CONSULTATION CONCLUSIONS

ON

PROPOSED AMENDMENTS TO THE LISTING RULES

RELATING TO

INITIAL LISTING CRITERIA

AND

CONTINUING LISTING OBLIGATIONS

January 2004

Hong Kong Exchanges and Clearing Limited

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PART A
INTRODUCTION

BACKGROUND

1. In July 2002, we published a Consultation Paper on Proposed Amendments to the Listing Rules relating to Initial Listing and Continuing Listing Eligibility and Cancellation of Listing Procedures (the "Consultation Paper"). The main objective of the Consultation Paper was to seek market views on our proposals that are aimed at enhancing the quality of the Hong Kong listing market and consequently its attractiveness to investors and issuers.

2. The Consultation Paper sought to examine and review the eligibility criteria for initial and continuing listing and cancellation of listing procedures applicable to issuers of equity securities (not debt securities) applying for listing or already listed on the Main Board of the Stock Exchange of Hong Kong Limited (the "Exchange") under Chapter 8 of the Rules Governing the Listing of Securities on the Exchange (the "Main Board Rules"), as well as mineral and infrastructure companies.

3. In response to public concern about some proposals in the Consultation Paper relating to continuing listing eligibility criteria, we withdrew Part C of the Consultation Paper for separate consultation. In November 2002, we published another consultation paper to seek market views on issues relating to the continuing listing standards, alternative trading arrangements for securities delisted from the Main Board and issues commonly associated with low-priced securities (the "November Consultation Paper").

4. With regard to Part E of the Consultation Paper relating to the cancellation of listing procedures, the issues proposed to be dealt with in that part are inevitably linked to those in the withdrawn Part C. Therefore, we consider it more appropriate to analyse the responses to the proposals in Part E together with responses to the November Consultation Paper. The consultation period for the November Consultation Paper closed on 28 February 2003. We intend to seek policy advice from the Listing Committee in Quarter One, 2004. We will announce the implementation date in due course pending further discussion with the Securities and Futures Commission (SFC) and consideration by the Listing Committee.

5. Accordingly, for the purposes of this Consultation Conclusion Report, we focus on proposals covered in Parts B, D and F of the Consultation Paper (the "Consultation Proposals"), which relate to:

   (a) initial listing eligibility criteria;

   (b) continuing obligations; and

   (c) disclosure requirements at the time of initial listing.

6. The consultation period for the Consultation Paper closed on 30 October, 2002. We received a total of 93 responses from different market sectors. For analysis purposes, respondents were grouped under 4 categories based on the categories listed in the questionnaire booklet for the Consultation Paper. These categories are:

   (a) listed companies – Main Board and GEM;

   (b) professional bodies/trade associations;

   (c) market practitioners (accountants, legal advisers, financial advisers and sponsors, etc.); and

   (d) investors – institutional, retail and other miscellaneous/anonymous respondents.

7. In forming the basis of our analysis of the submissions received, we are mindful to adopt an approach that should be able to reflect a balanced view of the respondents from various market sectors. We have given due consideration to the substance of the responses. We have also taken into account the concerns raised by respondents. We consider that an analysis on the basis of respondent category is most appropriate to reflect a balanced view, as opposed to using a quantitative approach based solely on the number of respondents. In analysing the responses, whilst we had regard to regulatory requirements and practices in other major markets, we are also mindful of the practical issues that may arise from implementing the Consultation Proposals, so as to reflect the characteristics of the Hong Kong listing market.

8. A statistical analysis of responses by respondent category to each Consultation Proposal, together with a profile of the respondents, are available on the website of Hong Kong Exchanges and Clearing Limited ("HKEx") at www.hkex.com.hk.

9. This Consultation Conclusion Report summarises the views and issues raised in response to Parts B, D and F of the Consultation Paper and the final conclusions of the Listing Committee on the Consultation Proposals.

RESULTS OF THE MARKET CONSULTATION

10. The majority of the respondents' categories generally support most of the Consultation Proposals. The constructive comments on the Consultation Proposals that they put forward have facilitated our formulation of policies and amended rules. We would take this opportunity to thank all the respondents for their valuable comments and contributions that they extended to the Consultation Paper.

11. Respondents submit diverse views on some of the Consultation Proposals, where they express concerns on the practical issues that may arise from implementation. To the extent possible, we have modified some of these Consultation Proposals so as to reflect the respondents' views, and address the respondents' concerns and to provide further clarity.

12. We have not adopted certain Consultation Proposals, in the light of the respondents' views and the practical issues that might arise from adopting these proposals.

13. Part B of this Consultation Conclusion Report sets out detailed discussion on the responses received, together with our conclusion, on those Consultation Proposals that the respondents have diverse views and have expressed concerns.

14. Part C of this Consultation Conclusion Report summarises all those Consultation Proposals that have been adopted without modification.

15. All the proposed rule changes set out in this Consultation Conclusion Report apply solely to the Main Board Rules. However, as we stated in the Consultation Paper, we will consider carrying out a similar review for GEM, based on the responses to this consultation exercise to the Main Board Rules. On the basis of the responses received on the Consultation Proposals, which are generally supportive, we intend to review the GEM Rules to see if similar amendments to the GEM Rules would be appropriate. A further announcement will be made in due course to clarify the timing and scope of this review of the GEM Rules.

16. This Consultation Conclusion Report should be read in conjunction with Parts B, D and F of the Consultation Paper. Both papers are available at www.hkex.com.hk.

PART B
DISCUSSION ON SPECIFIC CONSULTATION PROPOSALS

17. We put forward a number of proposals relating to, among others, initial listing and continuing obligations, to facilitate public debate on the relevant issues that may have an effect on the future development of the Hong Kong listing market. Respondents' views on some of the Consultation Proposals were diverse and they raised stimulating points and arguments on some of the issues. In this Part, we discuss the responses and some of the comments raised. We also set out our conclusion on the proposals.

PART B – INITIAL LISTING ELIGIBILITY CRITERIA

Track Record – Trading Record Period (Consultation Proposals B.29 and B.30)

Consultation Proposal

18. We proposed to maintain the current requirement that generally a listing applicant must have a trading record of not less than three financial years. We also proposed that listing applicants to be listed under the alternative market capitalisation/revenue test will be granted a waiver from the trading record period requirement on satisfaction that they are able to meet, among others, minimum requirements on management experience and number of shareholders.

Respondents' comments

19. Concerns were expressed by some respondents that the adoption of the alternative market capitalisation/revenue test for listing on the Main Board is not appropriate as these companies can apply to be listed on GEM. They highlight a risk that GEM may be "degraded" into a second board upon the introduction of this alternative test.

Conclusion

20. As we discussed in the Consultation Paper, the introduction of the alternative tests to the current profit record requirement should not be interpreted as aligning the Main Board Rules with the GEM Rules. GEM was established to provide an avenue for capital formulation for emerging companies to facilitate their business development and/or expansion. Accordingly, for the purposes of accommodating these emerging companies with potential for growth but without a proven profit record, the GEM Rules do not impose any profit or revenue requirements on listing applicants except that such listing applicants must demonstrate a two-year active business pursuit record. However, for listing applicants to the Main Board opting for the alternative tests, they will still be required to meet alternative financial standards which include revenue requirement, in addition to the other track record requirements (although on satisfaction of certain conditions the trading record period requirement may be waived in the case of market capitalisation/revenue test). Indeed, one of the requirements of these alternative tests is that the listing applicant must be able to generate substantial revenues (see paragraphs 43 and 191) for the most recent financial year comprising 12 months. Such revenue will act as an indicator of the extent of its achievement to justify a listing of its securities on the Main Board.

21. We also discussed in the Consultation Paper that the market capitalisation/revenue test is an alternative test for assessing the track record financial performance of a listing applicant, in addition to the profit requirement under the existing Main Board Rules. As such, in demonstrating that a listing applicant meets the three components of the track record requirement, namely:

    (a) a trading record of not less than three financial years;

    (b) a profit record of not less than HK$20 million for the most recent year, and an aggregate of HK$30 million for the two preceding years; and

    (c) the issuer and its principal operations are under substantially the same management during the trading record period,

    a listing applicant may, insofar as the profit requirement is concerned, have a choice of meeting other alternative financial tests. A listing applicant opting for alternative financial standards will still have to satisfy the other two components of the track record requirement set out in this paragraph 21(a) and (c).

22. The market capitalisation/revenue test is to cater for listing applicants that are of substantially larger sizes, and can demonstrate that they are able to attract greater market support and command significant investor interest. For these listing applicants, given their size and ability to attract significant investor interest, their listing on the Main Board may be justified even if they do not have a full three-financial-year trading record period. However, to ensure that their management have sufficient and satisfactory experience in the particular line of the business and industry of the listing applicants, and that they are able to attract significant investor acceptance, listing applicants must be able to meet, among others, the minimum requirements on management experience and alternative requirements for the number of shareholders, before a waiver from the three-financial-year trading record period requirement will be granted. For discussion of this waiver, see paragraphs 41 to 44.

23. Accordingly, we decided to maintain the current requirement that generally a listing applicant must have a trading record of not less than three financial years. We have amended the Main Board Rules to provide that listing applicants to be listed under the alternative market capitalisation/revenue test will be granted a waiver of the trading record period requirement. Where such alternative requirement is applied, the Exchange must be satisfied that such listing applicants are able to meet, among others, the minimum requirements on management experience (see paragraphs 41, 42 and 44) and number of shareholders (see paragraphs 85 and 86).

Financial Standards – Profit (Consultation Proposals B.41, B.42 and B.43)

Consultation Proposal

24. We proposed in the Consultation Paper to maintain the current profit requirement as one of the quantitative tests for assessing the track record financial performance of a listing applicant. We also proposed to retain the current minimum HK$50 million aggregated profit requirement and to allow greater flexibility in the spread of the aggregated profit throughout the track record period.

25. For the purpose of satisfying the profit record requirement, we proposed to use pre-tax profits, rather than post-tax profits as is currently required under the Main Board Rules. However, we also proposed to maintain our current position that such pre-tax profits should exclude any income generated by activities outside the ordinary and usual course of business, as well as the results of associated companies.

Respondents' comments

26. Most of the respondents were supportive of maintaining the current profit requirement as one of the quantitative tests for assessing track record financial performance of listing applicants, whilst introducing alternative financial tests. They were also supportive of retaining the current minimum HK$50 million aggregated profit requirement.

27. Certain respondents raised concerns that the use of pre-tax profits effectively lowers the profitability threshold for listing. Taxation may in some cases have a significant impact on the listing applicant's profits.

28. Other respondents were concerned that the adoption of pre-tax profits for the purposes of the profit record requirement may cause confusion to the market, as post-tax profits are currently used to derive many other indicators such as PE (price/earnings) ratios and EPS (earnings per share).

29. Some respondents queried how the results of associated companies or PRC joint ventures under control restrictions or jointly controlled companies would be treated.

30. As for our proposal to allow greater flexibility in the spread of the aggregated profit throughout the track record period, some respondents consider that there is no real need for the change, as the current requirement has been working well and listing applicants have been able to meet the existing spread without much difficulty.

Conclusion

31. We decided to maintain the current profit requirement as one of the quantitative tests for assessing the track record financial performance of a listing applicant.

32. The reason for proposing the use of pre-tax profits was to bring Hong Kong in line with international practices. We acknowledge that the use of pre-tax profits would effectively lower the profitability threshold for listing. As the use of post-tax profits to assess the financial performance of listing applicants has not been problematic, and in the light of any possible confusion that may be caused to the market as a result of the change from post-tax to pre-tax profits, we do not consider there is compelling need to depart from the current requirement. Accordingly, we have not adopted the proposal and post-tax profits will remain as the standard to be used by listing applicants for the purpose of satisfying the profit record requirement.

33. We have maintained our current policy that such post-tax profits should exclude any income generated by activities outside the ordinary and usual course of business, as well as the results of associated companies.

34. Given our requirement to demonstrate ownership continuity and control for at least the most recent financial year in the track record period, the results of associated companies should be excluded from the calculation of post-tax profits, as the listing applicant does not have control over these companies.

35. In the case of joint ventures under control restrictions or jointly controlled companies, there exist a number of operational issues, such as whether and how they are to be accounted for in the accounts of listing applicants, and whether the listing applicants have "negative control" in the form of the power of veto over certain key areas of operations. For the purposes of determining the appropriate treatment of the results of these entities, we consider that a separate review should be conducted. In the meantime pending the outcome of such a review, we have maintained our existing policy that the results of these entities (over which the listing applicants have not been able to demonstrate "control") are to be excluded from the calculation of post-tax profits.

36. We have maintained the current minimum HK$50 million aggregated profit requirement, and the current requirement on the spread of the aggregated profit throughout the track record period.

Financial Standards – Market Capitalisation/Revenue (Consultation Proposals B.52 and B.53)

Consultation Proposal

37. We proposed in the Consultation Paper to introduce an alternative market capitalisation/revenue test to the profit requirement, in addition to the market capitalisation/revenue/cash flow test (see paragraph 191). This alternative test will apply to listing applicants with market capitalisation of at least HK$4 billion at the time of listing and revenue of at least HK$500 million for the most recent financial year comprising 12 months. There would be a specific requirement for a higher minimum number of shareholders so as to demonstrate that listing applicants under this alternative test can attract significant investor interest.

38. We also proposed that listing applicants under the market capitalisation/revenue test may be granted a waiver from the three-financial-year trading record requirement. However, these listing applicants need to demonstrate management continuity and ownership continuity and control for the most recent financial year comprising 12 months, as well as sufficient management experience.

Respondents' comments

39. Certain of the respondents considered that listing applicants under this alternative test should still be required to comply with the trading record period of not less than three financial years.

40. In relation to the proposal to make management experience a pre-condition to a waiver, some respondents queried whether the directors and senior management would be expected to have "higher qualifications and experience" when compared with the requirements under Rule 3.09 of the Main Board Rules.

Conclusion

41. The market capitalisation/revenue test is catered particularly for those listing applicants that are of substantially larger size (having a market capitalisation of at least HK$4 billion at the time of listing), are able to generate substantial revenues (of at least HK$500 million for the most recent financial year comprising 12 months) and can demonstrate that they are able to command significant investor interest. They may or may not have a full three-financial-year trading record period. To reject these listing applicants merely because they do not have a sufficiently long period of trading record may not, in the long run, be beneficial to the maintenance of Hong Kong as "the premier capital formation centre of China". A waiver of the requirement for the three-financial-year trading record is therefore considered justified in appropriate circumstances. In these circumstances, the listing applicant is still required to demonstrate a sufficient period of management continuity and ownership control.

42. In the absence of a reasonably long period of trading record in the listing applicant itself, the appropriate benchmark for assessing the performance of a listing applicant during its shorter track record period would be from the perspective of its management. Accordingly, it is essential that for a waiver of the requirement for the three-financial-year trading record to be granted, the management of the listing applicant must be able to demonstrate that it has sufficient and satisfactory experience in the line of the business and industry of the listing applicants. The experience of the management must be specific, which must be to the particular line of the business and industry of the listing applicant. The specific nature of the management's experience distinguishes the pre-condition from the general requirement for directors under Rule 3.09 of the Main Board Rules. Such rule sets out the general requirement applicable to all directors, that every director of an issuer must have "the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer".

43. We have amended the Main Board Rules to introduce the market capitalisation/revenue test to apply to listing applicants with market capitalisation of at least HK$4 billion at the time of listing and revenue of at least HK$500 million for the most recent financial year comprising 12 months. In addition, there is a specific requirement for a higher minimum number of shareholders so as to demonstrate that the listing applicants can attract significant investor interest (see paragraphs 85 and 86). For the purposes of calculating revenue under this alternative test, only revenue arising from the principal activities of the listing applicants and not items of revenue and gains that arise incidentally will be recognised. Revenue arising from "book" transactions, such as banner barter transactions or writing back of accounting provisions, will be disregarded.

44. We have also amended the Main Board Rules to provide that listing applicants under the market capitalisation/revenue test will be granted a waiver of the trading record period requirement, subject to the listing applicant demonstrating management continuity and ownership continuity and control for the most recent financial year comprising 12 months. In addition, the listing applicant must demonstrate that its management has sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicant.

Market Capitalisation (Consultation Proposal B.67)

Consultation Proposal

45. We proposed to increase the initial minimum expected market capitalisation to HK$200 million.

Respondents' comments

46. Certain respondents expressed concerns that a significant number of currently listed companies would not be able to meet the proposed HK$200 million level. To these respondents, the proposed increase in the minimum market capitalisation may discourage companies from applying for listing on the Exchange, because the initial minimum expected market capitalisation would be doubled. They argue that the proposal will also deter the listing of small to medium size enterprises regardless of their profitable track records and growth potential. As such, the future fund raising capability of the Main Board would be impaired.

Conclusion

47. As we discussed in the Consultation Paper, the current Main Board Rules generally require that the expected market capitalisation of a listing applicant at the time of listing must be at least HK$100 million. The Main Board Rules also require that the expected market capitalisation at the time of listing of the shares which is held by the public must be at least HK$50 million and there is a minimum public float of 25%. Given these requirements and the market practice of listing applicants generally only offer 25% of their enlarged issued share capital to the public at the time of listing, normally a listing applicant will have a minimum market capitalisation of HK$200 million at the time of listing. Otherwise, for a listing applicant with an expected market capitalisation of HK$100 million to be listed on the Exchange, its public float has to be at least 50%. During each of the five years ended 31 December and up to 30 June 2003, approximately 96%, 89%, 92%, 93%, 91% and 75% of newly listed issuers (excluding those that were listed under Chapter 21 of the Main Board Rules and by way of introduction) had market capitalisation of at least HK$200 million at the time of listing.

48. The statistics show that a majority of listing applicants has been able to meet the HK$200 million threshold. Therefore, the proposal to increase the minimum market capitalisation to HK$200 million would align the Main Board Rules with the de facto situation, and should not create an additional hurdle to jeopardise the chance of potential listing applicants getting listed on the Exchange. We have amended the Main Board Rules to increase the initial minimum expected market capitalisation to HK$200 million.

Consultation Proposal

49. In the Consultation Paper, for the purposes of calculating the market capitalisation, we proposed to aggregate the market capitalisation of all securities of a listing applicant that are listed and traded on the Exchange as well as on other regulated markets.

Respondents' comments

50. Some respondents considered that the proposal is unfair to H shares because they consist of domestic shares which are not listed securities.

51. Other respondents consider that in calculating the market capitalisation, an initial distinction should be drawn on whether shares traded in other listed markets are fungible or non-fungible with those to be traded on the Exchange. If they are not fungible (e.g. H shares and A shares), it may be appropriate to set up a separate minimum market capitalisation for shares that are to be listed and traded on the Exchange as A shares have traditionally traded at significantly higher P/Es than H shares. To these respondents, given the high P/E ratio of A shares, it would be misleading and unfair if A shares are included.

52. Certain respondents are of the view that if the minimum market capitalisation requirement is set for liquidity purposes, it should be calculated solely on each class of securities to be listed on the Exchange. However, if the minimum market capitalisation requirement is used to determine the substantiveness of the underlying business of a listing applicant, it should be determined by reference to all listed and unlisted securities.

Conclusion

53. The intention of our proposal was to provide a level playing field for all listing applicants applying for listing on the Exchange. We recognise the possible unfairness that may be brought about by our proposal to construe the term "market capitalisation" as referring to the total market value of all securities of a listing applicant that are listed and traded on the Exchange and other regulated markets. To do so would ignore the actual size of a listing applicant that may have more than one class of securities, and some of which may not be listed on any regulated markets. We consider that the public float requirement provides for sufficient safeguard to maintain liquidity in the securities of a listing applicant. Accordingly, for the purposes of determining the market capitalisation, we have modified our proposal to refer to the entire size of a listing applicant, which includes both of its listed and unlisted securities.

54. There were suggestions to use the same valuation of shares to be listed on the Exchange to all issued shares, and to determine the market capitalisation on the basis of multiplying the number of issued shares by the expected offer price of the shares to be listed on the Exchange. The effect of this methodology is to extrapolate from the offer price of the securities to be listed on the Exchange for all securities that are either unlisted (and therefore do not have a readily available "market value") or listed on other regulated markets (and which are not fungible). We agree that an extrapolation from the offer price of securities that are to be listed on the Exchange for the entire issued share capital of a listing applicant which has more than one class of securities, and all or some of these other class(es) are unlisted, or listed on other regulated markets, provides a uniform and simplified approach to determine the overall market capitalisation of the listing applicant. A corresponding modification of our proposal has been made in this regard.

55. We have amended the Main Board Rules to provide that the minimum expected market capitalisation of HK$200 million will be calculated on the basis of all issued share capital (inclusive of the class to be listed on the Exchange and other class (es) that are either unlisted or listed on other regulated markets) of a listing applicant at the time of listing. 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 the other class(es) of securities that are unlisted, or listed on other regulated markets.

56. Applicants to be listed under the market capitalisation/revenue test or the market capitalisation/revenue/cash flow test will be required to meet the respective applicable market capitalisation standards (see paragraphs 43 and 191).

Public Float (Consultation Proposal B.73)

Consultation Proposal

57. In the Consultation Paper, we considered that the current level of our public float requirement (25% where the issuer's market capitalisation at the time of listing does not exceed HK$4 billion) is generally comparable to other major markets and is adequate for maintaining an open, fair and orderly market for the investing public. We proposed to apply the same level of public float by reference to the aggregate market capitalisation of all securities of a listing applicant that are listed and traded on the Exchange as well as on other regulated markets.

Respondents' comments

58. Respondents disagreeing with the proposals consider that although the current 25% public float requirement should be maintained, there should not be any additional market capitalisation requirement. They argued that there is no compelling rationale for raising the market value of the public float as proposed.

59. Respondents supporting the proposals noted that it was not the Exchange's intention to change the existing position regarding the initial minimum market value of the public float of HK$50 million, as most listing applicants are able to comply with the 25% minimum public float with an initial value of HK$50 million.

60. Some respondents considered that the proposal was unfair to H share issuers as they have domestic shares which are not listed securities and not included in the calculation to determine the market capitalisation of a listing applicant.

Conclusion

61. It is the current Main Board Rules that the expected market capitalisation at the time of listing of the shares held by the public must be at least HK$50 million and that there must be a minimum public float of 25% (where the issuer's market capitalisation at the time of listing does not exceed HK$4 billion). As we discussed in paragraph 47, for the past five years and up to 30 June 2003, the majority of listing applicants had a market capitalisation of not less than HK$200 million. Accordingly, for these listing applicants, the offer of a minimum of 25% of their enlarged issued share capital to the public at the time of listing would suffice to meet the minimum initial value of HK$50 million. Our proposal to require (in the case of a listing applicant having only one class of securities) at least 25% of the listing applicant's total existing issued share capital having an aggregate market capitalisation of not less than HK$50 million to be in the hands of the public restates the existing position.

62. As we discussed in paragraphs 54 and 55, we will take into account all classes of securities of a listing applicant, including the class to be listed on the Exchange and other class(es) that are either unlisted or listed on other regulated markets, when determining the market capitalisation of a listing applicant. Accordingly, for the purposes of the public float requirement, reference will also be made to the total issued share capital of a listing applicant (irrespective of whether listed or unlisted). A corresponding modification has been made to our proposals.

63. The Exchange may accept a lower percentage of public float if the issuer's market capitalisation at the time of listing exceeds HK$4 billion. Given that we proposed to raise the floor with regard to the minimum percentage of public float that the Exchange may grant from 10% to 15% (see paragraphs 70 to 73), we considered that we should align this revised percentage threshold with the minimum percentage threshold of securities that are to be listed on the Exchange, in case a listing applicant has more than one class of securities apart from the class that is to be listed on the Exchange. We have modified our proposal in this regard.

64. We have amended the Main Board Rules to provide that where a listing applicant has more than one class of securities apart from the class to be listed on the Exchange, the total securities held by the public (on all regulated markets including the Exchange) at the time of listing on the Exchange must be at least 25% of the listing applicant's total existing issued share capital. However, the securities that are to be listed on the Exchange must not be less than 15% of the listing applicant's total existing issued share capital, having an expected market capitalisation at the time of listing of not less than HK$50 million.

Public Float (Consultation Proposal B.74)

Consultation Proposal

65. We proposed that the floor with regard to the minimum percentage of public float that the Exchange may under the current Main Board Rules (where the issuer's market capitalisation at the time of listing exceeds HK$4 billion) at its discretion grant (from 25% to not less than 10%), should be raised (to not less than 15%). However, the issuer's market capitalisation at the time of listing should exceed HK$10 billion. We also proposed that for this waiver to be granted, the listing applicant has to demonstrate to the satisfaction of the Exchange that it has sufficient safeguards in place to protect the interests of minority shareholders.

Respondents' comments

66. A number of respondents take the view that as it is only in rare and exceptional circumstances that the Exchange would exercise its discretion to allow a lower minimum public float, there is no need to limit the scope of the discretion. To these respondents, there may be circumstances where a minimum public float percentage of below 15% is justifiable, and keeping the existing position will allow the Exchange to have a greater flexibility. Other respondents do not see there being sufficient reason to justify the change.

67. Respondents that agreed with the proposal recognise that it reflects current practice. However, for greater transparency and investor protection, these respondents suggest that there should be disclosure of the lower percentage for public information. Indeed, it has been our current practice to require listing applicants granted with the public float waiver to disclose the lower prescribed percentage in their initial listing documents. We have modified our proposal to codify this existing practice into the Main Board Rules.

68. Certain of the respondents consider that the threshold can be maintained at the current HK$4 billion and a public float of HK$400 million is sufficient, as implied by the existing rules.

69. Certain respondents also requested that the Exchange clarify what constitutes "sufficient safeguard" to protect minority shareholders' interest.

Conclusion

70. As we discussed in the Consultation Paper, the level of public float, expressed as a percentage of the issued share capital of an issuer, may have implication for minority shareholders' protection. The lower the percentage of public float, the easier it may be for the controlling shareholders to acquire sufficient shares in contemplation of a compulsory acquisition, whilst still being able to comply with the minimum public float requirement. In Hong Kong, the threshold for compulsory acquisition of shares under the Companies Ordinance is 90% in value of the shares. It is against this background that we consider it appropriate to raise the threshold of the minimum percentage of public float which the Exchange may at its discretion grant to not less than 15% of the issued share capital of an issuer.

71. From October 1997 up to 30 June 2003, the Exchange granted a total of 8 public float waivers. According to the available statistics, all of these issuers had a market capitalisation of at least HK$10 billion at the time of listing. As such, the proposal to require a minimum market capitalisation of HK$10 billion as a pre-condition to granting a lower percentage of public float is a codification of our current practice. We do not consider that adopting such proposal would in any event prejudice or disadvantage new listing applicants.

72. As a sufficient safeguard to protect the interests of minority shareholders, we propose that there should be appropriate disclosure in the initial listing document of the lower prescribed percentage of public float and confirmation of sufficiency of public float in successive annual reports after listing.

73. For the avoidance of doubt, in the case of a listing applicant having more than one class of securities apart from the class to be listed on the Exchange, the HK$10 billion should take into account the market capitalisation of all class(es) of securities of the listing applicants (whether listed or not), using the extrapolated share offer price of securities that are to be listed on the Exchange as the basis (see paragraph 55).

Consultation Proposal

74. We proposed that the revised lower percentage of public float of between 15% and 25% will not affect existing issuers that have already been granted a waiver from the public float requirement.

Respondents' comments

75. Respondents that support the proposal consider it unfair and impracticable to require existing issuers to comply with the new requirement. However, certain respondents consider that the new requirement should apply equally to all issuers and existing issuers should be given an appropriate transitional period to reach compliance.

Conclusion

76. If we were to accept a lower percentage of public float based on the market capitalisation after listing, theoretically an issuer that has already been granted a waiver at the time of listing should be required to revert to the original prescribed minimum level (25%) if its market capitalisation post listing falls below the benchmarked level (HK$10 billion). We note market concerns that it would be difficult for existing issuers that have been granted a waiver to place down shares to meet the new rule requirement, particularly at a time of unfavourable economic conditions. We agree that the new rule requirement should not apply to existing issuers that have already been granted a waiver from the public float requirement.

77. We have amended the Main Board Rules to provide that:

(a) the Exchange may, at its discretion, accept a lower percentage of public float between 15% and 25% if the market capitalisation of securities of a listing applicant determined as at the time of listing on the Exchange exceeds HK$10 billion. For the avoidance of doubt, the HK$10 billion refers to the market capitalisation of all class(es) of securities of the listing applicant (whether listed or not);

(b) as a sufficient safeguard to protect the interests of minority shareholders, listing applicants that are granted the waiver will be required to include appropriate disclosure of the lower prescribed percentage of public float in their initial listing documents and confirm sufficiency of public float in successive annual reports after listing (see paragraph 150); and

(c) the lower percentage of public float of between 15% and 25% shall not affect existing issuers that have already been granted a waiver from the public float requirement.

Spread of Shareholders (Consultation Proposal B.82)

Consultation Proposal

78. We proposed in the Consultation Paper to increase the minimum number of shareholders to 300. For listing applicants to be listed under the alternative market capitalisation/revenue test, as they must demonstrate that they are able to command significant investor interest in their securities, we proposed a higher minimum number of 1,000.

Respondents' comments

79. Respondents disagreeing with the proposal were concerned that it would be difficult for listing applicants (particularly small cap companies) to attract a minimum of 300 shareholders. Raising the minimum number of shareholders to 300 would discourage certain companies (with difficulties procuring the necessary number of shareholders) to apply for listing on the Main Board, and hence impair the fund raising capability of the Exchange.

80. In the case of listing applicants under the alternative market capitalisation/revenue test, certain respondents consider that the change in the financial standard for listing application requirement does not warrant a change in the minimum number of shareholders and that a listing applicant with a larger market capitalisation can have an adequate spread of shareholders without necessarily increasing its number of shareholders to a minimum of 1,000.

Conclusion

81. We recognise that the thresholds of 300 and 1,000 respectively are arbitrary to a degree. However, we believe a significant change to raise the minimum number of shareholders from 100 is required to ensure an open market for the securities to be listed. We also note the recommendation made by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure to raise entry levels for new listings, and the example quoted of "raising the minimum number of unassociated holders of shares in a new listing to 300 from the present 100, would bring Hong Kong more in line with its international counterparts."

82. Setting the minimum number of public shareholders at 300 would be lower than the requirements of the New York Stock Exchange (2,000 for domestic U.S. companies) as well as Singapore (1,000) and Australia (400). Some might argue that ensuring genuinely public and independent shareholders is more important than having a mechanical minimum number. The two issues are related.

83. There has been some commentary on the problem of "fake placees" and "rented names". Together with the requirement on spread of public shareholders, the aim of the new requirements is to further help ensure genuine public interest in the offering/listing and a genuine public market in the securities to be listed.

84. In practice, it should not be difficult for listing applicants with genuine business and market potential to attract sufficient public following so as to meet the minimum of 300 shareholders. From a practical point of view, a higher minimum number of shareholders may hamper the ability of those who would abuse the listing process, (through coaxing names of placees) by increasing the cost of this activity. From an enforcement perspective, a higher threshold should help the SFC's surveillance efforts and ability to detect and gather evidence of market manipulation. On balance, we consider that the need to address regulatory concerns should prevail and that the minimum number of shareholders should be raised to 300.

85. On the basis that listing applicants to be listed under the market capitalisation/ revenue test should be able to demonstrate significant investor interest and public following, we consider that our proposal to require a minimum number of 1,000 shareholders for these listing applicants remains appropriate.

86. We have amended the Main Board Rules to increase the minimum number of shareholders to 300. For listing applicants to be listed under the market capitalisation/revenue test, the minimum number of shareholders will be increased to 1,000.

Spread of Shareholders (Consultation Proposals B.83, B.84 and B.85)

Consultation Proposal

87. We proposed in the Consultation Paper to require the top 5 shareholders that are regarded as "public" shareholders not to hold in aggregate more than 50% of the public float at the time of listing. Substantial shareholders and their associates, irrespective of whether their shares are subject to lock up restriction, will be excluded from the calculation of the minimum number of shareholders at the time of listing.

88. We also proposed to make it clear in the Main Board Rules that the term "shareholders" actually refers to beneficial, and not only to registered, owners of an issuer's securities. The intention of this proposal is to include the beneficial owners, in addition to the registered holders, of an issuer's securities, when considering the minimum number of its shareholders at the time of listing.

89. With requirements for a minimum number of shareholders and a minimum percentage public float at the time of listing, we proposed to delete the guideline in the current Main Board Rules of not less than 3 holders for each HK$1 million of the issue at the time of listing.

Respondents' comments

90. A number of respondents expressed concerns that the proposal to require the top 5 public shareholders in aggregate not to hold more than 50% of the public float is too restrictive, and would restrict the fund raising capability of the Main Board. In particular, the proposal would discourage institutional investors from acquiring shares in an applicant, as the 50% threshold would limit the maximum average holding of each of the top 5 public shareholders to 2.5% – a figure which was considered by some respondents to be too insignificant and may not meet the investment criteria of some institutional investors.

91. Some respondents queried whether a strategic/corporate investor holding less than 10% of issued share capital which is subject to lock-up post listing would be regarded as part of the public shareholders for the purpose of this proposal.

92. Most of the respondents consider that it would be difficult to ascertain the beneficial ownership of securities. There would be problem for issuers to determine the identity of interested persons if shares are deposited in the Central Clearing and Settlement System (CCASS) or otherwise held by nominees/funds/trusts.

93. The majority of respondents support the proposal to delete the guideline of not less than 3 holders for each HK$1 million of the issue at the time of listing. They agree that the guideline is unnecessary.

Conclusion

94. The rationale of our proposal to require the top 5 public shareholders in aggregate not to hold more than 50% of the public float was to prevent over concentration of the public float in a handful of shareholders, which is not conducive to a fair and orderly market.

95. We recognise the concerns of certain respondents that our proposal may be too restrictive and therefore may affect the fund raising capability of a listing applicant. To allay these concerns, we have modified our proposal to reduce the number from 5 to 3, such that the maximum average holding by each of the 3 top public shareholders would be increased to slightly over 4%.

96. We also recognise the practical difficulties for a listing applicant to identify the beneficial holders of its securities, save for those who are required to disclose their interests under the Securities and Futures Ordinance ("SFO"). However, the magnitude of these practical difficulties should not be over-exaggerated. Most IPO issues these days include a placing tranche, where the largest allocations of shares are found. In this connection, sponsors are encouraged to ensure an adequate spread of investors by deploying a sufficiently large distribution network so that allocation of the placing shares will not be overly concentrated. For shares to be allotted through the placing tranche to professional, institutional and other investors, the placing guidelines set out in Appendix 6 to the Main Board Rules apply, and provide a mechanism through which information can be obtained to enable the sponsors to have knowledge of the spread of distribution as well as confirmations of the independence of the placees.

97. We consider that practical difficulties of identifying the beneficial ownership of securities may arise in a limited number of cases, involving yellow form applications made through designated CCASS participants (i.e. the relevant brokerage firms), and our preliminary view is that similar requirements under Appendix 6 and the related provisions should be contemplated. The current requirements under Appendix 6 and the related provisions do not apply to CCASS participants in respect of the yellow form applications. These shares, for which applications are made through the CCASS participants under the yellow forms, will, when allotted, be registered in the name of HKSCC Nominees Limited and deposited directly into CCASS ready for immediate trading. A possible method to increase transparency in the spread of shares to be allotted through the yellow forms would be to require CCASS participants (as other placing/sub-placing agents in the case of placing are required) to provide/confirm to the sponsors the following:

    (a) an analysis of distribution of shares to be allotted to the applicants on whose behalf the CCASS participants submit the yellow forms applications; and

    (b) the independence of these applicants and their ultimate beneficial owners.

98. Although we consider that a mechanism along the lines of that referred to in paragraph 97 is viable, we will conduct a further consultation with market participants and further study of the practical issues involved before finalising and implementing such a mechanism.

99. We have amended the Main Board Rules to provide that:

    (a) the top 3 public shareholders cannot hold in aggregate more than 50% of the public float at the time of listing. The term "shareholders" should refer not only to the registered, but also the beneficial, owners of an issuer's securities;

    (b) substantial shareholders and their associates, irrespective of whether their shares are being locked up, will be excluded from the calculation of the minimum number of shareholders at the time of listing; and

(c) the guideline of not less than 3 holders for each HK$1 million of the issue at the time of listing will be deleted.

Minimum Issue Price (Consultation Proposal B.93)

100. As this proposal relates closely to the issues under review in the November Consultation Paper, we consider it more appropriate to consider this proposal together with the November Consultation Paper. However, we would comment that whilst it is generally up to the listing applicants and their advisers to consider and set initial pricing, they should have regard to the parameters of the trading system on the Exchange, and if circumstances require, adjustments should be made to ensure fair and orderly trading.

Mineral Companies (Consultation Proposals B.98 and B.99)

Consultation Proposal

101. In the Consultation Paper we proposed to clarify that the initial listing eligibility criteria apply equally to listing applicants that are mineral companies. We also proposed to make sufficient management experience of at least 3 years in mining and/or exploration activities a pre-condition to a waiver of the trading record requirement and/or financial standards requirement.

Respondents' comments

102. Some respondents queried the difference between the proposal to make management experience a pre-condition to a waiver and the requirement in Rule 18.03 of the Main Board Rules. The latter rule requires the management of listing applicants that are mineral companies to have adequate experience in mining and/or exploration activities in order to seek a waiver of the trading record requirement. As in the case of the proposal to make management experience a pre-condition to a waiver from the three-financial-year trading record requirement under the market capitalisation/revenue test, these respondents also queried whether the directors and senior management would be expected to have "higher qualifications and experience" when compared with the requirements under Rule 3.09 of the Main Board Rules.

Conclusion

103. We consider that the requirement to have "adequate" experience in mining and/or exploration activities as a pre-requisite for application to a waiver under the current Rule 18.03 of the Main Board Rules is, in principle, the same as the requirement for sufficient and satisfactory management experience of at least three years in the particular line of business (i.e. mining and/or exploration activities) under the proposal. Our proposal is intended to be more specific and supplement what would be considered as "adequate" under the current rule.

104. The rationale for making management experience a pre-condition to a waiver is the same as that set out in paragraph 42 applicable to listing applicants under the market capitalisation/revenue test. The experience of the management must be specific, which must be to the particular line of the business and industry of the listing applicant. The specific nature of the management's experience distinguishes the pre-condition from the general requirement for directors under Rule 3.09 of the Main Board Rules, which sets out the general requirement applicable to all directors.

105. We have amended the Main Board Rules to clarify that the initial listing eligibility criteria will apply equally to listing applicants that are mineral companies. Listing applicants that wish to apply for a waiver of the trading record requirement and/or financial standards requirement will be required to demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least three years in mining and/or exploration activities.

Infrastructure Companies (Consultation Proposals B.103 and B.104)

Consultation Proposal

106. As with mineral companies, we proposed in the Consultation Paper to apply the initial listing eligibility criteria equally to listing applicants that are infrastructure companies. In addition, the requirements of the Announcement regarding Infrastructure Project Companies (the "Announcement") should be incorporated into the Main Board Rules.

107. Similar to mineral companies, we also proposed in the Consultation Paper to make sufficient management experience of at least three years in the line of the business and industry of the listing applicants a pre-condition to a waiver from the trading record requirement and/or financial standards requirement. This is in addition to the specific requirements, including the additional disclosure requirements, set out in the Announcement.

Respondents' comments

108. Some respondents believed certain issuers had been given relaxation of the requirements of the Announcement. As such, they questioned if the incorporation of the requirements of the Announcement into the Main Board Rules would make the guidelines more restrictive, as relaxations of the requirements in the 1996 guidelines which appear to have previously been afforded to listing applicants will no longer be available.

Conclusion

109. The proposal to incorporate the requirements of the Announcement into the Main Board Rules is a codification of our current practice.

110. The scope of the guidelines is specific. According to the guidelines set out in the Announcement, infrastructure companies should be a party to and have the right to build and operate or participate in the results from the operation of projects which "create the basic physical structures or foundations for the delivery of essential public goods and services which are necessary for the economic development of a territory or country". That being the case, the management must have the necessary and sufficient specific experience in the particular line of the business and industry of the listing applicant, both to carry out the project to completion and to operate it thereafter. Indeed, the guidelines currently set out in the Announcement also contain similar requirement. Our proposal is intended to be more specific and to complement the original guidelines.

111. We have amended the Main Board Rules to incorporate, with appropriate modficiations, the requirements of the Announcement into the Main Board Rules and to provide that the initial listing eligibility criteria will apply equally to listing applicants that are infrastructure companies. Listing applicants that wish to apply for a waiver of the trading record requirement and/or financial standards requirement, will be required to demonstrate, to the satisfaction of the Exchange, that they comply with all the specific requirements, including additional disclosure requirements. In addition, they must demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicant.

Deemed New Listing (Consultation Proposal B.109)

Consultation Proposal

112. We indicated in the Consultation Conclusions on Proposed Amendments to the Listing Rules relating to Corporate Governance Issues ("Corporate Governance Consultation Conclusions") published in January 2003 that a separate category of "reverse takeover" transactions would be introduced to the Main Board Rules, based on the GEM Rules and as modified in the Corporate Governance Consultation Conclusions. Upon such new rules coming into effect, an issuer that proposes a "reverse takeover" will be treated as if it were a new listing applicant, in which case the enlarged group or the assets to be acquired must be able to comply with the new listing requirements.

113. In the Consultation Paper, we proposed to require an issuer that is treated as a new listing applicant by proposing a reverse takeover, or the new company (if set up to hold assets and to be listed instead of the issuer) ("NewCo"), to comply with the initial listing eligibility criteria, except for the spread of shareholders requirement which the issuer would have to comply with on a continuing basis.

114. We also proposed, in more specific terms, that the same requirements proposed in "reverse takeover" situations would apply to asset injection in rescue situations (where assets are injected with a view to bringing an issuer that is in financial difficulties back to long-term compliance with the Main Board Rules and such assets to be injected are expected to make a contribution to the revenue of the enlarged group).

Respondents' comments

115. Whilst agreeing with our proposal, some respondents consider that under the "reverse takeover" rules, "deemed new listing" may arise in different situations, such as in transaction involving change of control of issuer, or an issuer in financial difficulties. It may not, therefore, be suitable if the initial listing eligibility criteria were to apply across the board to all situations. The Exchange should consider whether some of the initial listing eligibility criteria should be "modified or waived" under different "deemed new listing" scenarios. Examples of these are requirements on continuity of management, and lock-ups.

116. Certain respondents disagreeing with our proposal were concerned that the proposal would deprive an issuer in financial difficulties of an opportunity of being rescued, and would be detrimental to the interests of its shareholders. This is because experience has shown that if all the new listing criteria are applied to these cases, transactions are less likely to proceed resulting in the issuer not being able to turn around and therefore a further loss of investment by the investing public.

117. Certain respondents also disagree that the assets to be injected must themselves meet the track record/financial standards requirements. To these respondents, such a requirement might deter good projects, which may marginally fail the proposed initial listing criteria but yet possess good growth and development potential from being injected into a listing company with financial difficulties. They believed that the requirement that the enlarged group of NewCo must meet the new listing criteria should be sufficient to serve the purpose.

Conclusion

118. Currently under the Main Board Rules, an issuer that is essentially the subject of a "reverse takeover" (i.e. in general terms, an acquisition which would result in a change in control through the introduction of a majority holder or group of holders) is treated as a new listing applicant. It is our existing practice to require the enlarged group or the assets to be acquired to comply with the new listing requirements. Our proposal is to clarify such existing practice with regard to the treatment of new listing applications arising from reverse takeover transactions, and in particular, with regard to asset injection. To ensure a level playing field for all listing applicants seeking a listing on the Exchange, we consider that the same set of initial listing eligibility criteria should be consistently and fairly applied to all listing applicants alike.

119. In the GEM Rules (which the Main Board Rules will adopt), a reverse takeover is an acquisition of assets by an issuer that in the opinion of the Exchange constitutes an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new listing applicants. In effect, an asset injection in rescue situations could be regarded as one form of "reverse takeover". Very often, investors may propose to inject assets into a financially delinquent issuer, and in consideration for such injections, the issuer will issue a substantial number of new shares either in the existing issuer, or the NewCo, in favour of such investors. This enables the investors to gain control of the issuer, or the NewCo.

120. We note respondents' concerns that the requirement that the assets to be injected must meet the track record/financial standards requirements may not facilitate rescues of issuers in financial difficulties. However, we consider that the requirement is appropriate if we were to provide a level playing field for all potential entrants to the Exchange, particularly where potential entrants wish to use a shell to seek a listing. Certain market practitioners treat failed companies with listed status as though the listing itself is of value. If an issuer has failed as a corporate entity, its shell company (a listed company with insufficient assets or operations) should not be entitled to treat the listed status as an asset of value nor to retain its listed status unless an asset that meets the initial listing criteria is injected into it. The underlying principle of the requirement is to prevent circumvention of the initial listing criteria by an otherwise unqualified listing candidate to obtain a listing status by buying into a listed shell.

121. Likewise, we do not consider it appropriate to grant exemption under rescue situation, as very often, the only exemption that is sought is in respect of the track record/financial standards requirements, given that the assets to be injected are themselves not suitable for listing. If an exemption is granted, the initial listing criteria would be rendered virtually meaningless in these cases of deemed new listing applicants.

122. We have revisited our proposal that deemed new listing applicants will not be required to comply with the spread of shareholders requirement. If a level playing field is to be provided to all listing applicants seeking a listing on the Exchange, deemed listing applicants should also be subject to the same set of initial listing eligibility criteria, which require a listing applicant to have an adequate spread of shareholders. Further, we do not anticipate this requirement would pose an additional burden to the new controlling shareholders given that any placing down by the new controlling shareholders in these situations is similar to public offer in the case of initial public offerings. Accordingly, we have modified our proposal to drop this exception and require deemed new listing applicants to comply with all the initial listing eligibility criteria.

123. We have amended the Main Board Rules to provide that in case of "reverse takeover" transactions including asset injection in rescue situations, the enlarged group (or where appropriate, the NewCo) or the assets to be injected will be required to comply with the proposed initial listing eligibility criteria as follows:

(a) the asset to be injected/acquired or the enlarged group must meet:

- the track record requirement inclusive of trading record period and management and ownership continuity requirements; and
- the profit or other financial standards requirement;

(b) the enlarged group of the existing issuer, or the NewCo, must meet:

- the working capital sufficiency requirement;
- the market capitalisation requirement;
- the public float requirement;
- the spread of shareholders requirement; and
- the minimum issue price requirement, if, upon conclusion, adopted (please refer to paragraph 100 for discussion).

Effective Date (Consultation Proposal B.111)

Consultation Proposal

124. We proposed in the Consultation Paper that the initial listing eligibility criteria would become effective immediately when amendments to the Main Board Rules are made. The new rule will apply to all new listing applicants as well as listing applicants that have submitted their listing application (Form A1) before amendments but remain unlisted three months after the introduction of the amendments.

Respondents' comments

125. Some respondents called for a longer transitional period for implementation of the new rule as there may be applications which, although the Form A1 has not been submitted, are already at an advanced stage and extensive preparation for listing has been made.

Conclusion

126. The proposed modification of initial listing eligibility criteria, in particular, the financial standards, provides a number of alternative routes by which applicants can achieve a listing and in this regard represents a relaxation of the current requirements under the Main Board Rules.

127. The new listing eligibility criteria will be effective on 31 March 2004. Listing applicants that submit their listing application (Form A1) after this date, and listing applicants that have submitted their Form A1 before this date but remain unlisted three months afterwards, must comply with these initial listing eligibility criteria.

PART D – CONTINUING OBLIGATIONS

Public Float (Consultation Proposal D.194)

Consultation Proposal

128. In the Consultation Paper, we proposed to require suspension of an issuer's securities where its public float is 15% or less, until public float is restored. We may consider granting a waiver from the minimum public float requirement in a general offer situation until such time when the general offer is completed.

Respondents' comments

129. Certain respondents considered that the Exchange's general discretion under Rule 6.01 of the current Main Board Rules to suspend dealings in any securities when the prescribed minimum percentage of public float is not met should not be fettered. To these respondents, the threshold to trigger the suspension should not be applied rigidly and flexibility should be provided on a case-by-case basis.

130. Some respondents prefer the issue of update announcements regarding the public float compliance situation on a regular basis instead of suspension. To these respondents, suspension will adversely affect shareholders' interest immediately.

131. On the proposed grant of a waiver from the minimum public float requirement in a general offer (including privatisation offer) situation, respondents that support the proposal consider that an offeror should be required to sell down to maintain the public float without suspension being imposed. To these respondents, suspension will make the task of selling down more difficult and exert pressure on minority shareholders to accept an offer, which they may not otherwise wish to accept. There should be a temporary waiver for a certain period after the close of an offer to allow an orderly sell down so as to minimise the effect on the share price. This is particularly relevant in the case where the controlling shareholders' percentage shareholding is more than 75% but less than that required to privatise the issuer. Respondents opposing the proposal however, consider that minority shareholders' right may be unfairly prejudiced if a waiver is granted. The minimum public float should be maintained to ensure reasonable prospects of a market for the shares after the offer and to avoid a situation where the offeror may gain an advantage in being able to use reduced liquidity in the stock to put pressure on the minority shareholders to sell.

132. On the issue as to whether a similar grant of a waiver from the minimum public float requirement should be granted in a share repurchase situation, where an issuer effects repurchases under the Share Repurchases Code resulting in its public float falling below 25% (on condition that the issuer is still able to maintain at least 15% of public float having an aggregate market capitalisation of not less than HK$500 million), a number of respondents questioned the appropriateness of granting such a waiver. To these respondents, the issuer should have taken into account the resulting public float when deciding whether to initiate share repurchases. This is unlike a general offer situation which may be started by a third party. It would be illogical if the issuer is required to issue new shares so as to increase the public float to the prescribed minimum percentage, when it has just undertaken a repurchase of its shares.

133. Respondents have diverse views on the length of the waiver period, ranging from one month to an unspecified time limit depending on market conditions.

Conclusion

134. We acknowledge respondents' concerns on the possible consequences resulting from suspension upon an issuer's failure to maintain a minimum public float. However, as the underlying principle of the minimum public float requirement is to ensure an open, fair and orderly market, we consider that our proposal to require suspension of an issuer's securities if its public float falls below a prescribed percentage is appropriate.

135. Under our current practice, where the percentage of public float of an issuer falls below 10% or less of its share capital, the issuer's securities may be suspended until it has taken appropriate steps to restore the public float. As we discussed in the Consultation Paper, there may be potential undesirable consequence for minority shareholders resulting from a lower percentage of public float (see paragraph 70). Accordingly, the minimum level that the Exchange may require in exceptional circumstances for granting an extension for an issuer to comply with the minimum prescribed percentage without suspension should likewise be at a higher threshold of 15% or more of an issuer's issued share capital.

136. There has been suggestion that as an alternative to the proposed 15% threshold for suspension, the market can be alerted by showing "flag" on the trading screen against the securities of the relevant issuer where its public float falls below 25%. However, as the underlying principle for suspending the securities of an issuer below certain threshold is to ensure a fair and orderly market, the introduction of a "flagging system" would not be helpful to this end. In these instances, the controlling shareholders should be obliged to take steps to place down and restore the public float.

137. The proposal to grant a waiver of the minimum public float requirement in case of general offer situations is intended to cover the following two scenarios:

(a) general offer by a third party offeror; and

(b) privatisation offer by the controlling shareholders.

Such waiver is temporary in nature. This is different from the permanent waiver that may be granted to issuers of substantial sizes at the time of listing (see paragraphs 77(a) and 146).

138. It is not unusual for the public float of an issuer to fall below the minimum prescribed threshold of 25% in general offer situations. We acknowledge that it would be practically difficult for an issuer to restore the public float immediately after completion of the general offer. Accordingly, we will modify our proposal such that a temporary waiver of the minimum public float requirement will be granted for a reasonable period after the close of the general offer, so as to enable the issuer, or the controlling shareholders (in a failed privatisation offer) to take steps to orderly place down and restore the public float. The length of the waiver period will be at the absolute discretion of the Exchange, having regard to the specific circumstances of each individual case, such as the action(s) taken or proposed to be taken by the issuer to comply with the public float requirement. A corresponding modification has been made to our proposal.

139. Our proposal contemplated the general situation but did not extend to cover issuers (with market capitalisation of over HK$10 billion) that might be granted a public float waiver at the time of listing (see paragraphs 77(a) and 146). In these instances, we consider that a downward adjustment of the percentage threshold from 15% to 10% is appropriate. We have made a corresponding modification to our proposal in this regard.

140. We note the concerns of respondents over share repurchase situations. Share repurchases under this category refer to a general offer share repurchases in accordance with the Share Repurchases Code. We agree that the resulting public float should be within the contemplation and therefore control of an issuer and its management before they proceed to initiate a general offer share repurchases. It would not be appropriate for an issuer and its management to consider a general offer share repurchases that would bring the public float of the issuer below the minimum threshold of 25%. Accordingly, we do not consider it appropriate to extend the public float waiver to share repurchases situations.

141. We have amended the Main Board Rules to provide that the Exchange will normally require suspension of an issuer's securities where its public float falls below 15% (or 10% in the case of an issuer that has been granted a public float waiver at the time of listing). The Exchange may consider granting a waiver to an issuer in a general offer situation (including privatisation offer) from complying with the minimum public float requirement for a period after the close of the general offer. The Exchange will normally regard three months as an adequate period for full restoration of the public float. The issuer must comply with the continuing obligation with regard to the public float immediately after the expiration of the waiver, if granted.

Public Float (Consultation Proposal D.195)

Consultation Proposal

142. In the Consultation Paper, we proposed that the Exchange may at its discretion accept a lower percentage of public float of between 15% and 25% for issuers with market capitalisation of over HK$10 billion which will only be applicable at the time of listing. The percentage of the public float will be fixed at the time of listing and issuers may not apply for a lower percentage after listing. Once granted, this lower percentage of public float and any conditions that the Exchange may impose will apply to issuers throughout their listing on the Exchange.

Respondents' comments

143. Respondents that disagreed with the proposal to grant a lower percentage of public float only at the time of listing consider that we should take into account the organic growth of an issuer and allow for a lower public float percentage post-listing. After listing, if an issuer grows to a size similar to that of a new listing applicant eligible for a lower percentage of public float, the issuer should be permitted to reduce its public float. If not, the issuer is being treated less favourably than a new listing applicant of similar size.

144. Respondents that disagreed with the proposal also considered that regard must be given to the long term market capitalisation. If the market capitalisation of an issuer remains consistently below a given threshold for a period of time, the relaxation on the public float percentage that has been granted at the time of listing should be withdrawn and the issuer should be required to comply with the minimum public float percentage requirement.

Conclusion

145. Our proposal was to clarify our practice that the lower percentage of public float will only be granted at the time of listing to listing applicants with a market capitalisation of at least HK$10 billion (see paragraph 71). The initial market capitalisation provides a more objective benchmark than the market capitalisation after listing as the latter may fluctuate. It would be difficult to monitor compliance if a waiver of the public float requirement is to be granted after listing. Also, it would be difficult to require existing issuers that have been granted the waiver at the time of listing to place down their shares in order to meet the new rule requirement, particularly when the general market sentiment is weak. For these reasons we decided not to extend our proposal.

146. We have amended the Main Board Rules to clarify the existing rules and our interpretation thereof that the lower percentage of public float which the Exchange may at its discretion accept for issuers with market capitalisation of over HK$10 billion, is only applicable at the time of listing and will not be considered post listing. The percentage of the public float (between 15% and 25%) will be fixed at the time of listing and issuers may not apply for a lower percentage after listing. Further, this lower percentage, once granted, will apply to issuers throughout their listing on the Exchange, subject to such conditions that the Exchange may impose at the time the lower percentage is granted.

Public Float (Consultation Proposal D.196)

Consultation Proposal

147. We proposed in the Consultation Paper to require issuers to include a confirmation of sufficiency of public float in their annual reports, based on information such as filing under the Securities (Disclosure of Interests) Ordinance ("SDI Ordinance"), that is available to them. The SDI Ordinance has been repealed and replaced by the SFO which came into effect on 1 April 2003.

Respondents' comments

148. A number of respondents expressed concerns that the confirmation would require an issuer to make a full investigation under section 18 of the SDI Ordinance (now section 329 of SFO) on its shareholders. To do this would unnecessarily increase the compliance cost and burden on the issuer.

Conclusion

149. Our proposal to require a confirmation of sufficiency of public float in annual reports of issuers is to increase transparency and provide more information to investors. We note the respondents' concerns in paragraph 148. However, we expect that this confirmation will be based on information publicly available to the issuer and within the knowledge of its directors as at the latest practicable date up to the issue of the annual report. Only where there is an indication that the public float of an issuer may not be met will the issuer be required to carry out an investigation under section 329 of SFO (previously section 18 of the SDI Ordinance).

150. Accordingly, we have amended the Main Board Rules to provide that a confirmation of sufficiency of public float is required to be included in an issuer's annual reports, based on information that is publicly available to it and within the knowledge of its directors as at the latest practicable date up to the issue of the annual report.

Spread of Shareholders (Consultation Proposals D.201, D.202 and D.203)

Consultation Proposal

151. In the Consultation Paper, we proposed to require an issuer to maintain, at all times subsequent to listing, at least the minimum number of shareholders applicable to the issuer at the time of its initial listing. We may consider granting a waiver from the minimum number of shareholders requirement in a general offer situation until such time when the general offer closes. Where there is an indication that the securities of an issuer may not be held by an adequate spread of shareholders, the issuer may be required to demonstrate to our satisfaction that it meets the continuing obligation in respect of the spread of shareholders.

152. We also proposed to grant a transitional period of 18 months to all the existing issuers that are listed before the effective date of the amendments to initial listing eligibility criteria. All existing issuers will be required to maintain a minimum of 300 shareholders after the transitional period.

Respondents' comments

153. Respondents that did not agree with the proposal considered that an issuer's control over the spread of shareholders after listing is severely limited. As such, monitoring such spread would be time consuming, costly and difficult.

154. Certain respondents also disagreed for different reasons. They argued that if controlling shareholders/management did not engage in activities which led to a breach of the minimum spread of shareholders requirement, it would be unfair if they were required to sell down in order for the listed company to comply with such requirement. These respondents suggested that the issue could be dealt with by way of disclosure and by requiring the issuer and relevant persons to undertake appropriate actions to facilitate a genuine open market.

155. Respondents generally supported the proposal to grant a temporary waiver from the spread requirement in general offer situations until such offer closes.

156. Respondents that supported the proposal to grant a transitional period to existing issuers to comply with the new continuing obligation in respect of the spread requirement consider that a period of 18 months is appropriate.

Conclusion

157. The purpose of a spread of shareholders requirement is to help ensure an open, fair and orderly market such that the shares of an issuer would not be concentrated in the hands of a small number of shareholders.

158. We recognise respondents' concerns over the significant practical difficulties to comply with the spread of shareholders requirement, particularly, how the issuer can obtain the necessary information on a timely basis relating to the beneficial ownership of its securities after listing.

159. In view of these difficulties and having regard to the safeguard provided by the minimum public float requirement, we have decided that now is not the appropriate moment to introduce a continuing obligation on the spread of shareholders.

160. To deal with the unusual circumstances of high concentration of shares, we have adopted the suggestions of certain respondents regarding the actions to be taken upon an indication of a lack of an open market or an insufficient spread of shareholders. A corresponding modification has been made to our proposals.

161. We have amended the Main Board Rules to provide that:

When the Exchange has reason to believe that there is a lack of genuine market in an issuer's securities, or that these securities may be concentrated in the hands of a few shareholders to the detriment or without the knowledge of the investing public,

(a) the issuer will be required to issue an announcement to inform the public that the relevant securities may not have a genuine market or shareholding may have been concentrated in the hands of a few shareholders; and to remind the public to exercise caution when dealing in the securities; and

(b) the issuer will be required to conduct an investigation under section 329 of the SFO and report to its shareholders on the results of the investigation.

Timeliness of Accounts (Consultation Proposal D.206)

Consultation Proposal

162. In the Consultation Paper, we proposed to subject issuers that fail to publish financial results on the due date to immediate suspension of trading of their securities.

Respondents' comments

163. The majority of the respondents that disagreed with the proposal prefer to address this issue through disclosure, by way of announcement, or an indication in the trading system, of the fact that an issuer has failed to publish its financial results on the due date, rather than suspension.

Conclusion

164. As we discussed in the Consultation Paper, the market needs reliable and timely information. The financial results of an issuer are important information to enable investors to make informed investment decisions. Failure by an issuer to publish financial results on time may be indicative of the issuer not being able to keep proper books and records. This may raise serious concerns over the issuer's transparency and about the issuer's ability to meet its disclosure obligations as a listed company. In these instances, we consider that for the protection of investors and to promote a higher standard of financial reporting, the trading of the securities of the issuer should be suspended pending release of its financial results.

165. We understand that in UK, the securities of an issuer that fails to publish its financial results on time will be subject to immediate suspension. No grace period prior to suspension is allowed. In the mainland, there is no one standard set of rules, yet they have notices issued by different stock exchanges notifying that issuers that fail to publish their results within the prescribed deadline will be subject to suspension on the day after the prescribed deadline. In US, the registration of an issuer that is late in filing its financial reports may be at risk – an issuer will lose availability for short-form registration for at least one year from the date of the late filing. We consider that the provision of timely financial information is important to enable investors to make informed investment decisions and to facilitate a fair and orderly market. Therefore, there should not be any grace period before suspension.

166. Currently under the Main Board Rules, an issuer that fails to issue timely audited financial results is required, so far as the information is available, to publish the results for the financial year based on unaudited financial results. Where possible, those results must have been reviewed by the issuer's audit committee or the issuer's auditors (if an audit committee has not been formed). The rationale of this rule is to provide the investing public with sufficient financial information of the issuer in the interim, although the quality of such information may not be to the same standard as the audited financial results. There is a risk that the release of unaudited financial results in the interim pending release of the audited financial results may at times be more misleading for the investing public. Such unaudited financial results may be at variance with the subsequent audited financial results, when published.

167. It is the Exchange's expectation that an issuer should publish its financial results on a timely basis. Given that it will normally take some time to prepare the financial results before their release to the public, where the auditors realise that there is no reasonable prospect of the issuer's financial results being published on the due date, they should give prior warning to the issuer, who in turn should inform the Exchange as soon as possible. We are mindful that existing issuers may experience practical difficulty in complying with the new requirement. Therefore, we have decided to modify the proposal and introduce a transitional period up to 31 December 2004.

168. Accordingly, we have amended the Main Board Rules to provide that trading of the securities of issuers that fail to publish their financial results on the due date will be immediately suspended. Trading may only resume after the issuers publish the requisite financial results. There will be a transitional period up to 31 December 2004 for all existing issuers to comply with this new continuing obligation.

Provision of Information to the Exchange (Consultation Proposal D.208)

Consultation Proposal

169. In the Consultation Paper, we proposed to introduce a new continuing obligation on provision of information by the issuer to the Exchange such that an issuer should not make a misrepresentation to the Exchange, omit necessary material information in the course of communication with the Exchange, or otherwise fail to provide requested information.

Respondents' comments

170. A number of respondents consider that the current rule under Paragraph 39 of the Listing Agreement is sufficiently wide to serve the purposes of the proposal. Further, the relevant provisions in the SFO together with the Securities and Futures (Stock Market Listing) Rules should be adequate to deal with the provision of false and misleading information by an issuer.

171. Some of the respondents commented that the proposal, as presently worded, is too wide and would be subject to dispute.

Conclusion

172. The obligation to ensure a fair and orderly market raises in the first instance a primary need to ensure that accurate and complete information is supplied by the management of issuers to the Exchange. The ability of the Exchange to make timely decisions may be compromised if inaccurate or incomplete information is supplied. From a regulatory perspective it is important to reinforce the need for accurate and complete disclosure to the Exchange.

173. If the market situation requires the publication of an announcement it is of equal importance that such an announcement is made as soon as possible so that the market is informed and a disorderly market in an issuer's securities is prevented. However, the requirement of timeliness can be prejudiced by the inability of issuers to obtain confirmation from all members of the board of directors that the announcement is accurate and complete before publication.

174. The purpose of the proposal was to ensure that any information provided by an issuer regarding listing matters should be accurate, complete and not misleading. In achieving this, the Exchange recognises the importance of balancing the competing interests of timely disclosure against the qualitative level of assurance to be given to shareholders as to its accuracy by some or all of the directors. Whilst the SFO and its subsidiary legislation may have already contained provisions to deal with the provision of false and misleading information by an issuer, we consider that explicit provisions should also be imparted from the perspective of the Main Board Rules.

175. It is our view that the solution adopted should reflect in so far as possible the legal obligations placed on directors. In general the law appears to recognise that while no distinctions are drawn between executive and non-executive roles when assessing liability the standards expected of individual directors in given circumstances will vary. We are considering a number of possible solutions:

(a) to impose an absolute obligation on issuers and directors to ensure the accuracy of announcements. Such a rule would be akin to imposing strict liability on issuers and their management of whatever role and calibre; and

(b) to permit a form of responsibility statement which is modified so that only those directors directly involved in authorising the publication of an announcement take full responsibility for it. In connection with this, we are also considering whether the rules should be tailored to recognise formal delegation of responsibility. Under this solution there may be a role for published guidance to clarify the expectations and enforcement policy of the Exchange.

176. The provision of timely and accurate information to the market is of fundamental importance to its integrity and carries with it significant implications for the protection of investors. However, we also recognise the practical and legal limits to the degree of responsibility that can and should be fairly placed on directors of listed issuers.

177. Given the complexity of the issues involved, we consider that more study should be conducted before arriving at a solution which should be able to balance the competing interests of timely disclosure against the assurances as to accuracy to be given by directors. In the interim pending finalisation of such a review, we have not made any changes to the Main Board Rules.

Effective Date (Consultation Proposal D.210)

Consultation Proposal

178. In the Consultation Paper, we proposed that the new continuing obligations will become effective immediately when amendments to the Main Board Rules are made. There will, however, be a transitional period of 18 months for existing issuers and listing applicants that have submitted their Form A1 before the effective date and listed within three months after the effective date, to comply with the minimum spread of shareholders requirement.

Respondents' comments

179. Whilst some respondents agree that an 18-month transitional period is reasonable, others consider that there should be a further grace period for listing applicants that have submitted their Form A1 before the effective date and listed after the effective date.

Conclusion

180. Given that we have decided not to proceed with our proposal on the spread of shareholders requirement as a continuing obligation, the need for transitional arrangements has largely disappeared. The continuing obligations rules are to take effect on 31 March 2004 except for the continuing obligation with regard to the timeliness of accounts. A transitional period up to 31 December 2004 will apply (see paragraphs 162 to 168 for more detailed discussion).

PART F – DISCLOSURE REQUIREMENTS AT THE TIME OF INITIAL LISTING

Directors and Board Practices – Information about the Listing Applicant's Past Corporate Governance Practices (Consultation Proposal F.237)

Consultation Proposal

181. We proposed to require a listing applicant to disclose in the initial listing document its past corporate governance practices during the track record period. It was considered that with the introduction of this new requirement, investors could be in a better position to assess the listing applicant's achievement in governance practices. Listing applicants would be encouraged to adopt good corporate governance practices well before listing.

Respondents' comments

182. A number of respondents consider that disclosure of the past corporate practices of a company before listing is unduly burdensome and also question the relevance of such information as unlisted companies often do not have corporate governance structures in place which are comparable to those of listed issuers. It would be unusual for a private company to have adopted public company corporate governance practices. Any disclosure should be forward looking on the practice to be adopted following listing rather than focusing on the past history of corporate governance.

Conclusion

183. We note the respondents' comments and recognise that a private company may not have similar standards of corporate governance practices in place than those applicable to listed companies. What is more important is for an issuer to ensure that they will adopt and observe good corporate governance practices after listing. Accordingly, we have decided not to adopt our proposal that requires disclosure by listing applicants in their initial listing documents their corporate governance practices (if applicable) during the three-financial-year track record period.

184. Notwithstanding we are not to adopt the proposal, where information relating to past corporate governance practices is relevant to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the listing applicant and of its profits and losses and of the rights attaching to the securities to be listed, such information should be disclosed by listing applicants under the general disclosure for prospectuses as is currently required under the Main Board Rules.

Corporate Reporting and Disclosure of Information – Accounts and Financial Information (Consultation Proposal F.244)

Consultation Proposal

185. We proposed to require a listing applicant to include management accounts from the latest financial period of the accountants' report to a period that is not more than 3 months before the date of the initial listing document. The information to be disclosed should be the net profit for the period and the unaudited balance sheet. The management accounts should be reviewed by the reporting accountants to a standard comparable to that required by the Hong Kong Society of Accountants or the International Auditing Practice Committee of the International Federation of Accountants.

Respondents' comments

186. A number of respondents consider that our proposal may create substantive or logistical problems. The imposition of the additional requirement for the management accounts (in addition to the current rule that the latest financial period reported on by reporting accountants must not be more than 6 months before the date of the initial listing document (see paragraph 202)) would affect the timetable of fund raising activities and incur extra costs for the listing applicant yet without providing much more meaningful information to investors. The full accountants' report, adjusted NAV statement and confirmation that there are no material adverse changes as at the latest practicable date included in the initial listing documents already provide for sufficient and up-to-date financial information.

187. Some respondents are of the view that given the short time frame covered by the management accounts, cyclical or seasonal factors might be accentuated and disclosure of management account figures without any qualitative discussion may be misleading.

Conclusion

188. We recognise that to require a listing applicant to include management accounts of not more than 3 months before the date of its initial listing document and which must be reviewed by the reporting accountants to a comparable standard may in some cases be onerous. The current rule requiring the latest financial period reported on by reporting accountants must not be more than 6 months before the date of the initial listing document, together with the confirmation of no adverse material change, should be able to capture sufficiently up-to-date financial information to enable investors to make informed decisions. After balancing the potential benefits against the practical difficulties and additional costs which the new requirement may bring to listing applicants, we have decided not to adopt this proposal.

PART C
SUMMARY OF CONSULTATION PROPOSALS ADOPTED WITHOUT MODIFICATION

189. This Part summarises all the Consultation Proposals, in addition to those set out in Part B of this Consultation Conclusion Report, that we have adopted without modification. Most of these Consultation Proposals have received support from a majority of the categories of respondents.

PART B – INITIAL LISTING ELIGIBILITY CRITERIA

Track Record – Management and Ownership Continuity (Consultation Proposal B.34)

190. We have codified our interpretation of the current rule to require a listing applicant to demonstrate management continuity for at least the three-financial-year trading record period and ownership continuity and control for at least the most recent financial year of the trading record period.

Financial Standards – Market Capitalisation/Revenue/Cash Flow (Consultation Proposal B.48)

191. We have amended the Main Board Rules to introduce an alternative market capitalisation/revenue/cash flow test to the profit requirement. This alternative test will apply to listing applicants with market capitalisation of at least HK$2 billion at the time of listing and revenue of at least HK$500 million for the most recent financial year comprising 12 months and positive cash flow from operating activities that are to be listed of at least HK$100 million in aggregate for the three-financial-year track record period. Listing applicants are, however, still required to comply with the trading record period of not less than three financial years. For the purposes of calculating revenue under this alternative test, only revenue arising from the principal activities of the listing applicants and not items of revenue and gains that arise incidentally will be recognised. Revenue arising from "book" transactions, such as banner barter transactions or writing back of accounting provisions, will be disregarded.

Working Capital Sufficiency (Consultation Proposals B.57 and B.58)

192. The Exchange's current practice does not compel a listing applicant to include a profit forecast in its initial listing document.

193. The current practice of the Exchange prohibits the issue of pre-deal research with a profit forecast by sponsors and/or each of the underwriters unless a profit forecast is included in the listing applicant's initial listing document. We will codify this current practice into the Main Board Rules and further to clarify that any forward-looking statements not included in an initial listing document should not be included in a pre-deal research published by these parties.

194. We have amended the Main Board Rules to introduce a new requirement on working capital sufficiency such that a listing applicant (except a listing applicant, whose business is entirely or substantially that of the provision of financial services, and its solvency and capital adequacy are subject to prudential supervision by a regulator acceptable to the Exchange) has to show that it has sufficient working capital for its current needs, that is for at least the next 12 months from the date of the initial listing document.

195. We have amended the Main Board Rules to require the sponsor to confirm to the Exchange in writing that it:

(a) has obtained written confirmation from the listing applicant that the working capital available to the group is sufficient for its present requirements, that is for at least the next 12 months from the date of publication of the initial listing document; and

(b) is satisfied that the confirmation in paragraph 195(a) immediately above has been given after due and careful enquiry by the listing applicant and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.

Market Capitalisation (Consultation Proposal B.68)

196. We have decided to maintain the current requirement of the Main Board Rules that options, warrants or similar rights to subscribe or purchase securities for which listing is sought must have a minimum market capitalisation of at least HK$10 million at the time of listing.

PART D – CONTINUING OBLIGATIONS

General (Consultation Proposal D.185)

197. We have amended the Main Board Rules to incorporate the continuing obligations requirements previously contained in the Listing Agreement (for equity securities only) as part of the Main Board Rules. Ongoing suitability for listing would be assessed with reference to compliance with the continuing obligations set out in the Main Board Rules.

Public Float (Consultation Proposal D.193)

198. We have decided to maintain the current continuing obligation with regard to the public float. An issuer is generally required to maintain, at all times after listing, not lower than the prescribed percentage of securities in public hands at the time of initial listing. We will retain discretion under the current Main Board Rules not to require a suspension of an issuer's securities if the shortfall in the prescribed percentage arises purely from an increased or newly acquired holding of the issuer's securities by a person or entity (which the Exchange would expect to be institutional investors with a wide spread of investments other than in the issuer's securities) that becomes a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries after such acquisition, and is otherwise independent of the issuer.

PART F – DISCLOSURE REQUIREMENTS AT THE TIME OF INITIAL LISTING

General (Consultation Proposal F.232)

199. We have amended the Main Board Rules to introduce additional qualitative disclosure requirements to enhance disclosure in the areas of corporate matters of a listing applicant in the initial listing document, so as to enable investors to better evaluate and price their investment accordingly.

Protection of Shareholders' Rights – Over-allotment Option and Price Stabilising Activities (Consultation Proposal F.234)

200. We have codified our current practice to require disclosure in the initial listing documents where a listing applicant or its selling shareholder has granted over-allotment options or it is proposed to enter into price stabilising activities in connection with an offering. The information to be disclosed will include:

(a) confirmation that the price stabilising activities will be entered into in accordance with the laws, rules and regulations in place in Hong Kong on stabilisation;

(b) the reason for entering into the price stabilising activities;

(c) the number of shares subject to the over-allotment option, the option price, whether the shares issued or sold under an over-allotment option are to be issued or sold on the same terms and conditions as the shares that are subject to the main offering;

(d) whether there are any other terms, such as the duration, of the option; and

(e) the purpose for which the option has been granted.

Corporate Reporting and Disclosure of Information – Information about the Persons in Control of the Listing Applicant (Consultation Proposal F.239)

201. We have amended the Main Board Rules to require description of the matters that the listing applicant relied on in satisfying itself that it is capable of carrying on its business independently of the persons who are directly or indirectly, jointly or severally, in control of the listing applicant after listing.

Corporate Reporting and Disclosure of Information – Accounts and Financial Information (Consultation Proposal F.243)

202. We have decided to maintain the current requirement that the latest financial period reported on by reporting accountants must not be more than 6 months before the date of the initial listing document.

Corporate Reporting and Disclosure of Information – The Management (Consultation Proposals F.247 and F.248)

203. We have amended the Main Board Rules to require disclosure of the details of the expertise, experience and qualification of the management of a listing applicant to be listed under Chapter 8 of the Main Board Rules.

204. We have amended the Main Board Rules to require disclosure of the details of the management expertise and experience for the management of a listing applicant to be listed under the market capitalisation/revenue test and a listing applicant that is a mineral company or infrastructure company that wishes to apply for a waiver of the trading record requirement or financial standards requirement, where appropriate.

Corporate Reporting and Disclosure of Information – Prospects of the Group (Consultation Proposal F.250)

205. We have codified our current practice to require that where a profit forecast or estimate is prepared, such profit forecast or estimate must be prepared on a basis consistent with the accounting policies normally adopted by the listing applicant.

Effective Date (Consultation Proposal F.251)

206. The new disclosure requirements will become effective on 31 March 2004. Listing applicants that have submitted their listing application before implementation of these amendments are encouraged to make similar disclosure in their initial listing document.