份承諾書，本人同意及確認，本人將被視為於作出有關修訂後按修訂後的條款另行作出承諾。」

Appendix 5 附錄五

Declaration and Undertaking with regard to Directors of an Issuer incorporated in the People's Republic of China ("PRC") 在中華人民共和國（「中國」）註冊成立的發行人的董事的聲明及承諾

Form H H 表格

Part 2 第二部分

UNDERTAKING 承諾

「(b) I shall:
本人將：

- (i) provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:
盡快或根據交易所設定的時限向交易所提供：
1. any information and documents that the Exchange considers appropriate to protect investors or ensure the smooth operation of the market; and
交易所認為可保障投資者或確保市場運作暢順的任何資料及文件；及
 2. any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Listing Rules; and
交易所可為核實遵守《上市規則》事宜而合理要求的任何其他資料及文件或解釋；
及
- (ii) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of The Stock Exchange of Hong Kong Limited, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear；
將在香港聯合交易所有限公司上市科及／或上市委員會所進行的任何調查中給予合作，包括及時及坦白地答覆向本人提出的任何問題，及時地提供任何有關文件的正本或副本，並出席任何本人被要求出席的會議或聽證會；

(c) ...
...

(d) I shall provide to The Stock Exchange of Hong Kong Limited, immediately upon my resignation as a director of the issuer, my up-to-date contact information, including my address for correspondence from the service of notices and other documents by The Stock Exchange of Hong Kong Limited and telephone number; and I shall, for so long as I remain a director of the issuer and for a further period of 3 years from the date on which I cease to be a director of the issuer, inform The Stock Exchange of Hong Kong Limited, by notice in writing to the Head of the Listing Division, of any change to my contact address for correspondence from and service of notices and other documents by The Stock Exchange of Hong Kong Limited as soon as reasonably practicable and in any event within 28 days of such change. I acknowledge and agree that a document or notice, for whatever purposes, including but not limited to the service of notice of disciplinary proceedings, shall be deemed to have been validly and adequately served on me by The Stock Exchange of Hong Kong Limited when the document or notice is served personally on me or is sent by post or facsimile to the address I provide to The Stock Exchange of Hong Kong Limited. I agree and acknowledge that I am responsible for keeping The Stock Exchange of Hong Kong Limited informed of my up-to-date contact address. I acknowledge that, if I fail to provide The Stock Exchange of Hong Kong Limited with my up-to-date contact address or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by The Stock Exchange of Hong Kong Limited;

本人將在辭去發行人董事職務後，立即向香港聯合交易所有限公司提供本人最新的聯絡資料，包括供本人接收香港聯合交易所有限公司發出的書信、送達的通知書及其他文件的地址和電話號碼；以及在本人出任發行人董事期間以至辭去發行人董事職務之日起計三年內，若本人用以接收香港聯合交易所有限公司發出的書信、送達的通知書及其他文件的聯絡地址有任何變動，本人將會在合理可行的情況下盡快及在任何情況下於有關變動出現後28日內，向上市科總監發出書面通知，知會香港聯合交易所有限公司有關變動。本人確認及同意，若有任何文件或通知(不論其目的，包括(但不限於)送達紀律程序的通知) 面交本人，或以郵寄或傳真方式送達本人向香港聯合交易所有限公司提供的地址，該文件或通知即被視為香港聯合交易所有限公司已有效及充分地送達本人。本人同意及確認，本人有責任向香港聯合交易所有限公司提供本人最新的聯絡地址。本人確認，若本人未能向香港聯合交易所有限公司提供本人最新的聯絡地址，或未有為送呈本人的通知、文件或書信提供轉送安排，本人可能會未能獲得通知有關香港聯合交易所有限公司向本人展開的任何程序。

(e) I hereby give my authority to the Head of the Listing Division of The Stock Exchange of Hong Kong Limited, or to any person authorised by him, to disclose any of the foregoing particulars given by me to members of the Listing Committee and, with the approval of the Chairman or a Deputy Chairman of The Stock Exchange of Hong Kong Limited, to such other persons, as the said Head of the Listing Division may from time to time think fit; and

本人茲授權香港聯合交易所有限公司上市科總監、或其授權的任何人士，將本人提供的上述資料向上市委員會委員披露；並在香港聯合交易所有限公司主席或一位副主席批准的情況下，向上市科總監不時認為適當的其他人士披露；及

(f) in so far as this Undertaking is amended by The Stock Exchange of Hong Kong Limited, I agree and acknowledge that I shall be deemed to have made a further undertaking with the amended terms as and when the amendment is made.

若香港聯合交易所有限公司修訂此份承諾，本人同意及確認，本人將被視為於作出有關修訂後按修訂後的條款另行作出承諾。

...”

...」

APPENDIX 18 DRAFT RULE AMENDMENTS REGARDING ISSUE 18

(Set out below are the proposed Main Board amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

“Interpretation

7. For the purpose of this code:

-

- (d) notwithstanding the definition of “dealing” in paragraph (a) above, the following dealings are not subject to the provisions of this code:

...

(vi) dealing where the beneficial interest or interests in the relevant security of the listed issuer do not change;

(vii) a director shareholder who places out his existing shares in a “top-up” placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out; and

(viii) bona fide gifts to a director by a third party.

RULES

A. Absolute prohibition

1. A director must not deal in any of the securities of the listed issuer at any time when he is in possession of unpublished price sensitive information in relation to those securities, or where clearance to deal is not otherwise conferred upon him under rule B.8 of this code.

Note: “Price sensitive information” means information described in rule 13.09(1) and the notes thereunder. In the context of this code, rule 13.09(1)(c) and its note 11 are of particular relevance.

2. ...

3. During the period commencing ~~from one month immediately preceding the earlier of:~~

~~(a) the end of year, half-year, quarterly or any other interim period (whether or not required under the Exchange Listing Rules); and~~

~~(b) the deadline for the listed issuer to publish an announcement of its results for any year or half-year under the Exchange Listing Rules, or quarterly or any other interim period (whether or not required under the Exchange Listing Rules);~~

and ending on the date of the results announcement, a director must not deal in any securities of the listed issuer unless the circumstances are exceptional, for example, where a pressing personal financial commitment has been met as described in section C below. In any event, he must comply with the procedure in rules B.8 and B.9 of this code.

B. Notification

A director must not deal in any securities of the listed issuer without first notifying in writing the chairman or a director (otherwise than himself) designated by the board for the specific purpose and receiving a dated written acknowledgement. In his own case, the chairman must first notify the board at a board meeting, or alternatively notify a director (otherwise than himself) designated by the board for the purpose and receive a dated written acknowledgement before dealing. The designated director must not deal in any securities of the listed issuer without first notifying the chairman and receiving a dated written acknowledgement. In each case,

- (i) a response to a request for clearance to deal must be given to the relevant director within five business days of the request being made; and
- (ii) a director who is given clearance to deal in accordance with (i) above must deal as soon as possible and in any event within five business days of clearance being received.

Note: For the avoidance of doubt, the restriction under A.1 of this code applies in the event that price sensitive information develops following the grant of clearance.

APPENDIX 19 DRAFT MINOR RULE AMENDMENTS

Proposed Main Board Rule amendments

“2.07 (1) The procedures regarding the delivery of information and documents under the Exchange Listing Rules shall be determined by the Exchange from time to time and promulgated by way of a practice note to the Exchange Listing Rules.

Note: See Practice Note 1

(1A) Where the Exchange Listing Rules require a certain number of copies of a document to be sent or submitted to the Exchange, the Exchange may require the issuer to provide the Exchange with such lesser or greater number of such copies as the Exchange may reasonably determine.

...

2.07C (4) (a) Electronic copies of announcements or notices must not be submitted to the Exchange between 9:00 a.m. and 4:30 p.m. ~~4:15 p.m.~~ on a normal business day, or between 9:00 a.m. and 1:00 p.m. on the eves of Christmas, New Year and the Lunar New Year when there is no afternoon session, for publication on the Exchange’s website, other than:

...

...

(c) Subject to rule 2.07C(~~54~~)(d), where a document is required to be published in both the English and Chinese language, the issuer must submit the ready-to-publish electronic copy of both the English and Chinese versions of that document together to the Exchange for publication on the Exchange’s website.

...

9.14 In the case of a new applicant, as soon as practicable after the hearing of the application by the Listing Committee but on or before the date of issue of the listing document and, in the case of a listed issuer, on or before the date of issue of the listing document, the following documents must be supplied to the Exchange:—

...

- (1) (a) in the case of a new applicant, four copies and, in the case of a listed issuer, two copies of each of the English language version and the Chinese language version of the listing document and relevant application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought. Of these, one copy~~four copies~~ of the listing document ~~one of which~~ must be dated and signed by every person who is named therein as a director or proposed director of the issuer or by his agent authorised in writing and by the secretary or, in the case of a capitalisation issue, one copy of the listing document~~which has been~~ must be dated and signed by the secretary;
- (b) ~~four copies~~one copy of the formal notice, where applicable;
- (c) ~~four copies of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought~~[Repealed, [insert date]]; and

- (d) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

...

- (4) ~~in the case of an offer for subscription or offer for sale, 25 copies of each of the English language version and the Chinese language version of the listing document and relative application form~~[Repealed, *[insert date]*];
- (5) ~~in any other case, 25 copies of each of the English language version and the Chinese language version of the listing document and relative application form (including any excess application form)~~[Repealed, *[insert date]*];

...

10.05 ~~Subject to the provisions of the Code on Share Repurchases, a~~An issuer may purchase its shares on the Exchange or on another stock exchange recognised for this purpose by the Commission and the Exchange; ~~under the exemption from the general offer rule contained in Rule 2 of the Code on Share Repurchases.~~ All such purchases must be made in accordance with rule 10.06. Rules 10.06(1), 10.06(2)(f) and 10.06(3) apply only to issuers whose primary listing is on the Exchange while the rest of rule 10.06(2) and rules 10.06(4), (5) and (6) apply to all issuers. The Code on Share Repurchases must be complied with by an issuer and its directors and any breach thereof by an issuer will be a deemed breach of the Exchange Listing Rules and the Exchange may in its absolute discretion take such action to penalise any breach of this paragraph or the listing agreement as it shall think appropriate. It is for the issuer to satisfy itself that a proposed purchase of shares does not contravene ~~falls within the exemption provided in Rule 2 of the Code on Share Repurchases.~~

...

11A.03 The Commission's functions under sections 38B(2A) (b), 398D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap.32), to the extent that they relate to any prospectus which is concerned with any shares or debentures of a company that have been approved for listing on the Exchange, and the power to charge and retain the fees which would have been payable to the Commission in respect of any such prospectus under the Commission's fees rules, have been transferred to the Exchange by order of the Chief Executive in Council pursuant to section 25 of the Securities and Futures Ordinance (the "Transfer Order").

...

11A.09 Every issuer must notify the Exchange's ~~Prospectus Vetting Unit~~ at least 14 days in advance of the date on which it is proposed to register a prospectus. The ~~Prospectus Vetting Unit~~ Exchange may promulgate from time to time procedures to be followed in the submission of prospectuses for vetting.

...

12.11 All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public:

- (1) in electronic format on CD ROM (together with the ~~relative~~relevant application form in electronic format on the same CD ROM); ~~and/or~~
- (2) ~~in electronic format through publication of the listing document (together with the relative application form) on the new applicant's own website on a continuous basis for at least 5 years from the date of first publication;~~

provided always that, where the new applicant has made additional copies available in electronic format on CD ROM pursuant to either or both of the methods permitted under (1) and (2) above, the new applicant must ensure that:

- (a) the CD ROM ~~and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form are made available~~ include(s):
 - (i) a confirmation that the contents of the listing document and ~~relative~~relevant application form in electronic format are identical with the contents of the listing document and application form in printed form; and
 - (ii) a confirmation that the listing document and ~~relative~~relevant application form are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s) permitted under (1) and (2) above as was/were used when the main or first listing document was published) on CD ROM~~ and the new applicant must also comply with the requirements of (a) above with all references to "listing document" and "application form" being construed as references to the supplemental listing document or subsequent amendment to the listing document and the ~~relative~~relevant application form.

...

13.37 An issuer shall ensure that notice of every annual general meeting is published in accordance with rule 2.07C ~~on the same day as it is otherwise given to those entitled to receive the same~~ (see also rules 13.71 to 13.73). Where it is published in the newspapers, whether pursuant to rule 2.07C or otherwise, such notice must be of a size of not less than 8 centimetres by 10 centimetres (three inches by four inches approximately).

...

13.39 ...

- (3) If the Chairman of the meeting and/or the directors individually or collectively hold proxies in respect of shares holding 5% or more of the total voting rights at a particular meeting, and if on a show of hands a meeting votes in the opposite manner to that instructed in those proxies, the Chairman and/or the directors and the Chairman holding proxies as aforesaid collectively shall demand a poll; provided that if it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands, ~~(because the votes represented by those proxies exceed 50%, 75% or any other relevant percentage, as the case may be, of the total issued share entitled to vote on the resolution in question,)~~ then the directors and/or the Chairman shall not be required to demand a poll.

...

13.45 An issuer shall inform the Exchange immediately after approval by or on behalf of the board of:—

- (1) any decision to declare, recommend or pay any dividend or to make any other distribution on its listed securities and the rate and amount thereof;
- (2) any decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
- (3) any preliminary announcement of profits or losses for any year, half-year or other period;

Notes: 1. *The timing of board meetings is a matter for the convenience and judgement of individual boards, but announcements regarding decisions on dividends and results should be published either between 12:30 and 1:30 p.m. or after the market closes at 4:30 p.m. on a normal business day. On the eves of Christmas, New Year and the Lunar New Year when there is no afternoon trading session, the announcements should be published after the market closes at 1:00 p.m. at 4:15 p.m. in accordance with rule 2.07C. The directors are reminded that it is their direct responsibility to ensure that such information is kept strictly confidential until the announcement is so published. By following this procedure, an issuer will have taken appropriate steps to ensure that no dealings take place in which one party is in possession of information of which the other is not. Each transaction in the market will thus take place in the light of all information from the moment that such information is released to the market.*

...

13.46 (1)(b) Notes: ...

4. *An issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the directors' report, annual accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to holders of the issuer's listed securities with registered addresses in Hong Kong (see rule 13.54).*

...

13.46 (2)(c) Notes: ...

3. *An issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the annual report and accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to holders of the issuer's listed securities with registered addresses in Hong Kong (see rule 13.54).*

...

13.48 (3) The issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the interim report and, where applicable, its summary interim report to the Exchange at the same time as it is sent to the holders of the issuer's listed securities with registered addresses in Hong Kong.

Note: See rule 13.54.

...

13.54 An issuer (other than authorised Collective Investment Schemes) shall forward to the Exchange:—

- (1) at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong, 25 copies of each of the English language version and the Chinese language version of the following documents in the following numbers:
 - (a) all circulars to holders of securities, 2 copies;
 - (b) its annual report and accounts and, where applicable, its summary financial report, 1 copy; and
 - (c) the interim report and, where applicable, its summary interim report, 1 copy;

~~at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong;~~

...

- (2) ~~seven~~ copies of documents relating to takeovers, mergers and offers, notices of meetings, forms of proxy, notices by advertisement to holders of its bearer securities, reports, announcements or other similar documents at the same time as they are issued in the following numbers:
- (a) in the case of a document which is in the nature of an announcement or notice, 1 copy;
 - (b) in the case of a document which is in the nature of a circular or listing document, 2 copies;
 - (c) in the case of a document which is in the nature of a financial report, 1 copy; and
 - (d) in any other case, such number as the Exchange may from time to time request; and
- (3) ~~eight~~ one certified copy of all resolutions of the issuer including resolutions concerning any of the matters set out in rule 13.36, other than resolutions concerning any other routine business at an annual general meeting, within 15 days after they are passed.

...

...

13.73 In addition to any direction of the court, the issuer shall ensure that notice of every meeting of its shareholders or its creditors concerning the issuer (e.g. for winding up petitions, schemes of arrangement or capital reduction) is published ~~by way of an announcement~~ in accordance with rule 2.07C ~~on the same day as it is given to those entitled to receive it. ...~~

...

14.35 For a share transaction, the announcement must contain the information set out in rules 14.58 and 14.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 14.58 and 14.60. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 13.54, the listed issuer must forward to the Exchange ~~seven copies~~ one copy of the announcement, as cleared by the Exchange, at the same time as it is issued.

...

14.79 If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. ~~7-c~~ Copies of the final documents issued must be supplied to the Exchange at the time of issue in the following numbers:

- (1) in the case of a document which is in the nature of an announcement or notice, 1 copy;
- (2) in the case of a document which is in the nature of a circular or listing document, 2 copies;
- (3) in the case of a document which is in the nature of a financial report, 1 copy; and
- (4) in any other case, such number as the Exchange may from time to time request.

...

14A.34 A continuing connected transaction on normal commercial terms where:

- (1) each of the percentage ratios (other than the profits ratio) is on an annual basis less than 2.5%; or
- (2) each of the percentage ratios (other than the profits ratio) is on an annual basis equal to or more than 2.5% but less than 25% and the annual consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in rules 14A.45 to 14A.47 and the requirements set out at paragraphs (1) to (2) of rule 14A.35. It ~~and~~ is exempt from the independent shareholders' approval requirements of this Chapter.

...

14A.47 (2) *Notes: 1. Pursuant to rule 13.54(2), the listed issuer must forward to the Exchange ~~7 copies~~ 1 copy of such announcement as cleared by the Exchange at the same time as it is issued.*

...

15A.21 In addition to the continuing obligations as set out in the Listing Agreement in Part H of Appendix 7 (subject to such modifications as shall be agreed to by the Exchange in accordance with rule 15A.26) an issuer shall, whilst any structured products issued by it are listed on the Exchange:–

- (1) deliver to the Exchange:–
 - (a) as soon as practicable after the date of its publication but, in any event, not later than four months after the date to which they relate, ~~ten copies~~ one copy of the issuer's and, where appropriate, the guarantor's annual report including its annual accounts and, where group accounts are prepared, its group accounts, together with the auditor's report thereon,
...
 - (c) as soon as practicable after the date of its publication or preparation but, in any event, not later than four months after the period to which it relates ~~ten copies~~ one copy of its interim financial report in respect of the first six months of its financial year,
 - (d) where published, as soon as practicable after the date of its publication ~~ten copies~~ one copy of its quarterly interim financial report, and

...

15A.56 A listing of structured products pursuant to this Chapter must be supported by a listing document. An issuer may use a base listing document supported by a supplemental listing document (see rules 15A.68 to 15A.70) or a “stand alone” listing document.

- (1) An issuer using a base listing document may be restricted from launching structured products until the base document has been finalised. ~~Twenty five copies~~ One copy of the English language version and the Chinese language version of the base listing document, ~~one of which~~ must be dated and signed by a duly authorised officer of the issuer, must be supplied to the Exchange. If the base listing document is signed by an agent or attorney, a certified copy of the authorisation for such signature should be provided to the Exchange. A soft copy of the English language version and the Chinese language version of the base listing document must also be provided to the Exchange.

...

15A.61 ~~Seven copies~~ One copy of any published launch announcement (for both English and Chinese version) under rules 15A.58 and 15A.60 must be submitted to the Exchange as soon as possible after publication.

...

15A.64 The following documents must be supplied to the Exchange as soon as practicable after the launch of the structured product but before the listing of the structured product:–

...

- (3) ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the supplemental or stand alone listing document to be supplied to the Exchange. A soft copy of these documents should also be provided to the Exchange;

...

15A.76 Any base listing document in respect of structured product issues, or any supplemental listing document in respect of a specific structured product, that is a prospectus must be registered under the Companies Ordinance. The procedures for registration are set out in Chapter 11A and Rule 9.15. The requirement to notify the Exchange's ~~Prospectus Vetting Unit~~ at least 14 days in advance of the date on which it is proposed to register a prospectus, set out in Rule 11A.09 will not apply in the cases of supplemental listing documents.

...

20.16 As soon as practicable after approval of the listing application by the Exchange but on or before the date of issue of the listing document, the following documents must be supplied to the Exchange:

- (1) in the case of a new applicant, four copies and, in the case of a listed issuer, two ~~four~~ copies of the listing document, one of which must be dated and signed by every person who is a director or officer of the governing body of the CIS or the functional equivalent in discharging the officer's duties or by his agent authorised in writing and by or on behalf of the CIS Operator and the custodian or the trustee or its functional equivalent;
- (2) in the case of a new applicant, four copies and, in the case of a listed issuer, two ~~four~~ copies of any application form to subscribe or purchase the CIS interests for which listing is sought; and
- (3) where any document referred to in (1) above is signed by an agent, a certified copy of the authorisation for such signature.

...

20.19A All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public:

- (1) ~~in electronic format on CD ROM (together with the relative~~ relevant application form in electronic format on the same CD ROM); ~~and/or~~
- (2) ~~in electronic format through publication of the listing document (together with the relative application form) on the new applicant's own website on a continuous basis for at least 5 years from the date of first publication;~~

provided always that, where the new applicant has made additional copies available in electronic format on CD ROM pursuant to either or both of the methods permitted under (1) and (2) above, the new applicant must ensure that:

- (a) the CD ROM ~~and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form are made available~~ include(s):
- (i) a confirmation that the contents of the listing document and ~~relative~~relevant application form in electronic format are identical with the contents of the listing document and application form in printed form; and
 - (ii) a confirmation that the listing document and ~~relative~~relevant application form are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s) permitted under (1) and (2) above as was/were used when the main or first listing document was published) on CD ROM~~ and the new applicant must also comply with the requirements of (a) above with all references to “listing document” and “application form” being construed as references to the supplemental listing document or subsequent amendment to the listing document and the ~~relative~~relevant application form.

...

24.13 In the case of a new applicant, as soon as practicable after the hearing of the application by the Listing Committee but on or before the date of issue of the listing document and, in the case of a listed issuer, on or before the date of issue of the listing document, the following documents must be supplied to the Exchange:—

- (1) (a) one copy of each of the English language version and the Chinese language version of the listing document and relevant application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought. The copy ~~four copies~~ of the listing document, ~~one of which~~ must be dated and signed by every person who is named therein as a director or proposed director of the issuer and any guarantor or by his agent authorised in writing, or, where the issuer is a State or a Supranational, by a duly authorised official of the issuer or by his agent duly authorised in writing;
- (b) ~~four copies~~one copy of the formal notice, where applicable;
- (c) ~~four copies of any application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought~~[Repealed, *insert date*]; and
- (d) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

...

- (4) ~~25 copies of each of the English language version and the Chinese language version of the listing document and relative application form (including any excess application form)~~[Repealed, *insert date*].

...

25.19A All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public:

- (1) in electronic format on CD ROM (together with the relative~~relevant~~ application form (if any) in electronic format on the same CD ROM); ~~and/or~~
- (2) ~~in electronic format through publication of the listing document (together with the relative application form (if any)) on the new applicant's own website on a continuous basis for at least 5 years from the date of first publication;~~

provided always that, where the new applicant has made additional copies available in electronic format on CD ROM pursuant to either or both of the methods permitted under (1) and (2) above, the new applicant must ensure that:

- (a) the CD ROM ~~and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form (if any) are made available~~ include(s):
 - (i) a confirmation that the contents of the listing document and relative~~relevant~~ application form (if any) in electronic format are identical with the contents of the listing document and application form (if any) in printed form; and
 - (ii) a confirmation that the listing document and relative~~relevant~~ application form (if any) are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s) permitted under (1) and (2) above as was/were used when the main or first listing document was published)~~ on CD ROM and the new applicant must also comply with the requirements of (a) above with all references to "listing document" and "application form" being construed as references to the supplemental listing document or subsequent amendment to the listing document and the relative~~relevant~~ application form (if any).

...

37.26 The following documents must be supplied to the Exchange:—

- (1) in the case of a new applicant, as soon as practicable after the hearing of the application by the Listing Committee but on or before the date of issue of the listing document and, in the case of a listed issuer, on or before the date of issue of the listing document (or such other date as the Exchange may agree):—
 - (a) (i) one copy of each of the English language version and the Chinese language version (if any) fifteen copies of the listing document, ~~one of~~ which must be dated and signed by a duly authorised officer of the issuer or the guarantor, in the case of a guaranteed issue, or by 2 members of an issuer's governing body in the case of an overseas issuer or by their agents authorised in writing, or, where the issuer is a State or a Supranational, by a duly authorised official of the issuer or by his agent duly authorised in writing;
 - (ii) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

...

(d) ~~25 copies of each of the English language version and the Chinese language version (if any) of the listing document to be supplied to the Exchange [Repealed *[insert date]*]; and~~

(2) ~~two copies~~ one copy of the formal notice before the date that permission to deal has become effective.

...

37.31 (3) All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available:

(a) in electronic format on CD ROM; ~~and/or~~

(b) ~~in electronic format through publication of the listing document on the new applicant's own website on a continuous basis for at least 5 years from the date of first publication;~~

provided always that, where the new applicant has made additional copies available in electronic format on CD ROM pursuant to either or both of the methods permitted under (a) and (b) above, the new applicant must ensure that:

(i) the CD ROM ~~and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document is made available~~ include(s):

(aa) a confirmation that the contents of the listing document in electronic format are identical with the contents of the listing document in printed form; and

(bb) a confirmation that the listing document is also available in printed form and addresses of the locations where it is available; and

(ii) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s) permitted under (a) and (b) above as was/were used when the main or first listing document was published)~~ on CD ROM and the new applicant must also comply with the requirements of (i) above with all references to "listing document" being construed as references to the supplemental listing document or subsequent amendment to the listing document.

Practice Note 8

1. Definitions

...

In this Practice Note, the following terms, save where the context otherwise requires, have the following meanings:

“~~Broker Participant~~” means a Participant ~~admitted to~~ participant in CCASS as a ~~Broker Participant~~;

...

3. The Exchange's New Requirements

- (1) As from the date when a security issued by a listed issuer has been designated by the HKSCC as eligible for deposit and settlement in CCASS:
- (a) an issuer incorporated or otherwise established in Hong Kong, outside Hong Kong or the PRC (other than authorised Collective Investment Schemes) shall forward to each Participant, ~~other than a Broker Participant~~, regardless of whether the Participant is a member of the issuer...
 - (b) ...

Note: HKSCC will provide listed issuers with up to date lists of Participants ~~other than Broker Participants~~.

...

Appendix 5 Declaration and Undertaking with regard to Directors Form B

NOTES:

- (1) Every person required to lodge this Form with The Stock Exchange of Hong Kong Limited must complete Part 1 and Part 2 herein. Part 3(A) need be completed only if the issuer is a new applicant ~~or continues to retain a sponsor~~. Part 3(B) must be completed whenever this Form is required.

...

Part 3

- (A) If the issuer is a new applicant ~~or continues to retain a sponsor~~, the following sponsor's certification must be completed:-

...

Appendix 5 Formal Application (For Equity Securities) Form C1

This form, ~~suitably adapted for an issuer which is not a company~~, must be lodged duly completed, in the case of a new applicant, at least FOUR CLEAR BUSINESS DAYS prior to the hearing of the application by the Listing Committee and in every other case, at least TWO CLEAR BUSINESS DAYS prior to the date on which the listing document is to be bulk printed. An issuer which is not a company should adapt this form as necessary to change references that apply only to companies.

...

**Appendix 5
Formal Application
(For Debt Securities)
Form C2**

This form, ~~suitably adapted for an issuer which is not a company~~, must be lodged duly completed (by reference to the Notes hereto), in the case of a new applicant, at least THREE CLEAR BUSINESS DAYS prior to the hearing of the application by the Exchange, and in every other case, at least TWO CLEAR BUSINESS DAYS prior to the date on which the listing document is to be bulk printed. An issuer which is not a company should adapt this form as necessary to change references that apply only to companies.

...

**Appendix 5
Formal Application
(For Collective Investment Schemes)
Form C3**

This form, ~~suitably adapted for an issuer which may or may not be a company~~, must be lodged duly completed at least FIVE CLEAR BUSINESS DAYS, unless otherwise agreed by the Exchange, prior to the date on which it is expected that the Exchange will consider approving the listing of the CIS. An issuer which is not a company should adapt this form as necessary to change references that apply only to companies.

...

**Appendix 5
Form of Share Buyback Report to The Stock Exchange
of Hong Kong Limited (“the Exchange”)
Form G**

...

By Fax/Hand

...

~~Yours faithfully,~~

Signed

Name:

~~Director, Secretary or other duly
authorised officer~~

~~for and on behalf of~~

~~[Issuer’s name]~~

Submitted by:

Name:

Title:

[Director, Secretary or other duly
authorised officer for and on behalf of
the Company]

Appendix 5
Declaration and Undertaking with regard
to Directors of an Issuer incorporated in
the People's Republic of China ("PRC")
Form H

NOTES:

- (1) Every person required to lodge this Form with The Stock Exchange of Hong Kong Limited must complete Part 1 and Part 2 herein. Part 3(A) need be completed only if the issuer is a new applicant ~~or continues to retain a sponsor~~. Part 3(B) must be completed whenever this Form is required.

...

Part 3

- (A) If the issuer is a new applicant ~~or continues to retain a sponsor~~, the following sponsor's certification must be completed:-

SPONSOR'S CERTIFICATION

We, are the sponsor for the issuer appointed for the purpose referred to in Rule ~~3.04~~3A.02 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and have offices located at We hereby certify that we have read the answers provided by [Insert name of director/declarant] in Part 1 of this Form H and we are not aware of any information that would lead a reasonable person to inquire further concerning the truthfulness, completeness or accuracy of any of the answers so provided.

Appendix 7
Part C

Note 7.4 *The Issuer must send ~~25 copies~~1 copy of each of the English language version and the Chinese language version of the directors' report, annual accounts and, where applicable, its summary financial report to the Exchange at the same time as they are sent to the holders of the Issuer's listed debt securities with registered addresses in Hong Kong (see paragraph 18).*

Note 8.5 *The Issuer must send ~~25 copies~~1 copy of each of the English language version and the Chinese language version of the annual report, accounts and, where applicable, the summary financial report to the Exchange at the address set out in Note 2.5 at the same time as they are sent to the holders of the Issuer's listed debt securities with registered addresses in Hong Kong (see paragraph 18).*

18. The Issuer shall forward to the Exchange:—

- (1) ~~25 copies~~1 copy of each of the English language version and the Chinese language version of:—
- (a) all circulars to holders of its listed debt securities at the same time as they are issued;
 - (b) the annual report and accounts, and where applicable, its summary financial report, at the same time as they are despatched to the holders of its listed debt securities with registered addresses in Hong Kong; and

- (c) any interim report prepared by the Issuer as soon as possible after it has been approved by the board of directors of the Issuer;
- (2) ~~seven copies~~one copy of notices of meetings, forms of proxy, notices by advertisement to holders of its bearer debt securities, reports, announcements or other similar documents at the same time as they are issued; and
- (3) ~~eight~~ one certified copies copy of all resolutions of the holders of listed debt securities, within 15 days after they are passed.

Appendix 7 Part D

7. The Issuer shall forward to the Exchange:—
- (1) ~~seven copies~~one copy of all circulars to holders of its listed debt securities, notices of meetings, forms of proxy, notices by advertisement to holders of its bearer debt securities, reports, announcements or other similar documents at the same time as they are issued; and
 - (2) ~~eight~~ one certified copies copy of all resolutions of the holders of listed debt securities within 15 days after they are passed.
- ...

Appendix 7 Part E

Note 4.3 *The Issuer must send ~~14 copies~~1 copy of the annual report and accounts to the Exchange at the same time as they are despatched to the holders of its listed debt securities with registered addresses in Hong Kong (see paragraph 12).*

12. The Issuer shall forward to the Exchange:—
- (1) ~~fourteen copies~~one copy of:—
 - (a) all circulars to holders of its listed debt securities at the same time as they are issued;
 - (b) the annual report and accounts at the same time as they are issued; and
 - (c) any interim report prepared by the Issuer as soon as possible after it has been approved by the board of directors or other governing body of the Issuer;
 - (2) ~~seven copies~~one copy of notices of meetings, forms of proxy, notices by advertisement to holders of its bearer debt securities, reports, announcements or other similar documents at the same time as they are issued; and
 - (3) ~~eight~~ one certified copies copy of all resolutions of the holders of listed debt securities, within 15 days after they are passed.
- ...

Appendix 7 Part G

9. The Scheme shall forward to the Exchange:—
- (1) ~~seven~~ copies of circulars, notices, financial reports and other documents at the same time as they are sent to holders of interests in the Scheme in the following numbers:
 - (a) in the case of a document which is in the nature of an announcement or notice, 1 copy;
 - (b) in the case of a document which is in the nature of a circular or listing document, 2 copies;
 - (c) in the case of a document which is in the nature of a financial report, 1 copy; and
 - (d) in any other case, such number as the Exchange may from time to time request; and
 - (2) ~~eight~~ one certified ~~copies~~ copy of all resolutions of holders of interests in the Scheme within 15 days after they are passed.
- 9A. (1) The Scheme must submit the documents referred to in Paragraphs 3 and 9(1) above to the Exchange for publication in accordance with rule 2.07C. Rule 2.07C shall apply to all such documents as well as to such other announcements, notices and documents which the Scheme may from time to time be required to publish under the Exchange Listing Rules.
- (2) For the purpose of this Paragraph 9A, references in rule 2.07C to “shareholders” shall be construed as references to “holders of interests in the Scheme”.

Appendix 7 Part H

15. The Issuer shall forward the following number of copies (or such further number as the Exchange may reasonably require), together with a soft copy, to the Exchange:—
- (1) ~~ten~~ one ~~copies~~ copy of all circulars to holders of its listed securities at the same time as they are despatched to holders of the Issuer’s listed securities with registered addresses in Hong Kong or made available for inspection; ~~and~~
 - (2) ~~seven~~ one ~~copies~~ copy of documents relating to notices of meetings to holders of its listed securities, forms of proxy, notices by advertisement to holders of its listed securities, reports, announcements or other similar documents at the same time as they are issued; and
- 15.1 Copies of announcements issued by the Issuer must be delivered to the Exchange no later than its issue to any other party outside the Issuer or its immediate advisers.*
- (3) ~~ten~~ one ~~copies~~ copy of (a) the directors’ report and its annual accounts; and (b) the interim report in accordance with the time prescribed in 15A.21.”

Proposed GEM Rule amendments

“2.23A Where the GEM Listing Rules require a certain number of copies of a document to be sent or submitted to the Exchange, the Exchange may require the issuer to provide the Exchange with such lesser or greater number of such copies as the Exchange may reasonably determine.

...

6A.24 When a Compliance Adviser is consulted by a listed issuer in the circumstances set out in rule 6A.23 above it must discharge the following responsibilities with due care and skill:

...

- (5) in relation to an application by the listed issuer for a waiver from any of the requirements in Chapter ~~14A20~~, advise the listed issuer on its obligations and in particular the requirement to appoint an independent financial adviser; and

...

12.24 The following must be lodged with the Exchange, in the case of a new applicant, as soon as practicable after the hearing of the application by the GEM Listing Committee but on or before the date of issue of the listing document and, in the case of a listed issuer, on or before the date of issue of the listing document:—

...

- (2) 7 in the case of a new applicant, 4 copies and, in the case of a listed issuer, 2 copies of the listing document:—

- (a) one of which must be dated and signed by every person who is named therein as a director or proposed director of the issuer or by his agent authorised in writing and by the secretary or, in the case of a capitalisation issue, one of which has been dated and signed by the secretary; and

- (b) one of which must be marked in the margin to indicate where compliance has been made with the relevant provisions of the GEM Listing Rules and, in the case only of a prospectus, to indicate where compliance has been made with the relevant provisions of the Companies Ordinance;

- (3) where any document referred to in (2)(a) above is signed by an agent, a certified copy of the authorisation for such signature;

- (4) ~~7 copies~~1 copy of the formal notice, where applicable;

- (5) 7 in the case of a new applicant, 4 copies and, in the case of a listed issuer, 2 copies of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;

...

13.03 Subject to the provisions of the Code on Share Repurchases, aAn issuer may purchase shares on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange, ~~under the exemption from the general offer rule contained in Rule 2 of the Code on Share Repurchases.~~ All such purchases must be made in accordance with the provisions of rules 13.04 to 13.14. The Code on Share Repurchases must be complied with by an issuer and its directors and any breach thereof by an issuer will be a deemed breach of the issuer's undertaking to comply with its continuing obligations under the GEM Listing Rules and the Exchange may in its absolute discretion take such action to penalise any breach of this rule as it shall think appropriate. It is for the issuer to satisfy itself that a proposed purchase of shares does not contravene ~~falls within the exemption provided in Rule 2 of the Code on Share Repurchases.~~

...

16.04C All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public in electronic format on CD ROM (together with the ~~relative~~relevant application form in electronic format on the same CD ROM) (~~the "CD ROM Method"~~). ~~Where the new applicant has its own website, it must also make additional copies available to the public in electronic format through publication of the listing document (together with the relative application form) on its website in accordance with the publication requirements of rule 16.19 (the "Website Method").~~

Where the new applicant has made additional copies available in electronic format on CD ROM ~~using either or both of the CD ROM Method and the Website Method~~, the new applicant must ensure that:

- (a) ~~the CD ROM and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form are made available include(s):~~
 - (i) a confirmation that the contents of the listing document and ~~relative~~relevant application form in electronic format are identical with the contents of the listing document and application form in printed form; and
 - (ii) a confirmation that the listing document and ~~relative~~relevant application form are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s), that is, the CD ROM Method and/or the Website Method, as was/were used when the main or first listing document was published)~~ on CD ROM and the new applicant must also comply with the requirements of (a) above with all references to "listing document" and "application form" being construed as references to the supplemental listing document or subsequent amendment to the listing document and the ~~relative~~relevant application form.

...

16.18(3)(a) Electronic copies of announcements or notices must not be submitted to the Exchange between 9:00 a.m. and ~~4:30 p.m.~~ 4:15 p.m. on a normal business day, ~~or between 9:00 a.m. and 1:00 p.m. on the eves of Christmas, New Year and the Lunar New Year when there is no afternoon session~~, for publication the GEM website, other than: ...

...

17.47 (3) If the Chairman of the meeting and/or the directors individually or collectively hold proxies in respect of shares holding 5% or more of the total voting rights at a particular meeting, and if on a show of hands a meeting votes in the opposite manner to that instructed in those proxies, the Chairman and/or the directors and the Chairman holding proxies as aforesaid collectively shall demand a poll; provided that if it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands, ~~(because the votes represented by those proxies exceed 50%, 75% or any other relevant percentage, as the case may be, of the total issued share entitled to vote on the resolution in question)~~ then the directors and/or the Chairman shall not be required to demand a poll.

...

17.57 An issuer shall forward to the Exchange:—

(1) ~~at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong,~~ 25 copies of each of the English language version and the Chinese language version of the following documents in the following numbers:

- (a) all circulars to holders of the issuer's listed securities, 2 copies; and
- (b) its annual report and accounts and, where applicable, its summary financial report, 1 copy; and
- (c) its half-year report and, where applicable, its summary half-year report and quarterly report, 1 copy;

~~at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong;~~

(2) ~~10~~ copies of documents relating to takeovers, mergers and offers, notices of meetings, forms of proxy, reports, announcements or other similar documents at the same time as they are issued in the following numbers:

- (a) in the case of a document which is in the nature of an announcement or notice, 1 copy;
- (b) in the case of a document which is in the nature of a circular or listing document, 2 copies;
- (c) in the case of a document which is in the nature of a financial report, 1 copy; and
- (d) in any other case, such number as the Exchange may from time to time request; and

(3) ~~10~~ 1 certified ~~copies~~ copy of all resolutions of the issuer including resolutions concerning any of the matters set out in rules 17.39 to 17.41, other than resolutions concerning any other routine business at an annual general meeting, within 15 days after they are passed.

17.60 An issuer shall:-

...

(2) forward to each participant, ~~other than a broker participant,~~ regardless of whether the participant is a member of the issuer...

Notes: 1 For the purpose of this rule, the following terms have the following meanings: -

~~"broker participant"~~ a participant admitted to participate in CCASS as a broker participant;

...

2 HKSCC will provide listed issuers with up to date lists of participants ~~other than broker participants.~~

...

18.03 Notes: ...

- 5 *The listed issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the directors' report, annual accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to holders of the listed issuer's listed securities with registered addresses in Hong Kong (see rule 17.57).*

18.54 Note: *The issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the relevant half-year report and, where applicable, summary half-year report to the Exchange at the same time as it is sent to the holders of its listed securities with registered addresses in Hong Kong (see rule 17.57).*

18.67 Note: *The issuer must send ~~25 copies~~ 1 copy of the relevant quarterly report to the Exchange at the same time as it is sent to the holders of its listed securities with registered addresses in Hong Kong (see rule 17.57).*

[Draftsman's note: Rule 18.67 is proposed to be deleted in our Consultation Paper on Periodic Financial Reporting which was published in August 2007. Therefore, the proposed amendment to the Note to Rule 18.67 is only applicable if the Rule is ultimately not deleted.]

...

19.35 For a share transaction, the announcement must contain the information set out in rules 19.58 and 19.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 19.58 and 19.60. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 17.57(2), the listed issuer must forward to the Exchange ~~10 copies~~ 1 copy of the announcement, as cleared by the Exchange, at the same time as it is issued.

...

19.79 If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. ~~10~~ Copies of the final documents issued must be supplied to the Exchange at the time of issue in the following numbers:

- (a) in the case of a document which is in the nature of an announcement or notice, 1 copy;
- (b) in the case of a document which is in the nature of a circular or listing document, 2 copies;
- (c) in the case of a document which is in the nature of a financial report, 1 copy; and
- (d) in any other case, such number as the Exchange may from time to time request.

...

20.34 A continuing connected transaction on normal commercial terms where:

- (1) each of the percentage ratios (other than the profits ratio) is on an annual basis less than 2.5%; or
- (2) each of the percentage ratios (other than the profits ratio) is on an annual basis equal to or more than 2.5% but less than 25% and the annual consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in rules 20.45 to 20.47 and the requirements set out at paragraphs (1) to (2) of rule 20.35. It ~~and~~ is exempt from the independent shareholders' approval requirements of this Chapter.

...

20.47 (2) *Note:1 Pursuant to rule 17.57, the listed issuer must forward to the Exchange ~~10 copies~~1 copy of such announcement as cleared by the Exchange at the same time as it is issued.*

...

28.14 On or before the date of issue of the listing document, the following documents must be supplied to the Exchange:—

...

(2) (a) 1 copy of each of the English language version and the Chinese language version of the listing document and related application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought. The copy~~7 copies~~ of the listing document, ~~one of which~~ must be dated and signed by every person who is named therein as a director or proposed director of the issuer and any guarantor or by his agent authorised in writing;

(b) ~~7 copies~~1 copy of the formal notice, where applicable;

(c) ~~7 copies of any application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought~~~~[Repealed *[insert date]*];~~ and

(d) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

.....

(5) ~~25 copies of each of the English language version and the Chinese language version of the listing document and related application form (including any excess application form)~~~~[Repealed *[insert date]*].~~

...

29.21A All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public in electronic format on CD ROM (together with the ~~relative~~relevant application form (if any) in electronic format on the same CD ROM) (the "CD ROM Method"). ~~Where the new applicant has its own website, it must also make additional copies available to the public in electronic format through publication of the listing document (together with the relative application form (if any)) on its website in accordance with the publication requirements of rule 16.19 (the "Website Method").~~

Where the new applicant has made additional copies available in electronic format on CD ROM~~using either or both of the CD ROM Method and the Website Method~~, the new applicant must ensure that:

- (a) the CD ROM ~~and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form (if any) are made available~~ include(s):
- (i) a confirmation that the contents of the listing document and ~~relative~~relevant application form (if any) in electronic format are identical with the contents of the listing document and application form (if any) in printed form; and
 - (ii) a confirmation that the listing document and ~~relative~~relevant application form (if any) are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s), that is, the CD ROM Method and/or the Website Method, as was/were used when the main or first listing document was published) on CD ROM~~ and the new applicant must also comply with the requirements of (a) above with all references to "listing document" and "application form" being construed as references to the supplemental listing document or subsequent amendment to the listing document and the ~~relative~~relevant application form (if any).

...

30.28 The following documents must be supplied to the Exchange after notification of listing approval:—

...

- (2) on or before the date of issue of the listing document (or such other date as the Exchange may agree):—
- (a) (i) 1 copy of each of the English language version and the Chinese language version (if any) 7 copies of the listing document, ~~one of~~ which must be dated and signed by a duly authorised officer of the issuer and the guarantor, in the case of a guaranteed issue, or by 2 members of an issuer's governing body in the case of an overseas issuer or by their agents authorised in writing;
 - (ii) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

...

- (d) ~~25 copies of each of the English language version and the Chinese language version (if any) of the listing document to be supplied to the Exchange~~[Repealed *[insert date]*]; and

...

30.33 (3) All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available in electronic format on CD ROM (the "CD ROM Method"). ~~Where the new applicant has its own website, it must also make available copies available in electronic format through publication of the listing document on its website in accordance with the publication requirements of rule 16.19 (the "Website Method").~~

Where the new applicant has made additional copies available in electronic format on CD ROM ~~using either or both of the CD ROM Method and the Website Method~~, the new applicant must ensure that:

- (i) ~~the CD ROM and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document is made available~~ include(s):
 - (aa) a confirmation that the contents of the listing document in electronic format are identical with the contents of the listing document in printed form; and
 - (bb) a confirmation that the listing document is also available in printed form and addresses of the locations where it is available; and
- (ii) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format ~~(using the same method(s); that is, the CD ROM Method and/or the Website Method, as was/were used when the main or first listing document was published)~~ on CD ROM and the new applicant must also comply with the requirements of (i) above with all references to "listing document" being construed as references to the supplemental listing document or subsequent amendment to the listing document.

...

31.21 The issuer shall forward to the Exchange:—

- (1) ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of:—
 - (a) all circulars to holders of its listed debt securities at the same time as they are issued;
 - (b) the annual report and accounts and, where applicable, the summary financial report at the same time as they are despatched to the holders of its listed debt securities with registered addresses in Hong Kong; and
 - (c) any half-year or quarterly report prepared by the issuer as soon as possible after it has been approved by the board of directors of the issuer;

...

- (2) ~~7 copies~~ 1 copy of notices of meetings, forms of proxy, notices by advertisement to holders of its bearer debt securities, reports, announcements or other similar documents at the same time as they are issued; and
- (3) ~~7~~ 1 certified ~~copies~~ copy of all resolutions of the holders of listed debt securities, within 15 days after they are passed.

...

31.38 Notes: ...

- 4 *The issuer must send ~~25 copies~~ 1 copy of each of the English language version and the Chinese language version of the directors' report and annual accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to the holders of the issuer's listed debt securities with registered addresses in Hong Kong (see rule 31.21).*

...

Appendix 6

Director's and Supervisor's Forms Form A Director's Declaration, Undertaking and Acknowledgement

Notes:

- (1) Every person required to lodge this Form with the Stock Exchange of Hong Kong Limited (the "Exchange") must complete Part 1 and Part 2 herein. Part 3(A) needs to be completed only if the issuer is a new applicant ~~or is obliged to or otherwise continues to retain a Sponsor~~. Part 3(B) must be completed whenever this Form is required.

...

Part 3

- (A) ~~If the issuer is a new applicant or is obliged to or otherwise continues to retain a Sponsor, the following Sponsor's certification must be completed: —~~

...

Appendix 6

Director's and Supervisor's Forms Form B Director's Declaration, Undertaking and Acknowledgement (PRC Issuer)

Notes:

- (1) Every person required to lodge this Form with the Stock Exchange of Hong Kong Limited (the "Exchange") must complete Part 1 and Part 2 herein. Part 3(A) needs to be completed only if the issuer is a new applicant ~~or is obliged to or otherwise continues to retain a Sponsor~~. Part 3(B) must be completed whenever this Form is required.

...

Part 3

- (A) ~~If the issuer is a new applicant or is obliged to or otherwise continues to retain a Sponsor, the following sponsor's certification must be completed: — ...~~

...

Appendix 8

FORM OF SHARE BUYBACK REPORT TO THE STOCK EXCHANGE OF HONG KONG LIMITED ("THE EXCHANGE")

...

- * Either on ~~The Stock Exchange of Hong Kong Limited~~ (the "Exchange"), on another stock exchange (stating the name of the exchange), by private arrangement or by general offer.

...

B. Additional Information

1. Number of such securities purchased on the Exchange in the year to date (since ordinary resolution)
(b)1

2. % of issued share capital at time ordinary resolution
passed acquired on the Exchange since date of resolution
.....
(b)1 x 100
issued share capital
.....%

...

~~Yours faithfully,~~

~~Signed:~~

~~Name:~~

~~Director, Secretary or other duly
authorised officer
for and on behalf of~~

~~Name of Issuer:~~

~~Submitted by:~~

~~Name:~~

~~Title:~~

~~[Director, Secretary or other duly
authorised officer for and on behalf of
the Company]"~~

APPENDIX 20 PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data” in the Personal Data (Privacy) Ordinance, Cap 486.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
 - for performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - for research and statistical purposes;
 - for any other lawful purposes.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. Your Personal Data may also be disclosed or transferred to members of the public in Hong Kong and elsewhere as part of the public discussion of this paper, including but not limited to disclosing your name to the public together with the whole or part of your comments by posting them on HKEx’s website, publishing them in documents or by other means. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper.

Access to or Correction of Data

6. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
 Hong Kong Exchanges and Clearing Limited
 12th Floor, One International Finance Centre
 1 Harbour View Street
 Central
 Hong Kong

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, addresses, e-mail addresses, login names, etc, which may be used for the stated purposes when your Personal Data is collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

