

CONSULTATION PAPER

ON

PROPOSED AMENDMENTS TO THE LISTING RULES

RELATING TO

INITIAL LISTING AND CONTINUING LISTING ELIGIBILITY

AND

CANCELLATION OF LISTING PROCEDURES

July 2002



Hong Kong Exchanges and Clearing Limited

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EXECUTIVE SUMMARY

INTRODUCTION

1. The quality of the market is crucial for investor confidence. It is the principal function of The Stock Exchange of Hong Kong Limited (the “Exchange”) to provide a fair, orderly, efficient and transparent market for the trading of securities. The Rules Governing the Listing of Securities on the Exchange (“Main Board Rules”) are designed to secure and maintain the quality of the market place and investors’ confidence in it.
2. We consider that the listing status is an indicator of issuers’ achievement in terms of financial performance as well as investor acceptance and interest. A listing on the Main Board of the Exchange generally signifies a public recognition of the issuer having achieved a quality status in its industry - in terms of financial performance and investor acceptance.
3. The Exchange has published in January 2002 a Consultation Paper on Proposed Amendments to the Listing Rules relating to Corporate Governance Issues (“Corporate Governance Consultation Paper”) which aimed at raising the standards of corporate governance amongst issuers listed on the Exchange. In line with this aim, we consider that we should, as an ongoing effort, examine and review the eligibility criteria for initial listing and continuing listing, so as to further enhance the quality of the issuers listed on the Exchange and to bring our requirements on a par with international standards.
4. In this Consultation Paper, we have reviewed the Main Board Rules generally applicable to issuers of equity securities (but not debt securities) applying for listing or already listed on the Main Board of the Exchange under Chapter 8 of the Main Board Rules, as well as mineral and infrastructure companies. The areas covered are:
 - (a) initial listing eligibility criteria;
 - (b) continuing listing eligibility criteria;
 - (c) continuing obligations;
 - (d) cancellation of listing procedures; and
 - (e) disclosure requirements at the time of initial listing.
5. This summary should be read in conjunction with the other parts of the Consultation Paper for a fuller understanding of the proposed changes to the Main Board Rules.

SUMMARY OF PROPOSALS RELATING TO INITIAL LISTING ELIGIBILITY CRITERIA

Track Record

Trading Record Period (paragraphs 26 to 30 of Part B)

1. We will maintain the current requirement that generally a listing applicant must have a trading record period of not less than three financial years.
2. We will amend the Main Board Rules such that those listing applicants to be listed under the market capitalisation/revenue test (discussed in paragraph 52 of Part B of this Consultation Paper) may be granted a waiver from the trading record period requirement. However, the Exchange must be satisfied that such listing applicants are able to meet minimum requirements on management experience (as discussed in paragraph 53 of Part B of this Consultation Paper) and number of shareholders (as discussed in paragraph 82 of Part B of this Consultation Paper).

Management and Ownership Continuity (paragraphs 31 to 34 of Part B)

3. We will codify our interpretation of the current rule to require a listing applicant to demonstrate management continuity during 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

Profit (paragraphs 36 to 43 of Part B)

4. We will maintain the current profit requirement as one of the quantitative tests for assessing the track record financial performance of a listing applicant.
5. We will amend the Main Board Rules so that pre-tax profits will be used by listing applicants for the purpose of satisfying the profit record requirement, rather than post-tax profits as currently required in the Main Board Rules. However, we will 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.

6. We will maintain the current minimum HK\$50 million aggregated profit requirement. However, we will amend the Main Board Rules to allow for greater flexibility in the spread of the aggregated profit such that no less than HK\$20 million can be attributable to the preceding two years and no less than HK\$20 million can be attributable to the most recent financial year of the track record period.

Market Capitalisation/Revenue/Cash Flow (paragraphs 44 to 48 of Part B)

7. We will amend the Main Board Rules to introduce an alternative quantitative test to the profit requirement for assessing the financial performance of a listing applicant during the three-financial-year track record period. This 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 during 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. For the purpose of calculating revenue under the alternative quantitative tests to the profit requirement under Part B of this Consultation Paper, the Exchange will only recognise revenue that generates actual cash inflow but not revenue that is created merely on books, such as banner barter transactions or writing back of accounting provisions.

Market Capitalisation/Revenue (paragraphs 49 to 53 of Part B)

8. We will amend the Main Board Rules to introduce another alternative quantitative test to the profit requirement, in addition to the market capitalisation/revenue/cash flow test as discussed in paragraph 48 of Part B of this Consultation Paper. This will apply to listing applicants having a market capitalisation of at least HK\$4 billion at the time of listing and revenue of at least HK\$500 million during the most recent financial year comprising 12 months. There will be a specific requirement for a higher minimum number of shareholders.
9. We will amend the Main Board Rules to provide that listing applicants under the market capitalisation/revenue test that wish to apply for a waiver from the three-financial-year trading record requirement will be required to demonstrate management continuity and ownership continuity and control for the most recent financial year comprising 12 months. In addition, they must demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least 3 years in the line of the business and industry of the listing applicants.

Working Capital Sufficiency (paragraphs 54 to 58 of Part B)

10. We will maintain the current practice not to compulsorily require a listing applicant to include a profit forecast in its initial listing document. However, listing applicants will be encouraged to include a profit forecast when circumstances permit.
11. We will amend the Main Board Rules to introduce a new requirement, in addition to the current requirement, on working capital sufficiency such that a listing applicant (except a listing applicant that is subject to prudential supervision by a regulator acceptable to the Exchange) has to show that it has sufficient working capital (including the proceeds raised from listing and its application) for its current needs and for at least the next 12 months from the date of the initial listing document. In this connection, we would also require the sponsor's written confirmation to the Exchange to such effect.

Market Capitalisation (paragraphs 59 to 68 of Part B)

12. We will amend the Main Board Rules to increase the initial minimum expected market capitalisation to HK\$200 million such that:
 - (a) in respect of a listing applicant that has only one class of securities and is applying to list such class of securities on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only one class of securities that are to be listed and traded on the Exchange;
 - (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only the class of securities that are to be listed and traded on the Exchange; and
 - (c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise the aggregate of such securities listed and traded on other regulated markets as well as securities that are to be listed and traded on the Exchange.

13. Other listing applicants to be listed under the proposed alternative market capitalisation/revenue/cash flow or market capitalisation/revenue tests will be required to meet the respective market capitalisation standards applicable to these tests. For the purpose of this Consultation Paper, the reference to market capitalisation shall, where appropriate, include the global market capitalisation of all the securities of an issuer that are listed and traded on other regulated markets.
14. We will 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.

Public Float (paragraphs 69 to 74 of Part B)

15. We will amend the Main Board Rules to provide that:
 - (a) in respect of a listing applicant that has only one class of securities and is applying to list such securities on the Exchange, there must be 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, in the hands of the public;
 - (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the total securities held by the public at the time of listing on the Exchange must be at least 25% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$200 million; and
 - (c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, 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 and traded on the Exchange must not be less than 10% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million.

16. We will amend the Main Board Rules to provide that 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 that are listed and traded on regulated markets determined as at the time of listing on the Exchange, exceeds HK\$10 billion. However, the listing applicant must demonstrate, to the satisfaction of the Exchange, that it has sufficient safeguard in place to protect the interests of minority shareholders. If this proposal is adopted, the revised lower percentage of public float of between 15% and 25% shall not affect those existing issuers that have already been granted a waiver from the public float requirement.

Spread of Shareholders (paragraphs 75 to 85 of Part B)

17. We will amend the Main Board Rules to increase the minimum number of shareholders to 300 for all listing applicants, including H share listing applicants. For listing applicants to be listed under the proposed alternative market capitalisation/revenue test as discussed in paragraph 52 of Part B of this Consultation Paper, the minimum number of shareholders will be 1,000.
18. For the purpose of this proposed initial listing eligibility criterion, as well as the proposed continuing obligation with regard to the “spread of shareholders” in Part D of this Consultation Paper, the term “shareholders” actually refers to beneficial, and not registered, owners of an issuer’s securities.
19. We will amend the Main Board Rules 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.
20. We will amend the Main Board Rules so that 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.
21. We will amend the Main Board Rules to delete the guideline of 3 holders each holding HK\$1 million.

Minimum Issue Price (paragraphs 86 to 93 of Part B)

22. We will amend the Main Board Rules to introduce a minimum issue price of HK\$2 for shares applying to be listed on the Exchange.

Mineral Companies (paragraphs 94 to 99 of Part B)

23. We will amend the Main Board Rules to clarify that the initial listing eligibility criteria as proposed under Part B of this Consultation Paper will apply equally to listing applicants that are mineral companies.

24. Listing applicants that wish to apply for a waiver from 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 (paragraphs 100 to 104 of Part B)

25. We will amend the Main Board Rules to incorporate the requirements of the Announcement regarding Infrastructure Project Companies issued by the Exchange on 31 January, 1996 into the Main Board Rules and to provide that the initial listing eligibility criteria as proposed under Part B of this Consultation Paper will apply equally to listing applicants that are infrastructure companies.
26. Listing applicants that wish to apply for a waiver from 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 the additional disclosure requirements, set out in the Announcement regarding Infrastructure Project Companies. 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 applicants.

Deemed New Listing (paragraphs 105 to 109 of Part B)

27. We will amend the Main Board Rules to provide for the following:
 - (a) subject to paragraph 27 (b), an issuer that is treated as a new listing applicant under the current Main Board Rules, and if our proposal on “reverse takeover” in the Corporate Governance Consultation Paper is adopted, an issuer that is treated as a new listing applicant by engaging in transactions leading to a “reverse takeover”, will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement. Where a new holding company (“NewCo”) is to be set up to hold assets of the issuer and to be listed instead of the issuer, the NewCo will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement;
 - (b) 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, the issuer, or the enlarged group of the issuer, or the NewCo, will be required to comply with the proposed initial listing eligibility criteria as follows:
 - (i) the asset to be injected must meet:

- the track record requirement inclusive of trading record period and management and ownership continuity requirements; and
 - the financial standards requirement.
- (ii) 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; and
 - the minimum issue price requirement, as represented by the value of the consideration shares.

In both cases, the issuer, or the enlarged group of the issuer, or the NewCo, has to comply with the spread of shareholders requirement on a continuing basis.

28. No relaxation to the proposed initial listing eligibility criteria, except for the spread of shareholders requirement, will be considered in case of deemed new listing applicants.

Market's View (paragraph 110 of Part B)

29. The market is invited to comment on whether the overall standard in respect of the initial listing eligibility criteria should be strengthened or relaxed, after considering the detailed discussion regarding the proposals on the initial listing eligibility criteria set out in Part B of this Consultation Paper.

Effective Date (paragraph 111 of Part B)

30. If our proposals regarding the initial listing eligibility criteria set out in Part B of this Consultation Paper are adopted, such criteria will become effective immediately when amendments of the Main Board Rules are made. Details will be included in an announcement to be made by the Exchange as and when appropriate. Listing applicants that submit their listing application (Form A1) after amendment of the Main Board Rules, and listing applicants that have submitted their Form A1 before such amendments but remain unlisted three months after amendment of the Main Board Rules, must comply with these initial listing eligibility criteria.

SUMMARY OF PROPOSALS RELATING TO CONTINUING LISTING ELIGIBILITY CRITERIA

Quantitative Criteria

Financial Standards

Financial Achievement (paragraphs 119 to 129 of Part C)

1. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will be considered as failing to meet the continuing listing eligibility criteria if it has been, after tax,
 - (a) loss making for three consecutive years and has negative equity; or
 - (b) loss making for three consecutive years and its average market capitalisation is less than HK\$50 million over 30 consecutive trading days.
2. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if:
 - (a) its average market capitalisation is less than HK\$50 million over 30 consecutive trading days; and
 - (b) its shareholders' equity is less than HK\$50 million. The issuer's latest published audited financial information and any subsequent published financial information will be used for the purpose of ascertaining its shareholders' equity.

Absolute Minimum Market Capitalisation (paragraphs 130 to 131 of Part C)

3. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if its average market capitalisation of the securities listed and traded on the Exchange is less than HK\$30 million for 30 consecutive trading days regardless of the level of shareholders' equity.

Insolvency (paragraphs 132 to 136 of Part C)

4. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if :
 - (a) the court has served a winding up order (or equivalent action in the issuer's country of incorporation) on it, or it goes into receivership or provisional liquidation; or
 - (b) its subsidiaries, whether singly or together, accounting for more than 75% of its total assets or turnover or after tax profits or production volume, have been served with a winding up order (or equivalent action in the country of incorporation of these subsidiaries), or go into receivership or provisional liquidation, and the remaining business of the issuer is unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis.

Total Disclaimer of Audit Opinion or Adverse Audit Opinion (paragraphs 137 to 138 of Part C)

5. We will amend the Main Board Rules to provide that an issuer will be considered as failing to meet the continuing listing eligibility criteria if its most recent auditor's report contains a total disclaimer opinion or an adverse opinion.

Minimum Share Price (paragraphs 139 to 152 of Part C)

6. We will amend the Main Board Rules to introduce a minimum share price of HK\$0.50 as a continuing listing eligibility criterion. Where the moving average of the daily volume weighted share price over 30 consecutive trading days of an issuer is less than HK\$0.50, the issuer will fail to meet the continuing listing eligibility criteria.
7. If the proposal to introduce a minimum share price of HK\$0.50 is adopted, a transitional period of 12 months will be afforded to those issuers with prices trading below HK\$0.50 to attain the minimum share price of HK\$0.50. After the transitional period and if the issuer still fails to meet the minimum share price requirement, it will be considered as failing to meet the continuing listing eligibility criteria.
8. We will not, during and after the transitional period, grant listing approvals for the securities to be issued by an issuer in relation to any of its corporate actions that will result in the theoretical value of its share falling below HK\$0.50. "Corporate actions" include bonus issues, share splits, open offers, rights issues, placings and other issues of securities that will generally result in lower theoretical share prices.

9. If the proposal to introduce a minimum share price of HK\$0.50 is adopted, and to avoid the undesirable impact on minority shareholders, which may be the same as a privatisation without shareholders' approval, as a result of the absence of listing approvals for securities that are subject to the issuer's corporate action which has the effect of reducing its theoretical share price below HK\$0.50, we will amend the Main Board Rules to require an issuer, prior to undertaking any such corporate action, to:
 - (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
 - (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.
10. We will amend the Main Board Rules to require issuers to confirm to shareholders when the general mandate is being granted or renewed that shares will not be issued under the general mandate that will result in the theoretical share price falling below HK\$0.50.

Minimum Trading Activity Level (paragraphs 153 to 157 of Part C)

11. We do not propose to introduce a continuing listing eligibility criterion based solely on trading volume.

Reduction in Operating Assets and/or Level of Operations (paragraphs 158 to 164 of Part C)

12. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if after a corporate action taken by the issuer, there is a decrease in its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, and its remaining business will be unable to meet all the initial listing eligibility criteria,

except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis. The issuer's latest available published financial information after the corporate action, excluding cash, will be used for the purpose of determining whether its remaining business satisfies the initial listing eligibility criteria.

13. If our proposal in paragraph 12 is adopted, we consider any corporate action of an issuer that has the effect of substantially reducing or depleting its total assets or operations or turnover or after tax profits and resulting in its remaining business being unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement, to have the same effect as a privatisation without shareholders' approval. We will amend the Main Board Rules to require an issuer, prior to undertaking any such corporate action, to:
 - (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
 - (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Cash Companies (paragraphs 165 to 168 of Part C)

14. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if it becomes a cash company. An issuer (other than investment companies, banks, insurance and other similar financial services companies) having 90% of its net assets in cash or short dated securities or portfolio shares investment or other marketable securities will for the purpose of this requirement be considered as a cash company.

15. We will maintain the current Main Board Rules governing cash companies but will clarify that the situation must have resulted from any corporate action by the issuer. If our proposal in paragraph 14 is adopted, we consider it appropriate to deem any corporate action of an issuer that has the effect of rendering it a cash company as equivalent to a privatisation without shareholders' approval. An issuer, prior to undertaking any such corporate action, will be required to:
- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
 - (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Qualitative Criteria

Prolonged Suspension (paragraphs 169 to 171 of Part C)

16. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if for whatever reasons, its securities have been suspended from trading for a continuous period of 12 months. Issuers that have been suspended for more than 12 months because of a delay in publishing their results will not, *prima facie*, be treated as failing to meet the continuing listing eligibility criteria. However, where there is an indication that an issuer is on the verge of failing to meet the continuing listing eligibility criteria and there are no acceptable or justifiable reasons for the issuer's prolonged delay in the publication of its results, the Exchange may subject such issuer to the New Delisting Procedures set out in Part E of this Consultation Paper.

Paragraph 38 of Listing Agreement (paragraphs 172 to 173 of Part C)

17. We will retain paragraph 38 of the Listing Agreement as a general continuing listing eligibility criterion to supplement the proposed quantitative criterion on reduction in operating assets and/or level of operations as discussed in paragraph 162 of Part C of this Consultation Paper. The Exchange may subject the issuer to the New Delisting Procedures set out in Part E of this Consultation Paper upon the issuer's failure to comply with paragraph 38 of the Listing Agreement.

Persistent Breaches of the Main Board Rules (paragraphs 174 to 175 of Part C)

18. We will amend the Main Board Rules so that the Exchange may, after having taken into account the frequency and nature of the breaches, subject those issuers that have persistently failed to comply with the Main Board Rules to the New Delisting Procedures set out in Part E of this Consultation Paper.

Illegal Operation (paragraphs 176 to 178 of Part C)

19. We will amend the Main Board Rules so that the Exchange may subject an issuer to the New Delisting Procedures set out in Part E of this Consultation Paper if there exists or occurs any event, condition or circumstances that makes further dealings or listing of the issuer's securities, in the opinion of the Exchange, contrary to the Exchange's general principles.

Exchange's Discretion (paragraph 179 of Part C)

20. Where circumstances indicate that the controlling shareholder(s) of an issuer take(s) advantage of the continuing listing eligibility criteria with a view to ultimately achieving privatisation without complying with the requirements for privatisation set out in the Main Board Rules, the Exchange may at its discretion deviate from the New Delisting Procedures set out in Part E of this Consultation Paper.

Effective Date (paragraph 180 of Part C)

21. If our proposals regarding the continuing listing eligibility criteria set out in Part C of this Consultation Paper are adopted, such criteria will become effective immediately when amendment of the Main Board Rules are made. However, we are also mindful that the immediate enforcement of certain of the new rules upon them becoming effective may be too harsh on existing issuers and the grant of transitional periods may be justifiable to enable issuers to take action to comply. Accordingly, we propose for existing issuers that:
- (a) there will be a transitional period of 12 months for issuers to bring themselves to compliance with the proposed minimum share price requirement and financial standards requirement, namely, financial achievement, and the absolute minimum market capitalisation requirement; and
 - (b) there will be no transitional period for all of the remaining proposed continuing listing eligibility criteria, namely,
 - (i) insolvency;
 - (ii) total disclaimer of audit opinion or adverse audit opinion;
 - (iii) reduction in operating assets and/or level of operations;
 - (iv) cash companies;
 - (v) prolonged suspension;
 - (vi) paragraph 38 of the Listing Agreement;
 - (vii) persistent breaches of the Main Board Rules; and
 - (viii) illegal operation.

All listing applications that are approved after the amendment of the Main Board Rules will be subject to the new continuing listing eligibility criteria immediately upon listing of their securities on the Exchange. There will be no transitional period.

SUMMARY OF PROPOSALS RELATING TO CONTINUING OBLIGATIONS

General (paragraphs 181 to 185 of Part D)

1. We will amend the Main Board Rules to make the continuing obligations requirements contained in the Listing Agreement part of the Main Board Rules. In addition to the continuing listing eligibility criteria as proposed in Part C of this Consultation Paper, on-going suitability for listing would also be assessed with reference to compliance with the continuing obligations set out in the Main Board Rules.

Public Float (paragraphs 186 to 196 of Part D)

2. We will maintain the current continuing obligation with regard to the public float such that 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 our current discretion not to require a suspension of the issuer's securities where the shortfall in the prescribed percentage arose 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). Such shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer.
3. We will amend the Main Board Rules to provide that the Exchange will normally require suspension of an issuer's securities where its public float is 15% or less. However, the Exchange may consider granting a waiver to an issuer in a general offer situation from complying with the minimum public float requirement until such time when the general offer is completed. The issuer must comply with the continuing obligation with regard to the public float immediately after the general offer is completed.
4. We will amend the Main Board Rules to clarify that:
 - (a) if our proposal on the lower percentage of public float (as discussed in paragraph 74 of Part B of this Consultation Paper) is adopted, the lower percentage of between 15% and 25% that the Exchange may at its discretion accept for issuers with market capitalisation of over HK\$10 billion, will only be applicable at the time of listing and will not be considered post 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; and

- (b) the lower percentage of public float, once granted, will apply to issuers throughout their listing on the Exchange, subject to any conditions that the Exchange may impose at the time the lower percentage is granted.
5. We will amend the Main Board Rules to require issuers to include a confirmation of sufficiency of public float in their annual reports, based on information such as filing under the SDI Ordinance, that is available to them.

Spread of Shareholders (paragraphs 197 to 203 of Part D)

- 6. We will amend the Main Board Rules to introduce a new continuing obligation in respect of the spread of shareholders. An issuer will be required at all times subsequent to listing, to maintain at least the minimum number of shareholders applicable to the issuer at the time of its initial listing. The Exchange may consider granting a waiver to an issuer in a general after situation from complying with the minimum number of shareholders requirement until such time when the general offer closes. The issuer must comply with the continuing obligation in respect of the spread of shareholders immediately after the general offer closes.
- 7. We will amend the Main Board Rules to provide that where there is an indication that the securities of an issuer may not be held by an adequate spread of shareholders, such as when the average monthly turnover of an issuer is below certain reasonable level, say less than 2,000,000 shares, for the last 12 months, the Exchange may require the issuer to demonstrate that it meets the continuing obligation in respect of the spread of shareholders.
- 8. If our proposals on the initial listing eligibility criteria as well as our proposal to introduce a new continuing obligation in respect of the spread of shareholders are adopted, a transitional period of 18 months will be granted to all existing issuers that are listed before the effective date of the initial listing eligibility criteria to comply with the new obligation. All such existing issuers will be required to maintain a minimum of 300 shareholders after the transitional period.

Timeliness of Accounts (paragraphs 204 to 206 of Part D)

9. We will amend the Main Board Rules to subject those issuers that fail to publish their financial results on the due date to an immediate suspension of trading of their securities. Trading may only resume after the issuer publishes the requisite financial results.

Provision of Information to the Exchange (paragraphs 207 to 208 of Part D)

10. We will amend the Main Board Rules to introduce a new continuing obligation with regard to the provision of information by the issuer to the Exchange. An issuer will be considered as failing to meet the continuing obligation if it makes a misrepresentation to the Exchange, omits necessary material information in the course of communicating with the Exchange, or otherwise fails to provide requested information.

Corporate Governance (paragraph 209 of Part D)

11. With a view to further enhancing the standards of corporate governance amongst issuers listed on the Exchange and protecting the interests of minority shareholders, the Exchange invites comments from the market as to whether there are any other areas that should be taken into account in formulating further continuing obligations.

Effective Date (paragraph 210 of Part D)

12. If our proposals regarding the continuing obligations set out in Part D of this Consultation Paper are adopted, such new continuing obligations will become effective immediately when amendments of the Main Board Rules are made. However, there will be a transitional period of 18 months for existing issuers that are listed before the effective date of the initial listing eligibility criteria 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.

SUMMARY OF PROPOSALS RELATING TO CANCELLATION OF LISTING PROCEDURES

Cancellation of Listing Procedures (paragraphs 215 to 219 of Part E)

1. We will amend the Main Board Rules to introduce new cancellation of listing procedures to apply where an issuer fails to comply with any one or more of the continuing listing eligibility criteria set out in Part C of this Consultation Paper. Non-compliant issuers will be given an opportunity to submit one proposal (and not multiple proposals) within the specified period to bring themselves back to long-term, sustained compliance with the continuing listing eligibility criteria failing which they would, subject to the process of natural justice, face cancellation of listing. By introducing a new set of cancellation procedures, we aim at shortening the whole delisting process such that it can be completed:
 - (a) not exceeding 6 months where no proposal is submitted, or the proposal submitted by the non-compliant issuer to restore itself to compliance with the continuing listing eligibility criteria is disapproved by the Exchange; or
 - (b) not exceeding 12 months where the non-compliant issuer fails to implement the proposal that has been approved by the Exchange to restore itself to compliance with the continuing listing eligibility criteria.

New Delisting Procedures (paragraphs 220 to 222 of Part E)

2. Where an issuer is identified as failing to meet any one or more of the proposed continuing listing eligibility criteria as set out in Part C of this Consultation Paper, the proposed New Delisting Procedures will apply.

The principles of the New Delisting Procedures will be as follows:

- (a) the Exchange will notify the issuer in writing of the fact that the issuer has failed to meet any one or more of the relevant continuing listing eligibility criteria. The Exchange will also issue an announcement notifying the public of such fact;
- (b) the securities of the issuer will continue trading until the Exchange issues an announcement notifying the date of when the securities of the issuer will cease trading and the listing status of the securities will be cancelled. In case of prolonged suspension where the Exchange does not see the justification for the continued suspension, the Exchange may, where circumstances require, exercise its power under the Main Board Rules to direct resumption;

- (c) the non-compliant issuer will be required to submit to the Exchange, within 1 month from the date of the Exchange’s notification, a Proposal (and not multiple proposals) which if implemented, would restore the issuer to long-term, sustained compliance with the continuing listing eligibility criteria. The Proposal must demonstrate how the issuer will achieve long-term, sustained compliance with the continuing listing eligibility criteria. The Exchange shall proceed immediately to cancel the listing of the issuer’s securities upon failure of the issuer to submit the proposal within the 1-month period. The Exchange will only consider the Proposal. No other proposals will be considered. The Exchange will also not allow any amendment to the Proposal;
- (d) the issuer may appeal against the decision of the Exchange to cancel the listing of its securities upon its failure to submit the Proposal in accordance with such procedures and within such period as prescribed by the Exchange from time to time;
- (e) the Exchange will review the Proposal and determine as to whether the Proposal has demonstrated a reasonable case of being able to bring the issuer back to conformity with the relevant continuing listing eligibility criteria;
- (f) if the Exchange accepts the Proposal, the issuer has 6 months from the date of the Exchange’s notification of determination to implement the Proposal. The issuer is required to provide monthly updates of its progress in implementing the Proposal during the 6-month period. The Exchange shall proceed immediately to cancel the listing of the issuer’s securities upon failure of the issuer to implement the Proposal at the end of the 6-month period;
- (g) the Exchange may, at its absolute discretion, require immediate suspension of the issuer’s securities at any time during the 6-month period should circumstances necessitate it;
- (h) if the Exchange does not accept the Proposal, the Exchange will notify the issuer in writing of the determination to cancel the listing of the securities of the issuer and setting out the basis for such decision;
- (i) the issuer will have the right to appeal to the relevant Committee that has the authority to consider the appeal matters (the “Relevant Committee”) against the decision of the Exchange to cancel the listing of the issuer’s securities. The appeal must be lodged by the issuer within such time as prescribed by the Exchange from time to time and set out in the decision letter;

- (j) the Exchange shall proceed immediately to cancel the listing of the issuer's securities if the issuer does not lodge the appeal within the stipulated period;
 - (k) if the Relevant Committee decides in favour of the Exchange's decision to cancel the listing of the securities of the issuer, the Exchange shall proceed immediately to cancel the listing of the issuer's securities in accordance with the decision of the Relevant Committee; and
 - (l) if the Relevant Committee decides that the Proposal is acceptable, the issuer has 6 months from the date of the decision of the Relevant Committee to implement the Proposal.
3. The appointment of a receiver or provisional liquidator to an issuer that has already been subject to the New Delisting Procedures for failing to meet other continuing listing eligibility criteria will not alter the delisting timetable. An issuer will be immediately delisted if it has been served with a winding up order (or equivalent action in the issuer's country of incorporation).

New Immediate-Delisting Procedures for Issuers in Liquidation (paragraphs 223 to 224 of Part E)

4. The Exchange will immediately proceed to cancel the listing of the issuer's securities where an issuer has been served with a winding up order (or equivalent action in the issuer's country of incorporation). No resumption proposal will be considered.

Special Circumstances (paragraphs 225 to 227 of Part E)

Market Capitalisation

5. If the issuer fails to meet the continuing listing eligibility criteria only because of the market capitalisation, and where the issuer re-establishes its market capitalisation to the specified level, and remains above such level for at least the following 60 consecutive trading days, the market capitalisation deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Minimum Share Price

6. If the issuer fails to meet the continuing listing eligibility criteria only because of the minimum share price, and where the issuer's average of daily volume weighted share price exceeds HK\$0.50 and remains above HK\$0.50 for at least the following 60 consecutive trading days, the price deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Effective Date (paragraph 228 of Part E)

7. If our proposals regarding the new cancellation of listing procedures set out in Part E of this Consultation Paper are adopted, such new procedures will become effective immediately when amendments of the Main Board Rules are made. Issuers that have already been subject to the current delisting procedures under the Main Board Rules before the effective date will be delisted in accordance with the existing Main Board Rules.

SUMMARY OF PROPOSALS RELATING TO DISCLOSURE REQUIREMENTS AT THE TIME OF INITIAL LISTING

General (paragraphs 229 to 232 of Part F)

1. We will amend the Main Board Rules to introduce additional qualitative disclosure requirements to enhance disclosure in the areas of corporate matters, including the pre-listing corporate governance related practices, of a listing applicant so as to enable investors to evaluate and price their investment accordingly.

Protection of Shareholders' Rights

Over-allotment Option and Price Stabilising Activities (paragraphs 233 to 234 of Part F)

2. We will codify our current practice to require disclosure in the initial listing document where a listing applicant or its selling shareholder has granted over-allotment options or 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) 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.

Directors and Board Practices

Information about the Listing Applicant’s Past Corporate Governance Practices (paragraphs 235 to 237 of Part F)

3. We will amend the Main Board Rules to require a listing applicant to disclose in the initial listing document its corporate governance practices during the three-financial-year track record period. Disclosure should include:
 - (a) the corporate governance practices, particularly in relation to directors, board practices and shareholders’ rights, adopted by the listing applicant;
 - (b) whether the listing applicant was able to meet the minimum standard in the Code of Best Practice and its own code (if any). If not, details of any deviations or non-existence of the minimum standard should be disclosed;
 - (c) whether the listing applicant had an audit committee or other specialised committees, details on their role and function, and composition and work performed by such committee; and
 - (d) internal controls over the listing applicant’s financial, operational and compliance matters and risk management.

Corporate Reporting and Disclosure of Information

Information about the Persons in Control of the Listing Applicant (paragraphs 238 to 239 of Part F)

4. We will amend 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.

Accounts and Financial Information (paragraphs 240 to 244 of Part F)

5. We will 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.

6. We will introduce an additional requirement 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 as at the date of the management accounts so disclosed. 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.

The Management (paragraphs 245 to 248 of Part F)

7. We will amend 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.
8. We will amend 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 mineral company or infrastructure company that wishes to apply for a waiver from the trading record requirement or financial standards requirement, where appropriate.

Prospects of the Group (paragraphs 249 to 250 of Part F)

9. We will codify 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 (paragraph 251 of Part F)

10. If our proposals regarding the new disclosure requirements set out in Part F of this Consultation Paper are adopted, such new disclosure requirements will become effective immediately when amendments of the Main Board Rules are made. Listing applicants that have submitted their listing application before such amendments will be encouraged to make similar disclosure in their initial listing document.

PART A INTRODUCTION

BACKGROUND

1. The quality of the market is crucial for investor confidence. The essential elements of market quality include the existence of a mature and established legal system, the provision of a fair, orderly and transparent market place, and above all, the quality of issuers. It is the principal function of the Exchange to provide a fair, orderly, efficient and transparent market for the trading of securities. The Main Board Rules are designed to secure and maintain the quality of the market place and investors' confidence in it.
2. We consider that the listing status is an indicator of issuers' achievement in terms of financial performance as well as investor acceptance and interest. We are of the view that the quality of issuers could be measured by means of issuers' achievement in their own industries:
 - (a) quantitatively - in terms of financial performance, which may be objectively assessed, and the level of the public's interest in the issuer which may be gauged from factors such as the number of shareholders, trading volume, share price performance, assets and earnings of the issuer; and
 - (b) qualitatively - for corporate matters (including corporate governance related areas) which are subjectively achievable by disclosure and ultimately, may have an effect on the financial performance, level of investors' acceptance and business prospects of the issuer.

A listing on the Main Board of the Exchange generally signifies a public recognition of the issuer having achieved a quality status in its industry - in terms of financial performance and investor acceptance.

3. The Exchange's Corporate Governance Consultation Paper, published in January 2002, aimed at raising the standards of corporate governance amongst issuers listed on the Exchange. The aim underlying the Corporate Governance Consultation Paper is to further enhance the quality of the issuers listed on the Exchange and to strengthen Hong Kong's position as an international financial centre. In line with this aim, we consider that we should, as an ongoing effort, examine and review the eligibility criteria for approval for initial listing and continuing listing. The current Main Board Rules relating to the qualifications of listing and delisting have been in place for some time. With the passage of time, a review of these rules is necessary in order to bring our requirements on a par with international standards. Hence, we have initiated this review.

SCOPE OF REVIEW

4. The Growth Enterprise Market (“GEM”) is a fairly new stock market which was launched by the Exchange only in November 1999 aimed at providing an avenue for capital formulation for emerging companies to facilitate their business development and/or expansion. We conducted a comprehensive review of the Rules Governing the Listing of Securities on GEM of the Exchange (the “GEM Rules”) in 2000 and revised rules were subsequently introduced in September 2001. Therefore, we do not propose to include the GEM Rules in this review. However, we may consider carrying out a similar review for GEM in the near future, based on the responses to this review for the Main Board Rules.
5. The review of approval for initial listing and continuing listing eligibility under this Consultation Paper covers the rules generally applicable to issuers of equity securities (but not debt securities) applying for listing or already listed on the Main Board of the Exchange under Chapter 8 of the Main Board Rules, as well as mineral¹ and infrastructure² companies. Investment companies³ which have their own sets of specialised rules that specifically cater for their particular circumstances, are not included in this review.

OUR APPROACH

6. In response to changing market conditions, we consider that it is appropriate for the Main Board Rules to put more emphasis on disclosure. As discussed in paragraph 2 of this Part A of the Consultation Paper, the quality of issuers could be measured by means of the issuers’ achievement in their own industries, from the quantitative perspectives. Quantitative criteria, in areas of financial performance and investor acceptance and interest, can be objectively assessed. Disclosure requirements in areas of corporate matters at the time of initial listing, including corporate governance related areas, enhance transparency and therefore enable investors to make their investment decisions accordingly. Failure to achieve the quantitative criteria and to comply with the disclosure requirements may be taken as an indicator that the issuer may not be of quality and accordingly, should not have a listing status.

¹ Companies referred to in Chapter 18 of the Main Board Rules.

² Companies referred to in Rule 8.05(2) of the Main Board Rules and the Exchange’s Announcement dated 31 January, 1996.

³ Companies referred to in Chapters 20 and 21 of the Main Board Rules.

OVERVIEW

7. This Consultation Paper is divided into 5 main sections, namely, (1) initial listing eligibility criteria, (2) continuing listing eligibility criteria, (3) continuing obligations, (4) cancellation of listing procedures, and (5) disclosure requirements at the time of initial listing.

Initial Listing Eligibility Criteria (Part B of this Consultation Paper)

8. The current Main Board Rules contain both quantitative⁴ and qualitative⁵ requirements relating to qualifications for listing but these are rather limited. To bring our initial listing requirements on a par with international standards, we propose to introduce new quantitative tests to assess the financial performance of a listing applicant, so that opportunities will be offered to listing applicants which may not meet the profit requirement, but are otherwise of a size that is able to attract significant public interest.

Continuing Listing Eligibility Criteria (Part C of this Consultation Paper)

9. Whilst we recognise that it is impossible for a listing applicant to guarantee that it will continue making profits after listing, the very notion of “listing” carries with it an implied potential for growth/performance. As such, in addition to the existing requirements under the current Main Board Rules, we propose to introduce certain quantitative criteria and disclosure requirements so as to ensure that the overall quality of the issuers listed on the Main Board of the Exchange exists, not only at the initial listing, but also on an ongoing basis after listing.
10. Although the notion of listing carries with it an implied potential for growth/performance, we acknowledge that an issuer’s profitability/financial achievements can fluctuate. However, we are of the view that these financial achievements should not significantly diverge from the admission criteria. Accordingly, we have new proposals for continuing listing eligibility. These proposals aim at setting criteria on eligibility for continuing listing which, if not met, will result in cancellation of the listing of the issuer’s securities.

⁴ The profit and trading record requirements under Rule 8.05 of the Main Board Rules, the spread of shareholders and public float requirements under Rule 8.08 of the Main Board Rules and the market capitalisation requirement under Rule 8.09 of the Main Board Rules.

⁵ See Rule 8.04 of the Main Board Rules - Both the issuer and its business must be, in the opinion of the Exchange, suitable for listing.

Continuing Obligations (Part D of this Consultation Paper)

11. The Main Board Rules together with the Listing Agreement⁶ prescribe a number of continuing obligations that an issuer is required to comply with once its securities are listed on the Exchange. These continuing obligations aim to maintain a fair and orderly market and ensure timely disclosure of all relevant information and proper treatment of all shareholders.
12. With a view to promoting a higher standard of corporate governance and ensuring that the affairs of issuers are conducted with transparency, we have proposals for continuing obligation criteria which, if not met, will result in the issuer facing disciplinary action.

Cancellation of Listing Procedures (Part E of this Consultation Paper)

13. The specific procedures regarding cancellation of listing aim at providing a fair, transparent and effective mechanism with regard to the delisting of issuers from the Exchange.
14. Under the current Main Board Rules, where the Exchange considers it necessary for the protection of investors or the maintenance of an orderly market, it may at any time suspend or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit⁷. The adoption of the quantitative and qualitative continuing listing eligibility criteria set out in Part C of this Consultation Paper provides an objective, effective, transparent and fair means for the Exchange to review the appropriateness of the continuing listing of an issuer. Where an issuer fails to meet any of the continuing listing eligibility criteria, the cancellation of listing procedures will be initiated.

Disclosure Requirements at the time of Initial Listing (Part F of this Consultation Paper)

15. In addition to the proposed quantitative initial listing eligibility criteria and the current requirements of the Main Board Rules, we consider that further disclosure requirements on corporate matters, including the pre-listing corporate governance related practices of a listing applicant, should be introduced. This will enable investors to better assess a listing applicant's achievement thereby evaluating and making their investment decisions accordingly.

⁶ Before an issuer is listed on the Main Board, it must enter into a Listing Agreement with the Exchange. This agreement, forming the basis of the relationship between the Exchange and the issuer, encompasses a general obligation on the issuer to comply with the Main Board Rules. The text of that agreement is set out in Parts A, B and I of Appendix 7 of the Main Board Rules.

⁷ See Rule 6.01 of the Main Board Rules.

CONSULTATION

16. This Consultation Paper discusses the rationale behind various proposed changes but does not set out the detailed changes to the Main Board Rules. After comments have been received on this Consultation Paper, we will consider making appropriate changes to the Main Board Rules.
17. We will analyse responses and comments on our proposals based on the completed questionnaire. Please complete and submit your comments by completing and returning the questionnaire booklet to:

Listing Division
Hong Kong Exchanges and Clearing Limited
11th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong
Fax : (852) 2868 5028

Alternatively, you can complete and submit the electronic questionnaire available at the website of Hong Kong Exchanges and Clearing Limited (“HKEx”): www.hkex.com.hk.

You can also download a soft copy of the questionnaire from the website of HKEx and thereafter submit the completed copy to us at cvw@hkex.com.hk.

18. The consultation period will close on 31 August, 2002.

Provision of Personal Data

19. Whilst you are invited to complete and return the questionnaire, you are not obliged to supply your personal data if you do not wish to do so. If you choose to voluntarily supply any personal data to us, you should note the Personal Data Privacy Policy Statement set out below.

Personal Data Privacy Policy Statement

- (a) HKEx is firmly committed to preserving the privacy of respondents in relation to personal data supplied to HKEx on a voluntary basis. Personal data which may include their names, addresses, e-mail addresses, login names etc. will not be disclosed by HKEx without your consent unless it is permitted or required by law.

- (b) Personal data of respondents collected by HKEx will be used for one or more of the following purposes:
- for performing HKEx's functions and those of its subsidiaries under the relevant laws, rules and regulations
 - for research and statistical purposes
 - for any other lawful purposes

Personal data collected will not be used by HKEx for any other purpose unless authorised by you or such use is permitted or required by law.

- (c) HKEx has security measures in place to protect the loss, misuse and alteration of the personal data of respondents. Personal data will be retained for such period as may be necessary for the proper discharge of the functions of HKEx and those of its subsidiaries.
- (d) If you wish to request access to and/or correction of your personal data held by HKEx, you may do so in writing addressed to :

Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
11th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong
cvw@hkex.com.hk

PART B

INITIAL LISTING ELIGIBILITY CRITERIA

GENERAL

20. The current Main Board Rules on initial listing eligibility comprise quantitative and qualitative requirements. Of these, the profit and trading record requirements⁸ act as an indicator of the past financial performance and achievement of a listing applicant. The profit and trading record may indicate that the listing applicant has attained a credible degree of growth and performance which warrants a listing of its securities on the Exchange.
21. There are views that our current profit record requirement is too restrictive, when compared with a number of other stock exchanges. These other exchanges either do not have a profit requirement or have more than one set of alternative quantitative tests to assess the financial performance of a listing applicant. These alternative tests generally refer to the listing applicant's pre-tax income, assets, revenue or market capitalisation as an indicator of the listing applicant's achievement. As we are moving towards more disclosure-based regulation, and to bring our requirements on a par with international practices, we consider it appropriate to introduce new alternative financial performance indicators and enhance qualitative disclosure requirements. This will assist investors to better assess the quality of a listing applicant from a wider perspective. Investors may have different considerations in making investment decisions. Therefore, we are of the view that these additional quantitative criteria and disclosure requirements will assist investors to evaluate and price their investment accordingly.
22. The initial listing criteria as discussed in this Part B of the Consultation Paper will apply to listing applicants applying for listing under Chapter 8 of the Main Board Rules, as well as mineral and infrastructure companies. However, in the case of mineral and infrastructure companies, the current additional Main Board Rules requirements specific to those companies, supplemented by the relevant announcement on infrastructure companies issued by the Exchange⁹, will continue to apply.
23. For the avoidance of doubt, "listing applicants" referred to in this Part B of the Consultation Paper include all new listing applicants as well as existing issuers that will be treated as new listing applicants under the current Main Board Rules, and if our proposal on "reverse takeover" in the Corporate Governance Consultation Paper is adopted, issuers that engage in transactions leading to a "reverse takeover".

⁸ See Rule 8.05 of the Main Board Rules.

⁹ See footnotes 1 and 2 above.

Therefore, where an issuer is treated as a new listing applicant, such issuer or the assets to be acquired will have to meet the new proposed quantitative initial listing eligibility criteria, except for the spread of shareholders requirement. These are discussed in detail in paragraphs 105 to 109 of this Part B of the Consultation Paper.

24. There are divergent views as to whether the current Main Board Rules on initial listing eligibility criteria should be strengthened. As we are proposing to introduce a set of new quantitative initial listing eligibility criteria as a package to assist investors to evaluate and price their investment, we would like to seek the market views on whether the Main Board Rules on these criteria should in general be strengthened or relaxed (as discussed in paragraph 110 of this Part B of the Consultation Paper).

TRACK RECORD

General

25. The current Rule 8.05 of the Main Board Rules generally requires a listing applicant to have an adequate trading record under substantially the same management (save where the Exchange may relax the trading record or profit requirements for mineral or infrastructure companies or under exceptional circumstances¹⁰). The Exchange has interpreted this rule to comprise the following three components that a new listing applicant has to meet:
 - (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.

Trading Record Period

Issues and current position

26. Rule 8.05 of the current Main Board Rules generally requires a new listing applicant to have a trading record of not less than three financial years.

¹⁰ See Rule 8.05(1), (2) and (3) of the Main Board Rules. However, in practice the Exchange has rarely granted waivers from the trading record or profit requirements.

27. As previously discussed in paragraph 2 of Part A of this Consultation Paper, a listing on the Main Board signifies public recognition of the issuer having achieved a quality status in its industry. In order to demonstrate that a listing applicant has attained a sufficiently high degree of achievement in its industry to warrant a listing on the Main Board, we consider that a reasonably long trading record period should be required to facilitate analysis or evaluation by potential investors. In this connection, we consider that our current requirement of a three-financial-year trading record period provides a reasonable benchmark for assessing the listing applicant's financial performance.
28. In the case of listing applicants that are of substantially larger sizes, it is reasonable to expect that if they are able to attract greater market support and therefore command significant investor interest, their listing on the Exchange can be justified, even though their trading record period may be shorter. In these instances, given their substantial size and the ability to attract significant investor acceptance, we consider it acceptable to grant waivers to these listing applicants from meeting the three-financial-year trading record period. However, these listing applicants must demonstrate that they are able to meet the minimum requirements on management experience (as discussed in paragraph 53 of this Part B of the Consultation Paper) and number of shareholders (as discussed in paragraph 82 of this Part B of the Consultation Paper).

Proposal

29. We will maintain the current requirement that generally a listing applicant must have a trading record period of not less than three financial years.

Q1. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

30. We will amend the Main Board Rules such that those listing applicants to be listed under the market capitalisation/revenue test (as discussed in paragraph 52 of this Part B of the Consultation Paper) may be granted a waiver from the trading record period requirement. However, the Exchange must be satisfied that such listing applicants are able to meet minimum requirements on management experience (as discussed in paragraph 53 of this Part B of the Consultation Paper) and number of shareholders (as discussed in paragraph 82 of this Part B of the Consultation Paper).

Q2. Do you agree with our proposal?

- Agree (please refer to Q11, Q12, Q13 and Q33)*
- Disagree. No waiver from the trading record period requirement should be granted. Please state reason(s) for your view.*

Management and Ownership Continuity

Issues and current position

31. The current Rule 8.05 of the Main Board Rules also requires a new listing applicant to be under substantially the same management during the three-financial-year trading record period. Accordingly, listing applicants are required to demonstrate that there has been no change in the majority of its board of directors and senior management of its principal operating entities during the three-financial-year track record period.
32. Whilst we acknowledge the importance of the management to an issuer, we also consider that where an issuer is dominated by controlling shareholders during the track record period, it is highly probable that these shareholders can exert substantial influence on the management. This is particularly common in Hong Kong where many issuers have a single dominant shareholder or group of shareholders controlling the issuer. Accordingly, we have been interpreting Rule 8.05 of the Main Board Rules to require a listing applicant to demonstrate, in addition to management continuity for three financial years, also ownership continuity and control for at least the most recent financial year in the track record period. By “ownership continuity and control”, we refer to the beneficial ownership and control by the controlling shareholder, and if none, by the single largest shareholder.
33. Other markets do not require a listing applicant to demonstrate that there is no change in their ownership at any time during the track record period. We have considered the situation in Hong Kong as discussed in the immediately preceding paragraph 32 and our intention is to prevent listing applicants from “packaging” their businesses so as to meet the profit record requirement. We believe that our practice of requiring listing applicants to demonstrate ownership continuity for at least the most recent financial year in the track record period should continue. This practice should be codified in our rules.

Proposal

34. We will codify our interpretation of the current rule to require a listing applicant to demonstrate management continuity during 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.

Q3. Do you agree with our proposal?

- Agree*
- Disagree (please tick one of the following)*
 - The listing applicant should demonstrate management continuity and ownership continuity and control during the three-financial-year trading record period.*
 - Other views.*

FINANCIAL STANDARDS

General

35. Apart from the profit requirement, we consider that there are other financial standards, such as market capitalisation, revenue and cash flow, that can be used as an indicator to reflect the financial achievement of a listing applicant during the track record period. These other financial standards are discussed in paragraphs 44 to 53 of this Part B of the Consultation Paper. Accordingly, in demonstrating that a listing applicant meets the three components of track record requirement mentioned in paragraph 25 of this Part B of the Consultation Paper, a listing applicant may, insofar as the profit requirement is concerned, have a choice of meeting other alternative financial tests.

Profit

Issues and current position

36. The current Rule 8.05 of the Main Board Rules generally requires a new listing applicant to meet a profit record requirement of HK\$20 million for the most recent year, and an aggregate of HK\$30 million for the two preceding years.
37. A number of other leading markets also have a profit requirement as one of their admission criteria¹¹. We consider that our current level of profit requirement is on a

¹¹ In the case of the New York Stock Exchange (NYSE), a company must have a pre-tax income of either a) US\$2.5 million of the most recent year and US\$2 million in each of the two preceding years, or b) US\$6.5 million in aggregate for the last three years and a minimum of US\$4.5 million in the most recent year. In the case of the Singapore Stock Exchange (SGX), a company must have a pre-tax profit of either a) S\$7.5 million over the last three consecutive years, with S\$1 million in each of the three years, or b) S\$10 million for the latest one or two years.

In the case of the Australian Stock Exchange (ASX), a company must have an aggregated profit (before tax) from continuing operations for the last 3 years of A\$1 million, and a consolidated profit (before tax) from continuing operations for the past 12 months to a date no more than 2 months before admission exceeding A\$400,000.

par with the NYSE and substantially higher than the other leading markets in the region. The Listing Rules of the London Stock Exchange issued by the Financial Services Authority, for example, do not have a profit requirement. We consider that a profit requirement serves as an effective indicator of the past performance of the management during the track record period, although this is not necessarily a guarantee of future performance. Such a requirement, together with appropriate disclosure, should enable investors to make an informed assessment as to the potential of the listing applicant and therefore to price their investment accordingly.

38. Those markets that have a profit requirement use pre-tax profit for the purpose of determining whether a listing applicant satisfies the profit record requirement. These markets do not exclude results of associated companies for the purpose of the profit record requirement. However, the profit requirement under the Main Board Rules is based on profit attributable to shareholders (i.e. post-tax), and excludes the results of associated companies. The reason for excluding the results of associated companies under the Main Board Rules is closely related to our requirement for ownership continuity and control as discussed above in paragraphs 32 and 33. However, we note comments that a listing applicant will have no control over its associated companies. Therefore, the results of these associated companies should be excluded from the calculation of the profit record requirement.
39. The use of pre-tax profits in assessing the financial performance of listing applicants is in line with international practices. The after tax information will, in any event, be disclosed in the initial listing document to the investors.
40. Some of the markets that have a profit requirement allow for greater flexibility in the way the aggregated profit is spread throughout the track record period¹². We recognise that there are circumstances where a listing applicant may, during the early years of the track record period, have embarked on the development of its business which has promising growth. The listing applicant may have eventually achieved a quality status that warrants a listing. In these cases, an uneven spread of the aggregated profit may result as during the development/investment stage undergone by the listing applicant, earnings may be building up. In other cases, where a listing applicant is more mature in its field of business, the existing requirement for an even spread of aggregated profit throughout the track record is appropriate. To cater for both situations, we recognise that greater flexibility in the spread of the aggregated profit during the track record period should be allowed.

¹² For example, NYSE has an alternative profit requirement of pre-tax income of US\$6.5 million in aggregate for the last three years with a minimum of US\$4.5 million in the most recent year (representing approximately 70% of the aggregate total), and positive amounts for each of the preceding 2 years.

Proposal

41. We will maintain the current profit requirement as one of the quantitative tests for assessing the track record financial performance of a listing applicant. If our proposals set out in paragraphs 48 and 52 of this Part B of the Consultation Paper are adopted, listing applicants may apply to be listed under alternative financial standards to the profit requirement. These alternative financial standards are the market capitalisation/revenue/cash flow test and the market capitalisation/revenue test as discussed in paragraphs 44 to 53 of this Part B of the Consultation Paper.

Q4. Do you agree that there should be other alternative financial standards?

- Yes.
- No. *The current profit requirement is sufficient for assessing the track record financial performance of a listing applicant. There is no need to introduce alternative financial standards.*

42. We will amend the Main Board Rules so that pre-tax profits will be used by listing applicants for the purpose of satisfying the profit record requirement, rather than post-tax profits as currently required in the Main Board Rules. However, we will 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.

Q5. Do you agree with our proposal to use pre-tax profits for the purpose of the profit record requirement?

- Agree
- Disagree. *The current rule to use post-tax profits for the purpose of the profit record requirement should be retained. Please state reason(s) for your view.*

Q6. Do you agree with our proposal to maintain our current position to exclude any income generated by activities outside the ordinary and usual course of business of the listing applicant, as well as the results of associated companies, for the purpose of the profit record requirement?

- Agree
- Disagree. *Please state reason(s) for your view.*

43. We will maintain the current minimum HK\$50 million aggregated profit requirement. However, we will amend the Main Board Rules to allow for greater flexibility in the spread of the aggregated profit such that no less than HK\$20 million can be attributable to the preceding two years and no less than HK\$20 million can be attributable to the most recent financial year of the track record period.

Q7. Do you agree with our proposal to retain our current minimum HK\$50 million aggregated profit requirement?

Agree

Disagree (please tick one of the following)

The threshold of the aggregated profit should be increased. The threshold should be HK\$ _____. Please specify the threshold you think is appropriate and state reason(s) for your view.

The threshold of the aggregated profit should be reduced. The threshold should be HK\$ _____. Please specify the threshold you think is appropriate and state reason(s) for your view.

Q8. Do you agree with our proposal with regard to the spread of aggregated profit throughout the track record period?

Agree

Disagree (please tick one of the following)

The current Main Board Rules with regard to the spread of aggregated profit throughout the track record period should be retained. Please state reason(s) for your view.

Other views.

Market Capitalisation/Revenue/Cash Flow

Issues and current position

44. For those markets that have a profit requirement, we note that they also have other tests as alternatives to the profit requirement¹³. We recognise that there is a market need for alternative tests as they offer greater opportunities to list vehicles, particularly those that are of capital investment intensive nature but have a relatively long development curve. They may be substantial in terms of market capitalisation but do not have a profit track record. In these cases, recognition should be given to those listing applicants that are able to command significant investor interest and acceptance (reflected through the market capitalisation), even if they may not have a profit record.
45. Under the current Main Board Rules, there are no alternative tests apart from the profit record requirement for assessing a listing applicant's financial performance during the three-financial-year track record period. As discussed in the immediately preceding paragraph 44, there may be potential listing applicants that have generated substantial revenue and demonstrated a high degree of achievement in their industries. However, due to the relatively long development curve of their industries, those potential listing applicants have not been able to generate profit. We consider that in these instances, an alternative test based on the market capitalisation is appropriate provided that this is accompanied by other tests such as revenue and positive cash flow which are objective indicators of the listing applicant's extent of achievement.
46. We should point out that the introduction of alternative tests to the current profit record requirement should not be interpreted as aligning the Main Board Rules with the GEM Rules. For the purpose of accommodating those emerging companies with

¹³ In the case of NYSE, an alternative cash flow/market capitalisation/revenue test: either a) applicants with an adjusted positive cash flow of US\$25 million in aggregate for the last three years for companies with not less than US\$500 million market capitalisation and US\$100 million in revenue in the last 12 months; or b) applicants with a market capitalisation of US\$1 billion worldwide and revenue of US\$100 million in the most recent year.

In the case of SGX, an alternative market capitalisation test: applicants with a market capitalisation of at least S\$80 million at the time of the initial public offering, based on the issue price.

In the case of the ASX, an alternative assets/market capitalisation test: applicants (except for investment entity) must have at the time of admission either a) net tangible assets of at least A\$2 million after deducting costs of fund raising; or b) a market capitalisation of at least A\$10 million, with less than half of the applicant's total tangible assets (after raising any funds) being cash or in a form readily convertible to cash. Where half or more of the applicant's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, the applicant must have commitments consistent with its business objectives to spend at least half of its assets in a form readily convertible to cash. The business objectives must be clearly stated and include an expenditure program. In addition, there is also a minimum working capital requirement of at least A\$1.5 million.

potential for growth but without a proven profit record, the GEM Rules do not impose any profit or revenue requirements on new listing applicants except that such applicants must demonstrate a two-year active business pursuit record¹⁴. Unlike the emerging companies under the GEM Board, a listing applicant of the Main Board will still be required to meet alternative financial standards which include a revenue requirement, in addition to the other track record requirements as set out in paragraph 25 of this Part B of the Consultation Paper. This will enable the listing applicant to demonstrate that it has attained a high degree of achievement in its industry to warrant a listing of its securities on the Main Board.

47. We consider that market capitalisation together with revenue and positive cash flow from operating activities can act as an indicator of the financial performance of a listing applicant. “Market capitalisation” will indicate the extent of the public’s interest and acceptance in the listing applicant. “Revenue” will indicate if the listing applicant’s business activities are steady so as to generate a constant flow of income. In this regard, we will only consider revenue that generates actual cash inflow and disregard revenue that is created merely on books, such as banner barter transactions or writing back of accounting provisions. “Positive cash flow from operating activities” will indicate if the listing applicant is a going concern and has sufficient working capital for its operations during the track record period.

Proposal

48. We will amend the Main Board Rules to introduce an alternative quantitative test to the profit requirement (as discussed in paragraphs 41 to 43 of this Part B of the Consultation Paper) for assessing the financial performance of a listing applicant during the three-financial-year track record period. This 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 during 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. For the avoidance of doubt, these listing applicants are still required to comply with the trading record period of not less than three financial years.

For the purpose of calculating revenue under the alternative quantitative tests to the profit requirement under this Part B of the Consultation Paper, the Exchange will only recognise revenue that generates actual cash inflow but not revenue that is created merely on books, such as banner barter transactions or writing back of accounting provisions.

¹⁴ See Rule 11.12(2) of the GEM Rules.

Q9. Do you agree with our proposal?

- Agree*
- Agree, but the respective amounts in respect of the market capitalisation, revenue and cash flow for the alternative quantitative test to apply should be (please indicate what levels these should be)*

HK\$ _____ for market capitalisation

HK\$ _____ for revenue

HK\$ _____ for cash flow

Please state reason(s) for your view.

- Disagree. There is no need to introduce alternative financial standards.*

Market Capitalisation/Revenue

Issues and current position

49. As discussed in paragraph 28 of this Part B of the Consultation Paper, listing applicants that are of substantially larger sizes should be able to attract greater market support and investor interest, thus justifying their listing status. In these instances, given their substantial size and revenue that they are generating, we consider that an alternative standard based purely on the market capitalisation and revenue of these listing applicants is appropriate. At the same time, to demonstrate that these listing applicants are able to attract significant investor support, we consider that a requirement for a higher minimum number of shareholders should be imposed.
50. Unlike GEM listing applicants that are usually emerging start-up companies with potential for growth but without proven profit or revenue records, listing applicants under the market capitalisation/revenue test must demonstrate that they are able to generate substantial revenues for the most recent financial year comprising 12 months. This, together with their substantial size in terms of market capitalisation and ability to attract significant investor interest, as well as sufficient working capital for at least 12 months after listing (as discussed in paragraph 58 below), provide sufficient indicators of the extent of their achievement and public acceptance that justify a listing of their securities on the Main Board.

51. We recognise that there may be instances where listing applicants do not have a reasonably long period of trading record. However, their management may have sufficient and satisfactory experience in the line of the business and industry of the listing applicant. In these cases, we consider that it is acceptable to refer to the relevant experience of the management of the listing applicant instead of the three-financial-year trading record of the listing applicant as the benchmark for assessing the listing applicant's financial performance. It follows that in these instances, the management continuity requirement may also be varied accordingly.

Proposal

52. We will amend the Main Board Rules to introduce another alternative quantitative test to the profit requirement, in addition to the market capitalisation/revenue/cash flow test as discussed in paragraph 48 of this Part B of the Consultation Paper. This will apply to listing applicants having a market capitalisation of at least HK\$4 billion at the time of listing and revenue of at least HK\$500 million during the most recent financial year comprising 12 months. There will also be a specific requirement for a higher minimum number of shareholders so as to demonstrate that the listing applicants opting for this alternative test can attract significant investor interest. For details please refer to paragraph 82 of this Part B of the Consultation Paper.

Q10. Do you agree with our proposal?

- Agree*
- Agree, but the respective amounts for the market capitalisation and revenue for the alternative quantitative test to apply should be (please indicate what levels these should be)*

HK\$ _____ for market capitalisation

HK\$ _____ for revenue

Please state reason(s) for your view.

- Disagree. There is no need to introduce alternative financial standards.*

53. We will also amend the Main Board Rules to provide that listing applicants under the market capitalisation/revenue test that wish to apply for a waiver from the three-financial-year trading record requirement will be required to demonstrate management continuity and ownership continuity and control for the most recent financial year comprising 12 months. 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 applicants.

Q11. Do you agree with our proposal that a waiver from the trading record requirement should be granted?

- Agree (please answer Q12 and Q13)*
- Disagree. Please state reason(s) for your view.*

Q12. Do you agree with our proposal to make management experience a pre-condition to a waiver?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q13. Do you think there should be other pre-condition(s) that should be met?

- Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view.*
- No.*

WORKING CAPITAL SUFFICIENCY

Issues and current position

54. Under the current Main Board Rules, the directors of a listing applicant are required to furnish a statement in the initial listing document that, in their opinion, the working capital available to the listing applicant (including its group companies) is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary¹⁵. There is, however, no explicit requirement for the minimum period of working capital sufficiency to be covered by the statement. In practice, this will cover the 12 months after the date of the initial listing document.
55. The current profit and trading record requirements or the alternative financial requirements proposals discussed in paragraphs 48 and 52 of this Part B of the Consultation Paper are historic information. It is, however, not practicable to impose a mandatory requirement to include a profit forecast in the initial listing document, given that certain businesses may have genuine difficulty in preparing a profit forecast. As such, the initial listing document may lack sufficiently meaningful

¹⁵ See Paragraph 36 of Part A of Appendix 1 of the Main Board Rules.

information that enable investors to estimate the financial viability of a listing applicant immediately after listing. Further, the information on the future plans and prospects of a listing applicant in the initial listing document are generally qualitative, which do not give much indication of the listing applicant's future financial performance.

56. We acknowledge the difficulty in requiring the inclusion of a profit forecast in the initial listing document. However, we consider that there should at least be an indicator in the document showing that the listing applicant will be able to maintain its operation for a reasonable period after listing. Further, the current Main Board Rules only require the directors, but not the sponsors, of a listing applicant to give a statement on the working capital sufficiency. We consider that the sponsors should also be responsible to opine on the adequacy of working capital of the listing applicant for a reasonable period after listing.

Proposal

57. We will maintain the current practice not to compulsorily require a listing applicant to include a profit forecast in its initial listing document. However, listing applicants will be encouraged to include a profit forecast when circumstances permit.

Q14. Do you agree with our proposal to maintain the inclusion of a profit forecast in the initial listing document as a voluntary requirement?

Agree

Disagree. Please state reason(s) for your view.

58. We will amend the Main Board Rules to introduce a new requirement, in addition to the current requirement, on working capital sufficiency such that a listing applicant (except a listing applicant that is subject to prudential supervision by a regulator acceptable to the Exchange) has to show that it has sufficient working capital (including the proceeds raised from listing and its application) for its current needs and for at least the next 12 months from the date of the initial listing document. In this connection, we would also 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, and 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 58(a) 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.

Q15. Do you agree with our proposal?

- Agree*
- Agree in principle, but the period covered should be _____. Please state reason(s) for your view.*
- Disagree. Please state reason(s) for your view.*

MARKET CAPITALISATION

Issues and current position

- 59. We note that market has different interpretation on the term “market capitalisation”. To avoid unnecessary confusion, for the purpose of discussion in this Consultation Paper, the term “market capitalisation” refers to the total market value of securities that are listed and traded on the Exchange or other regulated markets. In appropriate cases, the reference to “market capitalisation” and “market value of tradable securities” in this Consultation Paper can be used interchangeably.

As “market capitalisation” provides information on the value of securities that are listed and available for trading, it serves to reflect the potential of a listing applicant in attracting public interest and acceptance. In order to demonstrate that a listing applicant is able to attract sufficient public interest and acceptance so as to warrant a listing status, the current Main Board Rules generally require the following:

- (a) a minimum market capitalisation of HK\$100 million at the time of listing¹⁶; and
- (b) the expected market capitalisation at the time of listing of the shares which is held by the public must be at least HK\$50 million¹⁷; and
- (c) a minimum public float of 25%¹⁸.

¹⁶ See Rule 8.09(2) of the Main Board Rules.

¹⁷ See Rule 8.09(1) of the Main Board Rules.

¹⁸ See Rule 8.08 of the Main Board Rules.

Given these requirements, we would normally expect a listing applicant to 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 get a listing on the Exchange, it will have to increase the public float to 50%.

60. There are comments that issuers with a small market capitalisation may more easily be the subject of market manipulation. Where the market capitalisation of an issuer is small, the value of its public float is also small and as such, there is always the possibility that only a relative small amount of capital may be required to affect its share prices. There are also views that on the Main Board, an issuer with a small market capitalisation is of lower quality, as it may only marginally meet the minimum requirements for listing.
61. As discussed in paragraph 47 of this Part B of the Consultation Paper, “market capitalisation” is an indicator of the listing applicant’s achievement - both in terms of its financial performance and the extent of the public’s interest in and acceptance of the issuer. We do not agree that there is necessarily any relationship between the market capitalisation and the quality of an issuer. However, we do recognise that setting a requirement for a higher market capitalisation would mean that only companies with reasonable size could be listed on the Exchange. We note that there are a number of markets that do not have a market capitalisation requirement and for those markets that do have it, the level of the requirement varies¹⁹.
62. The current Main Board Rules on the initial market capitalisation envisage listing applicants with one class of securities seeking to list such securities on the Exchange. We recognise that there is, at present, no express provision in the current Main Board Rules that deals with the situation where a listing applicant has more than one class of securities and all of such other class(es) are unlisted, or all or part(s) of such other classes are listed and traded on other regulated markets, save those on H shares²⁰ under Chapter 19A of the Main Board Rules.

¹⁹ NYSE: US\$60 million for initial public offerings; the London Stock Exchange: a minimum of £700,000; and SGX and ASX: there is no minimum market capitalisation requirement for those applicants that meet the profit record requirement .

²⁰ H shares are for the purposes the Main Board Rules overseas listed shares issued by a PRC issuer under PRC law which are listed on the Exchange and subscribed for and traded in Hong Kong dollars.

63. For listing applicants of H shares, the Main Board Rules currently require that:
 - (a) H shares with an expected initial market capitalisation of at least HK\$50 million must normally be offered in Hong Kong²¹; and
 - (b) where the listing applicant has more than one class of listed securities apart from the H shares to be listed on the Exchange:
 - (i) all H shares must be held by the public except as otherwise permitted by the Exchange at its discretion;
 - (ii) the aggregate amount of H shares and such other classes of securities that are held by the public must constitute not less than 25% of the total existing issued share capital of the listing applicant; and
 - (iii) the H shares that are held by the public normally must constitute not less than 10% of the total existing issued share capital of the listing applicant²².
64. Share trading is becoming increasingly global. We are mindful of the need to provide a level playing field for all listing applicants applying for listing on the Exchange. Therefore, we consider it appropriate to adopt the current requirements for H shares set out in paragraph 63(b)(i), (ii) and (iii) above as the basis of the standard criteria for listing applicants having more than one class of listed and tradable securities apart from the securities to be listed and traded on the Exchange.
65. We recognise that the current requirements for H shares under the Main Board Rules do not set a minimum market capitalisation for the listing applicant in respect of all of its securities listed and traded on all regulated markets, save for a minimum public float and market capitalisation of securities to be listed and traded on the Exchange of at least HK\$50 million. Technically, the market capitalisation of the listing applicant could be HK\$100 million if securities representing 50% of its issued share capital were to be listed and traded on the Exchange, with the remaining securities listed and traded on other regulated markets. We are mindful to provide a level playing field for all listing applicants. Therefore, we consider that listing applicants with more than one class of securities should be subject to the same requirement as those listing applicants having only one class of securities and which are applying to list such class of securities on the Exchange, in that the minimum market capitalisation must be HK\$200 million. We will accordingly aggregate the market capitalisation of all securities of the listing applicant that are listed and traded on other regulated markets. For the purpose of this Consultation

²¹ See Rule 19A.13(6) of the Main Board Rules.

²² See Rule 19A.14(2)(a) of the Main Board Rules.

Paper and unless otherwise expressly stated, the reference to market capitalisation shall, where appropriate, include the global market capitalisation of all the securities of an issuer that are listed and traded on other regulated markets.

66. In the case of options, warrants or similar rights to subscribe or purchase securities for which listing is sought, the Main Board Rules currently require a minimum market capitalisation of at least HK\$10 million at the time of listing²³. We do not consider that any amendment to the current rule is necessary.

Proposal

67. We will amend the Main Board Rules to increase the initial minimum expected market capitalisation to HK\$200 million such that:

- (a) in respect of a listing applicant that has only one class of securities and is applying to list such class of securities on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only one class of securities that are to be listed and traded on the Exchange;

Q16. Do you agree with our proposal to require an initial minimum expected market capitalisation of HK\$200 million?

Agree

Disagree. The initial minimum expected market capitalisation should be HK\$_____ Please state reason(s) for your view.

- (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only the class of securities that are to be listed and traded on the Exchange; and

²³ See Rule 8.09(4) of the Main Board Rules.

Q17. Do you agree with our proposal to apply the same minimum threshold of HK\$200 million to the global market capitalisation of listing applicants that have more than one class of securities and all of which are unlisted apart from the class to be listed and traded on the Exchange?

- Agree*
 - Disagree. Please specify the threshold you think is appropriate and state reason(s) for your view.*
- (c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise the aggregate of such securities listed and traded on other regulated markets as well as securities that are to be listed and traded on the Exchange.

Q18. Do you agree with our proposal to apply the same minimum threshold of HK\$200 million to the global market capitalisation of listing applicants that have more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets?

- Agree*
- Disagree. Please specify the threshold you think is appropriate and state reason(s) for your view.*

For the avoidance of doubt, other listing applicants to be listed under the proposed alternative market capitalisation/revenue/cash flow or market capitalisation/revenue tests will be required to meet the respective market capitalisation standards as proposed under paragraphs 48 and 52 of this Part B of the Consultation Paper.

68. We will 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.

Q19. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

PUBLIC FLOAT

Issues and current position

69. The public float requirement has a dual purpose. It serves as an indicator of the level of the public's interest in the issuer's shares. It also facilitates the maintenance of a fair and orderly market by ensuring that a minimum level of shares are available in the market for trading. The current public float requirement under the Main Board Rules is a combination of dollar value and number of shares²⁴.
70. We recognise that 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 to be able to compulsorily buy out the shares of the minority shareholders, whilst complying 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 shares²⁵. For good corporate governance and shareholders' protection, we consider that the floor with regard to the minimum percentage of public float that the Exchange under the current Main Board Rules can grant²⁶ should be raised.

²⁴ See Rules 8.08(1) and 8.09(1) of the Main Board Rules which require a minimum public float of HK\$50 million or 25% of the issued share capital, whichever is higher at the time of listing. However, the 25% can be lowered to not less than 10% at the discretion of the Exchange if the issuer's market capitalisation (determined as at the time of listing) exceeds HK\$4 billion.

²⁵ See Section 168 and the Ninth Schedule of the Companies Ordinance, Cap 32.

²⁶ See footnote 24 above.

71. As issuers vary in size, there are views that a lower public float requirement should apply to issuers of larger size. For those issuers, the absolute number of their shares available in the market for public trading would be sufficient to maintain a fair and open market. Others, however, take the view that all issuers, irrespective of their size, should be treated alike and the public float should be a percentage proportional to their market capitalisation, instead of an absolute number of shares. We consider that the current level of our public float requirement is generally comparable to a number of other markets²⁷ and is adequate for maintaining an open, fair and orderly market for the investing public.
72. As with market capitalisation, the public float requirement under the current Main Board Rules only envisages listing applicants (other than those of H shares) with one class of securities applying to list such securities on the Exchange. Currently apart from listing applicants of H shares, there are no other listing applicants having two or more classes of securities listed and traded on other regulated markets. On the same rationale that listing applicants should be treated alike, we consider that it is appropriate to adopt the current requirements for H shares set out in paragraph 63(b)(i), (ii) and (iii) above as the basis of the standard criteria for listing applicants having more than one class of listed securities apart from the securities to be listed and traded on the Exchange.

Proposal

73. We will amend the Main Board Rules to provide for the following:
 - (a) in respect of a listing applicant that has only one class of securities and is applying to list such securities on the Exchange, there must be at least 25% of the listing applicants' total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million, in the hands of the public;

Q20. Do you agree with our proposal to require 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, in the hands of the public?

Agree

Disagree. Please state reason(s) for your view.

²⁷ The public float levels of the other markets (LSE, SGX and ASX) are generally 25%.

- (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the total securities held by the public at the time of listing on the Exchange must be at least 25% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$200 million; and

Q21. Do you agree with our proposal to apply the same percentage threshold of public float to listing applicants that have more than one class of securities and all of which are unlisted apart from the class to be listed and traded on the Exchange?

- Agree*
- Disagree. Please specify the percentage threshold you think is appropriate and state reason(s) for your view.*

- (c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, 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 and traded on the Exchange must not be less than 10% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million.

Q22. Do you agree with our proposal to apply the same percentage threshold of public float to listing applicants that have more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other exchanges?

- Agree*
- Disagree. Please specify the percentage threshold you think is appropriate and state reason(s) for your view.*

Q23. Do you agree with our proposal to require at least 10% of the listing applicant's total existing issued share capital to be listed and traded on the Exchange?

- Agree (please answer Q24)*
- Disagree (please tick one of the following)*
 - The percentage threshold should be higher. The percentage threshold should be _____. Please specify the threshold you think is appropriate and state reason(s) for your view. (please answer Q25)*
 - The percentage threshold should be lower. The percentage threshold should be _____. Please specify the threshold you think is appropriate and state reason(s) for your view. (please answer Q26)*

Q24. Do you agree with our proposal that the 10% of the listing applicant's total existing issued share capital to be listed and traded on the Exchange should represent an aggregate market capitalisation of not less than HK\$50 million?

- Agree*
- Disagree. The threshold of the aggregate market capitalisation represented by the 10% of the listing applicant's issued share capital should be HK\$_____. Please state reason(s) for your view.*

Q25. If you think that the percentage threshold of the listing applicant's issued share capital should be higher than 10%, do you agree that the threshold of the aggregate market capitalisation of securities to be listed and traded on the Exchange represented by such percentage should be maintained at HK\$50 million?

- Agree*
- Disagree. The market capitalisation should be HK\$_____. Please state reason(s) for your view.*

Q26. If you think that the percentage threshold of the listing applicant's issued share capital should be lower than 10%, do you agree that the threshold of the aggregate market capitalisation to be listed and traded on the Exchange represented by such percentage should be maintained at HK\$50 million?

Agree

Disagree. The market capitalisation should be HK\$_____. Please state reason(s) for your view.

74. We will amend the Main Board Rules to provide that 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 that are listed and traded on regulated markets determined as at the time of listing on the Exchange, exceeds HK\$10 billion. However, the listing applicant must demonstrate, to the satisfaction of the Exchange, that it has sufficient safeguard in place to protect the interests of minority shareholders. If this proposal is adopted, the revised lower percentage of public float of between 15% and 25% shall only apply to listing applicants referred to in paragraph 111 of this Part B of the Consultation Paper, and will not affect those existing issuers that have already been granted a waiver from the public float requirement.

Q27. Do you agree with our proposal to increase the floor to 15% with regard to the minimum percentage of public float that the Exchange may grant?

Agree (please answer Q28, Q29 and Q30)

Agree, but the threshold should be ____% (please indicate what level this should be). Please state reason(s) for your view. (please answer Q28, Q29 and Q30)

Disagree. The current threshold of 10% should be retained. Please state reason(s) for your view.

Q28. Do you agree with our proposal to increase the threshold of the market capitalisation of securities that are listed and traded on regulated markets to HK\$10 billion for the grant of the lower percentage of public float?

Agree

Agree, but the threshold of the increased market capitalisation should be HK\$_____ (please indicate what level this should be). Please state reason(s) for your view.

Disagree. Please state reason(s) for your view.

Q29. Do you agree with our proposal to require listing applicants to demonstrate that they have put in place sufficient safeguard to protect the interests of minority shareholders as a pre-condition for granting a lower percentage?

Agree

Disagree. Please state reason(s) for your view.

Q30. Do you think there should be any other pre-condition(s) that should be met?

Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view.

No

Q31. Do you agree with our proposal that the revised lower percentage of between 15% and 25% should not apply to existing issuers that have already been granted a waiver from the current public float requirement?

Agree

Disagree. Please state reason(s) for your view.

SPREAD OF SHAREHOLDERS

Issues and current position

75. The Main Board Rules currently provide that there should be a minimum of 100 holders, and as a guideline, with not less than 3 holders each holding HK\$1 million of the issue at the time of listing²⁸. In conjunction with the public float requirement, this requirement also serves to ensure that there is an open and orderly market, and provides an indicator of the level of the public's interest in the issuer's shares.
76. Given that there is already a requirement on the minimum number of shareholders, the guideline of 3 holders each holding HK\$1 million at the time of listing is not really necessary. As such, we consider that this guideline can be deleted.

²⁸ See Rules 8.08(2) and 19A.14(1)(b) of the Main Board Rules.

77. The requirement of 100 minimum shareholders is relatively low when compared with other markets²⁹. A small number of public shareholders may not be conducive to a fair and orderly market. The current requirement excludes, for the purpose of defining “the public”³⁰, any connected person of the issuer, or any person whose acquisition of securities has been financed by a connected person, or any person who is accustomed to take instructions from a connected person. Under the current Main Board Rules, a “substantial shareholder” refers to a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of an issuer³¹ and he is included as one of the “connected persons”³² of the issuer for the purposes of the Main Board Rules. This percentage threshold corresponds with the “notifiable percentage” under the Securities (Disclosure of Interests) Ordinance³³ (“SDI Ordinance”) which subject a person holding 10%, or such other percentage as may be prescribed by regulations, of the nominal value of the issued capital of a listed company to a duty of disclosure.
78. In Hong Kong many issuers have controlling shareholders holding between 50% to 75% of an issuer’s equity. This together with, say, 2 strategic investors each holding 9.99% of the issued share capital of the issuer, will leave a mere 5% of the issued share capital in the hands of the public, which is not conducive to a fair and orderly market. These strategic investors are still classified as “public” for the purposes of the Main Board Rules although their shares can only be traded when they dispose of the shares in the market.
79. Whilst we acknowledge the commercial reality that strategic investors are important to an issuer, we also consider it important to maintain a fair and level-playing field for the general public.
80. Given the status of Hong Kong as an international financial centre and the increasing participation of international investors in our market, we consider that the Main Board Rules should impose a higher mandatory minimum spread of shareholders requirement. This will ensure that a fair, open and orderly market exists for securities. In this connection, we consider that generally a minimum of 300 shareholders to be sufficient. Applicants of a substantial size using the proposed alternative financial standard of market capitalisation/revenue as discussed in paragraph 52 of this Part B of the Consultation Paper, should be able to demonstrate their ability to attract significant investor interest. Therefore, we consider that the minimum number of shareholders at the time of listing of these listing applicants should be increased to a minimum number of 1,000.

²⁹ The respective standards on other markets are 400 (ASX), 1000 (SGX) and 2000 (NYSE).

³⁰ See the definition of “the public” under Rule 8.24 of the Main Board Rules.

³¹ See the definition of “substantial shareholder” in Rule 1.01 of the Main Board Rules.

³² See the definition of “connected person” in Rule 1.01 of the Main Board Rules.

³³ See Section 6 of the SDI Ordinance.

81. For clarity, the term “shareholders” in this proposed initial listing eligibility criterion as well as the proposed continuing obligation with regard to the “spread of shareholders” actually refers to beneficial, and not registered, owners of the securities.

Proposal

82. We will amend the Main Board Rules to increase the minimum number of shareholders to 300. This will apply to all listing applicants including H share listing applicants, in which case, the number of H share holders must be at least 300. For listing applicants to be listed under the proposed alternative market capitalisation/revenue test as discussed in paragraph 52 of this Part B of the Consultation Paper, the minimum number of shareholders will be 1,000.

Q32. Do you agree with our proposal to increase the minimum number of shareholders to 300?

- Agree*
- Disagree (please tick one of the following)*
 - The current Main Board Rules on the minimum number of shareholders of 100 should be retained.*
 - The minimum number of shareholders should be (please tick one of the following)*
 - 200*
 - 400*
 - 500*
 - Other. Please specify: _____*

Please state reason(s) for your view.

Q33. Do you agree with our proposal to require at least 1,000 shareholders for listing applicants to be listed under the alternative market capitalisation/revenue test?

- Agree*
- Disagree (please tick one of the following)*
 - It is not necessary given that there should not be other alternative financial standards.*

The minimum number of shareholders for listing applicants to be listed under the alternative market capitalisation/revenue test should be (please tick one of the following)

800

1200

1500

Other. Please specify:_____

Please state reason(s) for your view.

83. Of the minimum 300 or, as the case may be, 1,000 shareholders, we will amend the Main Board Rules 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.

Q34. Do you agree with our proposal?

Agree

Agree, but the maximum number of top “public” shareholders holding in aggregate not more than 50% of the public float at the time of listing should be (please tick one of the following)

3

8

10

Other. Please specify:_____

Please state reason(s) for your view.

Agree, but the maximum percentage of the public float held by the top 5 public shareholders should be _____. Please specify the percentage and state reason(s) for your view.

Disagree. Please state reason(s) for your view.

Q35. Do you agree that the term “shareholders” should refer to beneficial, and not registered, owners of an issuer’s securities?

- Agree*
- Disagree. Please state reason(s) for your view.*

84. We will amend the Main Board Rules so that 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.

Q36. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

85. We will also amend the Main Board Rules to delete the guideline of 3 holders each holding HK\$1 million.

Q37. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

MINIMUM ISSUE PRICE

Issues and current position

- 86. The Main Board Rules currently do not set out mandatory requirements on a minimum issue price for listing applicants. However, we have a practice of requiring a minimum board lot value of HK\$2,000 at the time of listing.
- 87. There are comments from the market that a low issue price will improve liquidity as the lower the price, the greater the accessibility of the shares in the market and therefore the higher the liquidity. We do not agree with this argument. We consider that under the present system of board lot trading, liquidity depends on the value and number of trading units (i.e. board lots) available in the market rather than the value of the share at the time of issue.
- 88. There is a growing tendency that issuers, for their own reasons, set the issue price of their securities at a very low level. In these instances, it is more likely that their trading will be more volatile as changes in prices which are small in absolute terms may become significant in percentage terms (for example, a price change of HK\$0.005 from HK\$0.015 to HK\$0.01 represents a percentage change of 33%).

89. Further, the low pricing of the issue price may be misleading to investors and therefore may provide opportunities for market manipulation. We are of the view that if a security is priced at a low level, or even in cents, investors may believe, although possibly wrongly, that it is “cheap” in the sense of being good value for money without verifying the fundamentals of the issuer.
90. We also believe that the increasing trend for issuers to price their initial offer of securities at a low level is not compatible with the goodwill that Hong Kong has been building up as an international financial centre. Indeed, the predominance of low priced securities (so-called “penny stocks”) on the Exchange may have an adverse effect on the perception of the quality of the Hong Kong market, and hence the reputation of the Exchange, and the issuers listed on it, among international and other investors. We understand that there are instances where institutional investors would simply exclude securities priced in cents from their investment portfolios. Please refer to paragraphs 139 to 152 of Part C of this Consultation Paper for further discussion and our proposal on penny stocks.
91. There are views advocating for the abolition of the existing board lot trading system. If the board lot trading system was abolished, we believe that trading of low priced securities may become even more volatile as by then, the minimum trading unit would be equivalent to the unit price of the securities. As a result, changes in their prices may generate trading frenzies which may be more susceptible to manipulation and therefore not conducive to a fair and orderly market.
92. Practically, we believe that a higher minimum issue price would help to improve our international profile and encourage investors to focus more on the quality of the securities. We note that institutional investors generally tend not to buy stocks that are priced below US\$1. There are views that the minimum issue price should be set at HK\$5. However, we consider it reasonable to initially set the minimum issue price at HK\$2, with a long-term aim to increase the issue price to higher than HK\$2.

Proposal

93. We will amend the Main Board Rules to introduce a minimum issue price of HK\$2 for shares applying to be listed on the Exchange.

Q38. Do you agree with our proposal?

Agree

Agree in principle, but the minimum issue price should be (please tick one of the following)

HK\$3

HK\$5

HK\$8

HK\$10

Other. Please specify: _____

Please state reason(s) for your view.

Disagree. Please state reason(s) for your view.

Q39. If you agree that the minimum issue price should be higher than HK\$2, how long do you think it should be allowed for the minimum issue price to be increased?

6 months

12 months

18 months

Other. Please specify: _____

Please state reason(s) for your view.

MINERAL COMPANIES

Issues and current position

94. The Main Board Rules currently have a separate chapter on mineral companies³⁴. This chapter sets out the additional special requirements for issuers whose activities (whether directly or through a subsidiary company) include exploration for or production of natural resources consisting of substances such as metal ores, mineral concentrates, industrial minerals, mineral oils, natural gases or solid fuels, as well as companies engaged in mining, extraction of hydrocarbons, quarrying or similar activities³⁵.

³⁴ See Chapter 18 of the Main Board Rules.

³⁵ See Rule 18.01 of the Main Board Rules.

95. Under the current Main Board Rules, the general track record requirements under Rule 8.05 may not apply to a listing applicant that is a mineral company if the Exchange is satisfied that the management of the listing applicant has adequate experience in mining and/or exploration activities³⁶. In this regard, the Exchange may consider granting a waiver to such a listing applicant from the profit or trading record requirements that are otherwise required under Rule 8.05 of the Main Board Rules. Listing applicants that are mineral companies are, however, still required to comply with listing requirements in all other respects as with other listing applicants under Chapter 8 of the Main Board Rules, in addition to those specific requirements under the current Main Board Rules applicable to mineral companies.
96. The rationale for granting a waiver to listing applicants that are mineral companies from the general track record requirements under Rule 8.05 of the Main Board Rules is in line with our previous discussion under paragraphs 44 to 45 of Part B of this Consultation Paper, to introduce alternative financial standards to the profit requirement. Mineral companies may be highly capital intensive in nature, particularly during the early years of development and they may not be able to generate a profit. Accordingly, if our proposals with regard to the alternative financial standards to the profit requirement, namely, the market capitalisation/revenue/cash flow test and the market capitalisation/revenue test are adopted, listing applicants that are mineral companies which are otherwise not able to meet the profit requirement may adopt these alternative financial standards to demonstrate their achievement in their industry.
97. However, there may still be instances where listing applicants may also not be able to generate substantial revenue at their initial development stage. In these circumstances, we consider it appropriate to retain the Exchange's discretion to relax the financial standards requirement where the management of the listing applicant has adequate experience in mining and/or exploration activities.

Proposal

98. We will amend the Main Board Rules to clarify that the initial listing eligibility criteria as proposed under this Part B of the Consultation Paper will apply equally to listing applicants that are mineral companies.

Q40. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

³⁶ See Rule 18.03 of the Main Board Rules.

99. Listing applicants that wish to apply for a waiver from 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.

Q41. Do you agree with our proposal to make management experience a pre-condition to a waiver?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q42. Do you think there should be other pre-condition(s) that should be met?

- Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view.*
- No*

INFRASTRUCTURE COMPANIES

Issues and current position

100. Under the current Main Board Rules, infrastructure companies generally refer to newly formed “project” companies (for example a company formed to construct a major infrastructure project)³⁷. Pursuant to the guidelines set out in the Exchange’s Announcement dated 31 January, 1996 (“Announcement regarding Infrastructure Project Companies”), the Exchange may consider applications from listing applicants that are infrastructure companies which do not meet the profit requirement if they are able to meet certain requirements, such as:
- (a) the listing applicant is a party to and has the right to build and operate (or participate in the results from the operation of) a particular infrastructure project(s);
 - (b) at the time of listing, the listing applicant must not be engaged in any businesses other than those stipulated in the infrastructure project mandate(s) or contract(s);
 - (c) infrastructure projects are 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;

³⁷ See Rule 8.05(2) of the Main Board Rules.

- (d) the infrastructure project(s) must be carried out under a long term concession or mandate (normally there should be at least 15 years remaining at the time of listing) awarded by government and be of a substantial size;
 - (e) the majority of the projects should be in the pre-construction or construction stage;
 - (f) the bulk of the proceeds of the offering should be used to finance the construction of the project(s);
 - (g) the substantial shareholder(s) of the listing applicant must demonstrate to the satisfaction of the Exchange that it and the management team have the necessary experience, technical expertise, track record and financial strength to carry out the project(s) to completion and to operate it thereafter; and
 - (h) in addition to the documents required to be provided to the Exchange by listing applicants under the Main Board Rules, additional documents, such as business valuations, feasibility studies and sensitivity analyses and cash flow projections, must be provided and additional disclosure of various matters made in the listing document.
101. If our proposals on the alternative quantitative tests to the profit requirement, namely, the market capitalisation/revenue/cash flow test and the market capitalisation/revenue test (as discussed in paragraphs 48 and 52 of this Part B of the Consultation Paper) are adopted, listing applicants that are infrastructure companies which are otherwise not able to meet the profit requirement may adopt the alternative financial standards to demonstrate the extent of achievement in their industry.
102. Similar to mineral companies, infrastructure companies may also be of capital investment intensive nature with a relatively long development curve. Accordingly, it is possible that an infrastructure company may not be able to generate either profit or revenue during the early stage of its development. In these circumstances, we consider that a relaxation of the trading record requirement and/or financial standards requirement is appropriate, provided that the management of the listing applicant has sufficient experience in the line of business and industry of the listing applicant.

Proposal

103. We will amend the Main Board Rules to incorporate the requirements of the Announcement regarding Infrastructure Project Companies into the Main Board Rules and to provide that the initial listing eligibility criteria as proposed under this Part B of the Consultation Paper will apply equally to listing applicants that are infrastructure companies.

Q43. Do you agree with our proposal to incorporate the requirements of the Announcement regarding Infrastructure Project Companies into the Main Board Rules?

- Agree*
 Disagree. Please state reason(s) for your view.

Q44. Do you agree with our proposal to apply the proposed initial listing eligibility criteria to listing applicants that are infrastructure companies?

- Agree*
 Disagree. Please state reason(s) for your view.

104. Listing applicants that wish to apply for a waiver from 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 the additional disclosure requirements, set out in the Announcement regarding Infrastructure Project Companies. 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 applicants.

Q45. Do you agree with our proposal to make the specific requirements, including the additional disclosure requirements, as set out in the Exchange's Announcement regarding Infrastructure Project Companies and management experience pre-conditions to a waiver?

- Agree*
 Disagree. Please state reason(s) for your view.

Q46. Do you think there should be other pre-condition(s) that should be met?

- Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view.*
- No*

DEEMED NEW LISTING

Issues and current position

105. Under the current Main Board Rules, an acquisition which would result in a change in control through the introduction of a majority holder or group of holders (e.g. a reverse take-over) is regarded as a “very substantial acquisition”³⁸ and may be treated a new listing³⁹. The Main Board Rules do not specifically elaborate on reverse takeover situations. If our proposal under the Corporate Governance Consultation Paper is adopted, there will be an introduction of a separate category of transactions of “reverse takeover” in the Main Board Rules, which essentially refers to:
- (a) any acquisition that would result in, or is part of a transaction or arrangement or series of transactions or arrangements which would result in, a change in control of the issuer; or
 - (b) any acquisition that constitutes an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants; or
 - (c) any acquisition that will lead to a fundamental change of business of the issuer.

Issuers engaged in transactions leading to a “reverse takeover” will be treated as new listing applicants.

106. Typically in cases of rescue of issuers that are in financial difficulties, investors may propose to inject assets or cash into the issuer. The same may happen in reverse takeover cases where assets or cash may be injected into the issuer. In consideration for the injection of assets or cash, the issuer issues a substantial amount of new shares either in the existing issuer itself or in a new holding company. In these circumstances, the existing issuer, or if a new holding company that is set up to hold assets of the existing issuer and to be listed instead of the existing issuer

³⁸ See Rule 14.06 of the Main Board Rules.

³⁹ See Rule 14.07(2) of the Main Board Rules.

(“NewCo”), will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement given that it may be time consuming to carry out an investigation under the SDI Ordinance (“SDI investigation”) to ascertain the identities of the shareholders.

107. However, in rescue situations, assets may be 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. In these circumstances, the issuer, or the enlarged group of the issuer, or NewCo, will be required to comply with the proposed initial listing eligibility criteria in the following manner:
 - (a) the asset to be injected must meet the following proposed initial listing eligibility criteria:
 - (i) the track record requirement inclusive of trading record period and management and ownership continuity requirements as discussed in paragraphs 29 and 34 of this Part B of the Consultation Paper; and
 - (ii) the profit requirement or alternative financial standards as discussed in paragraphs 41, 48 and 52 of this Part B of the Consultation Paper.
 - (b) the enlarged group of the existing issuer, or NewCo, must meet the following proposed initial listing eligibility criteria:
 - (i) the working capital sufficiency requirement as discussed in paragraph 58 of this Part B of the Consultation Paper;
 - (ii) the market capitalisation requirement as discussed in paragraph 67 of this Part B of the Consultation Paper;
 - (iii) the public float as discussed in paragraph 73 of this Part B of the Consultation Paper; and
 - (iv) the minimum issue price as discussed in paragraph 93 of this Part B of the Consultation Paper, represented by the value of the consideration shares.

In both cases, the issuer, or the enlarged group of the issuer, or NewCo has to comply with the spread of shareholders requirement on a continuing basis.

108. We recognise that there are currently situations where a waiver from the profit requirement may be granted to a deemed new listing applicant if, and only if, the debt restructuring proposal does not involve any injection of assets. We have revisited this practice. We consider that, as with other new listing applicants, deemed new listing applicants should be subject to the same criteria for the purpose of demonstrating that the existing business of the issuer is viable and warrants a listing status. If our proposals regarding the continuing listing eligibility criteria set out in Part C of this Consultation Paper are adopted, there would be an adequate mechanism to keep track of issuers that are on the verge of delisting. To ensure that the Main Board Rules will be consistently and fairly applied to all listing applicants alike, we consider that relaxation to the proposed initial listing eligibility criteria, in particular, the profit (or where appropriate, the alternative financial standards) should no longer be granted.

Proposal

109. We will amend the Main Board Rules to provide for the following:

(a) subject to the proposal in paragraph 109(b), an issuer that is treated as a new listing applicant under the current Main Board Rules, and if our proposal on “reverse takeover” in the Corporate Governance Consultation Paper is adopted, an issuer that is treated as a new listing applicant by engaging in transactions leading to a “reverse takeover”, will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement. Where a NewCo is to be set up to hold assets of the issuer and to be listed instead of the issuer, the NewCo will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement;

Q47. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

(b) 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, the issuer, or the enlarged group of the issuer, or the NewCo, will be required to comply with the proposed initial listing eligibility criteria as follows:

- (i) the asset to be injected must meet:
- the track record requirement inclusive of trading record period and management and ownership continuity requirements; and
 - the financial standards requirement.

Q48. Do you agree with our proposal?

- Agree*
 Disagree. Please state reason(s) for your view.

- (ii) the enlarged group of the existing issuer, or NewCo, must meet:
- the working capital sufficiency requirement;
 - the market capitalisation requirement;
 - the public float requirement; and
 - the minimum issue price requirement, as represented by the value of the consideration shares.

Q49. Do you agree with our proposal?

- Agree*
 Disagree. Please state reason(s) for your view.

In both cases, the issuer, or the enlarged group of the issuer, or NewCo has to comply with the spread of shareholders requirement on a continuing basis.

For the avoidance of doubt, no relaxation to the proposed initial listing eligibility criteria, except for the spread of shareholders requirement, will be considered in case of deemed new listing applicants.

Q50. Do you agree with our proposal?

- Agree*
 Disagree. Please state reason(s) for your view.

MARKET'S VIEW

110. After considering the detailed discussion regarding our proposals on the initial listing eligibility criteria as set out in paragraphs 25 to 93 of this Part B of the Consultation Paper, we would like to invite comments from the market as to whether the overall standard in respect of the initial listing eligibility criteria should be strengthened or relaxed.

Q51. Do you think that the overall standard of our proposals on the initial listing eligibility criteria is appropriate?

- Yes
- No. Please specify which part(s) of our proposals on the initial listing eligibility criteria should be strengthened or relaxed. Please state reason(s) for your view.

EFFECTIVE DATE

111. We propose that if our proposals regarding the eligibility criteria for initial listing set out in this Part B of the Consultation Paper are adopted, such criteria will become effective immediately when amendments of the Main Board Rules are made. Details will be included in an announcement to be made by the Exchange as and when appropriate. Listing applicants that submit their listing application (Form A1) after amendment of the Main Board Rules, and listing applicants that have submitted their Form A1 before such amendments but remain unlisted three months after amendment of the Main Board Rules, must comply with these initial listing eligibility criteria.

Q52. Do you agree with our proposal?

- Agree
- Disagree. Please state reason(s) for your view.

PART C

CONTINUING LISTING ELIGIBILITY CRITERIA

GENERAL

112. Under the current Main Board Rules, listing is always granted subject to the overriding principle that the Exchange may at any time, for the protection of the investor or the maintenance of an orderly market, suspend or cancel the listing of any securities in such circumstances and on such conditions as it thinks fit⁴⁰. The Exchange may, among others, cancel the listing of an issuer if it does not have a sufficient level of operations or assets to warrant the continuing listing of the issuer's securities⁴¹. In these instances, cancellation of listing commences with trading suspension where an issuer shows signs of insufficiency of operation or assets. Typically, these issuers are in liquidation or receivership.
113. All issuers are required to sign a Listing Agreement with the Exchange by which they undertake to comply with the continuing obligations as a condition of the listing of their securities. These obligations generally relate to disclosure of information that are designed to promote transparency and protect investors by maintaining a fair and orderly market and ensuring equal treatment by issuers of all shareholders. Failure to comply with the terms of the Listing Agreement may lead to the suspension or cancellation of the listing of the issuers' securities⁴². However, depending on the seriousness of the breaches, the Exchange may subject non-compliant issuers to disciplinary actions, with the cancellation of listing as the most severe sanction.
114. Save for the continuing obligations that issuers are required to observe once their securities are listed on the Exchange, there are currently under the Main Board Rules no quantitative continuing listing eligibility criteria, other than Paragraph 38 of the Listing Agreement⁴³. Through the passage of time, some issuers may have persistently under-performed, both financially and in terms of public following, and sometimes even to levels below the initial entry standards. Their lack of financial achievement may lessen the public's interest in them. The existence of these under-performing issuers may affect the quality of our market, and may tarnish the reputation of Hong Kong as an international financial centre.

⁴⁰ See Rule 6.01 of the Main Board Rules.

⁴¹ See Rule 6.01(3) and Paragraph 2 of Practice Note 17 to the Main Board Rules as well as Paragraph 38 of the Listing Agreement.

⁴² See Rule 13.07 of the Main Board Rules.

⁴³ Paragraph 38 of the Listing Agreement provides that an issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer's securities.

115. We consider that the Main Board Rules should provide an exit route to those under-performing issuers in order to maintain the quality of our market. It is therefore appropriate to adopt certain quantitative and qualitative continuing listing eligibility criteria. The quantitative criteria include financial achievement and public interest indicators. The qualitative criteria include prolonged suspension, persistent breaches of the Main Board Rules and illegal operations. Issuers that lack achievement and investor acceptance and interest, and cannot present viable plans to bring themselves back to long-term, sustained compliance with the quantitative and qualitative continuing listing eligibility criteria would face cancellation of listing.
116. We recognise that in the case of a cancellation of listing minority shareholders may lose out more. In the event of delisting, minority shareholders may end up holding shares in an unlisted vehicle with no exit route and no protection. We, however, consider that in enhancing the quality of our market, the issue of whether the general investing public is adequately protected takes precedence over other matters. To the extent possible, we have also taken into account the interests of minority shareholders in formulating our proposals for continuing listing eligibility criteria.
117. There are views that an alternative trading platform should be set up to provide shareholders of a delisted issuer with a venue to trade their shares after delisting. We consider that transparent quantitative delisting rules would provide adequate “early warning” signals to investors and afford them sufficient time to act and make investment decisions. Accordingly, we do not consider that an alternative trading platform for trading of delisted shares is necessary for the purpose of this Consultation Paper. In this connection, we should point out that if an issuer, subsequent to delisting, wishes to apply for listing on any market operated by the Exchange, then for track record purposes the commencement date shall be from the date of its delisting from the Main Board.

Proposal

118. We will amend the Main Board Rules to introduce a set of quantitative and qualitative continuing listing eligibility criteria. We will consider these criteria to determine whether there is strong indication of failure by issuers. Failure by issuers may be in the form of unsatisfactory achievement and low level of investor acceptance and interest. Failure by issuers to meet one or more of these criteria will, subject to the process of natural justice, result in cancellation of the listing of the issuers’ securities.

Q53. Do you agree with our proposal?

Agree

Disagree

QUANTITATIVE CRITERIA

FINANCIAL STANDARDS

Financial Achievement

Issues and current position

119. Given that the very notion of a listing status carries with it an implied potential for growth/performance, one would normally expect an issuer to be able to generate profit from its business activities. However, there are times for reasons beyond the control of issuers, such as the general decline in the overall economic climate, when their ability to generate profits may be impaired. Therefore, it would not be reasonable to expect issuers to be profitable or achieve annual growth in profitability every year.
120. As discussed in paragraphs 45 to 47 of Part B of this Consultation Paper, profit is only one of the indicators of the extent of an issuer's achievement in its industry. There are other alternative indicators, such as market capitalisation together with revenue and positive cash flow or market capitalisation together with revenue, that are equally indicative of an issuer's achievement and the level of investor acceptance and interest in the issuer. Accordingly, in considering an issuer's suitability for continuing listing, we will also take into account other factors such as the level of public following that the issuer is able to attract. This is particularly relevant in the case of issuers that were listed under the market capitalisation/revenue test as discussed in paragraph 52 of Part B of this Consultation Paper, given that their listing is premised on them being able to attract significant investor interest and generate revenue.
121. We recognise that the mere fact that an issuer is loss making should not be taken, on its own, as a ground for cancellation of listing. However, a prolonged period of loss making together with failure to meet other financial indicators such as market capitalisation and shareholders' equity, may imply a lack of achievement, or even failure on the part of the issuer. In this regard, we consider that three years of consecutive losses will provide a reasonable benchmark. However, three years of consecutive losses on its own, may not be a sufficient indicator of lack of achievement and public acceptance and interest. Therefore, such losses should be considered with other financial achievements, for example, market capitalisation and shareholders' equity, as a test of whether there are strong indicators that the issuer has failed to meet the continuing listing eligibility criteria. Given the fluctuating nature of the market capitalisation, we consider it appropriate to set the benchmark in relation to the market capitalisation at HK\$50 million. This represents approximately 25% of the minimum market capitalisation at the time of listing (if our proposal set out in paragraph 67 of Part B of this Consultation Paper is

adopted). Accordingly, where an issuer has been loss making for three consecutive years after listing and has either negative equity or a low market capitalisation, it will be considered as failing to meet the continuing listing eligibility criteria.

122. As discussed in paragraphs 119 and 120 of this Part C of the Consultation Paper, we recognise that profit on its own should not be taken as the only indicator for measuring an issuer's achievement. There may be instances where an issuer may still appear to be attractive to the public as reflected by its market capitalisation, even if it may be loss making.
123. As also discussed in paragraphs 44 to 48 of Part B of this Consultation Paper, market capitalisation, together with revenue and positive cash flow from operating activities, can act as an alternative indicator of the financial performance of an issuer. Accordingly, in line with the rationale underlying the introduction of an alternative indicator of financial performance as one of the initial listing eligibility criteria, we consider that a similar test should also apply to continuing listing. Where an issuer has been failing to achieve financial indicators such as having a low market capitalisation and negative equity, and is unable to attract a sufficient level of investor acceptance and interest, we would re-consider the suitability of its continuing listing.
124. The Main Board Rules currently do not have a minimum market capitalisation requirement for continuing listing, although there is a HK\$100 million minimum market capitalisation requirement for initial listing.
125. We recognise that the market capitalisation fluctuates when share prices fluctuate. It may not, therefore, be reasonable to require issuers to maintain at all times the proposed prevailing minimum market capitalisation applicable at the time of initial listing for issuers that list under the minimum profit requirement. If our proposal in paragraph 67 of Part B of this Consultation Paper is adopted, such minimum market capitalisation will be HK\$200 million. However, an issuer with a small market capitalisation may be more likely to be prone to abuse as only a small amount of capital and a few trades may be sufficient to move its price. Further, low market capitalisation is more likely to be associated with penny stocks.
126. As discussed in paragraph 121 of this Part C of the Consultation Paper, given the fluctuating nature of the market capitalisation, we consider it appropriate to set the benchmark in relation to the market capitalisation at HK\$50 million. This represents 25% of the minimum market capitalisation at the time of listing.

127. Market capitalisation can be regarded as an important means to measure an issuer's achievement and therefore the extent of investors' interest in and acceptance of the issuer. However, we recognise that there are industries where the share price is at a discount to the book value of the issuer's assets. In such a case, the reference to the market capitalisation alone may not truly reflect the actual value of the share price. As we consider shareholders' equity to be one of the financial indicators, consideration will also be given to the issuer's shareholders' equity which should not be less than HK\$50 million.

Proposal

128. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will be considered as failing to meet the continuing listing eligibility criteria if it has been, after tax,
- (a) loss making for three consecutive years and has negative equity; or
- Q54. Do you agree with our proposal?*
- Agree*
- Disagree. Please state reason(s) for your view.*
- (b) loss making for three consecutive years and its average market capitalisation is less than HK\$50 million over 30 consecutive trading days.

For the purpose of calculating the average market capitalisation of an issuer in this Part C of the Consultation Paper, the term "average market capitalisation" shall mean the average of the daily volume weighted market capitalisation of securities listed and traded on the Exchange over a period of 30 consecutive trading days. Where the securities of an issuer are also listed and traded on other regulated markets, the term "average market capitalisation" shall mean the average of the global market capitalisation over a period of 30 consecutive trading days. Global market capitalisation in turn shall mean the sum of the daily volume weighted market capitalisation of securities listed and traded on the Exchange and the market capitalisation of securities listed and traded on other regulated markets. For this purpose, reference will be made to the daily closing price of such securities of the issuer listed and traded on other regulated markets as announced by these markets.

Q55. Do you agree with our proposal?

- Agree*
- Agree, but the threshold for the average market capitalisation should be (please tick one of the following)*
 - HK\$70 million*
 - HK\$80 million*
 - HK\$100 million*
 - Other. Please specify: HK\$_____*

Please state reason(s) for your view.

- Disagree. Please state reason(s) for your view.*

129. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if:

- (a) its average market capitalisation is less than HK\$50 million over 30 consecutive trading days; and
- (b) its shareholders' equity is less than HK\$50 million. The issuer's latest published audited financial information and any subsequent published financial information will be used for the purpose of ascertaining its shareholders' equity.

Q56. Do you agree with our proposal?

- Agree (please answer Q57 and Q58)*
- Disagree. Please state reason(s) for your view.*

Q57. Do you agree with the proposed threshold of the average market capitalisation of HK\$50 million over 30 consecutive trading days?

- Agree*
- Disagree. The threshold should be HK\$ ____ over ____ consecutive trading days. Please state reason(s) for your view.*

Q58. Do you agree with the proposed threshold of the shareholders' equity of HK\$50 million?

- Agree*
- Disagree. The threshold should be HK\$ ____ . Please state reason(s) for your view.*

ABSOLUTE MINIMUM MARKET CAPITALISATION

Issues and current position

130. As previously discussed, a small market capitalisation may be more susceptible to market manipulation. Accordingly, where an issuer's market capitalisation in respect of securities listed and traded on the Exchange falls below HK\$30 million, we consider that for a fair and orderly market, the issuer should not be regarded as suitable for continuing listing, notwithstanding the size of its shareholders' equity.

Proposal

131. We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if its average market capitalisation of the securities listed and traded on the Exchange is less than HK\$30 million for 30 consecutive trading days regardless of the level of shareholders' equity.

Q59. Do you agree with our proposal?

- Agree*
- Agree, but the threshold should be HK\$ ____ over ____ consecutive trading days. Please state reason(s) for your view.*
- Disagree. Please state reason(s) for your view.*

INSOLVENCY

Issues and current position

132. It is implicit in a listing status that there has been and there will be a reasonable expectation of continuous growth and performance in the business of an issuer. We therefore consider it of paramount importance that an issuer must be operating on a “going concern” basis. Where an issuer has been served with a winding up order, it is an indication that the issuer is in or faces financial and operational difficulties. In such circumstances for the protection of investors, we consider it appropriate to subject the issuer to cancellation of listing.
133. Under the current Main Board Rules, receivership or liquidation is a ground for suspension⁴⁴. Although it is also indicative of the issuer being in or facing financial and operational difficulties if the issuer goes into receivership or provincial liquidation, we consider that it should be given an opportunity to bring itself back to long-term compliance with the continuing listing eligibility criteria.
134. We consider that the situation is similar where any of the issuer’s subsidiaries, whether singly or together, accounting for more than 75% of the issuer’s total assets or turnover or after tax profits or production volume (“Principal Subsidiaries”), have been served with a winding up order, or go into receivership or liquidation. In these instances, the issuer’s operations may be seriously affected and accordingly, its suitability for continuing listing should be subject to review. We consider that an issuer will be regarded as failing to meet the continuing listing eligibility criteria if its Principal Subsidiaries have been served with a winding up order, or go into receivership or liquidation, and the remaining business of the issuer is unable to meet the initial listing eligibility criteria. In this connection, we recognise that it may be difficult for an issuer to ascertain its market capitalisation after exclusion of the Principal Subsidiaries and that it may be time consuming and costly for the issuer to carry out an SDI investigation to ascertain its spread of shareholders. Accordingly, we consider it appropriate to relieve the issuer from complying with the market capitalisation requirement and the spread of shareholders requirement, when demonstrating that its remaining business will be able to satisfy the initial listing eligibility criteria. However, the issuer will still be required to comply with the market capitalisation requirement and the spread of shareholders requirement on a continuing basis.

⁴⁴ See Paragraph 3 of Practice Note 11 to the Main Board Rules.

135. Where the Principal Subsidiaries of an issuer have been served with a winding up order, or go into receivership or provisional liquidation, and yet the issuer's remaining business is still able to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement, the reason for their exclusion has been discussed in the immediately preceding paragraph 134, the issuer will not be considered as failing to meet the continuing listing eligibility criteria.

Proposal

136. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if :
- (a) the court has served a winding up order (or equivalent action in the issuer's country of incorporation) on it, or it goes into receivership or provisional liquidation; or
 - (b) its Principal Subsidiaries have been served with a winding up order (or equivalent action in the country of incorporation of the Principal Subsidiaries), or go into receivership or provisional liquidation, and the remaining business of the issuer is unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis.

“Provisional liquidation” refers to the period after the presentation of a winding-up petition and before the making of a winding-up order (or equivalent period in the country of incorporation of the issuer or its Principal Subsidiaries).

Q60. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q61. Do you agree that an issuer should not be considered as failing to meet the continuing listing eligibility criteria where its Principal Subsidiaries have been served with a winding up order, or go into receivership or provisional liquidation, and yet its remaining business is still able to meet the initial listing eligibility criteria?

Agree

Disagree. Please state reason(s) for your view.

TOTAL DISCLAIMER OF AUDIT OPINION OR ADVERSE AUDIT OPINION

Issues and current position

137. As we attach importance to the issuer being able to operate on a “going concern” basis, we consider that where the most recent auditor’s report of the issuer contains a total disclaimer opinion or an adverse opinion, it is indicative that the issuer may have failed to keep proper books and records. Accordingly, for the protection of investors, we consider it appropriate to treat the issuer as failing to meet the continuing listing eligibility criteria.

Proposal

138. We will amend the Main Board Rules to provide that an issuer will be considered as failing to meet the continuing listing eligibility criteria if its most recent auditor’s report contains a total disclaimer opinion or an adverse opinion.

Q62. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

MINIMUM SHARE PRICE

Issues and current position

139. The Main Board Rules currently do not specifically provide for a minimum share price. The Listing Agreement provides that the Exchange reserves the right to require an issuer either to change the trading method or to proceed with a consolidation or splitting of its securities, where the market price of its securities approaches the extremities of HK\$0.01 or HK\$9,995⁴⁵.

⁴⁵ See Paragraph 30 of the Listing Agreement.

140. It is the present situation that securities are normally traded on the Exchange through automatic matching of purchase and sales orders (“automatching”) on the Exchange’s Automatic Order Matching and Execution System (“AMS”). The minimum price at which securities may be traded using automatching is HK\$0.01.
141. Securities may be traded at prices below HK\$0.01 by using the Semi-automatic Matching (“SAM”) system. The SAM system is used for trading odd lots and special orders. Trading on the SAM system is not as transparent as on the AMS because only terminal operators have access to the price and quantity information. Therefore, we consider that it is undesirable for an issuer’s securities to be traded on the SAM system for a prolonged period. There have been comments that given the lack of transparency to the investing public, trading in this form might be more susceptible to manipulation.
142. As discussed in paragraphs 88 and 89 of Part B of this Consultation Paper, trading of low priced securities may be more susceptible to market manipulation owing to investors’ misconception and exceptional volatility.
143. As an objective indicator to show if the securities of an issuer are appealing to the investing public, we consider that it is appropriate to introduce a minimum share price as an ongoing requirement.
144. There are views that the minimum share price should be set at a higher level so as to maintain the international profile of our market. We recognise that it is impracticable to require issuers to maintain at all times a minimum share price at the proposed minimum issue price of HK\$2. The market price will invariably be affected by, among other things, the performance of or corporate actions taken by the issuer subsequent to listing. Accordingly, we consider it appropriate to allow for a minimum share price to be set at a level lower than HK\$2. In this regard, we consider that HK\$0.50 (being 25% of the minimum issue price) provides a reasonable benchmark as a continuing listing eligibility criterion.
145. As an interim measure, a transitional period of 12 months will be afforded to those issuers with current share prices trading below HK\$0.50 to attain the minimum share price of HK\$0.50. After the transitional period and if the issuer still fails to meet the minimum share price requirement, it will be considered as failing to meet the continuing listing eligibility criteria.
146. We perceive that one of the ways that an issuer can bring its share price in compliance with the minimum level of HK\$0.50 is by consolidation. Given the transitional period, issuers can minimise any extra costs that may be incurred as a result of consolidation by including the share consolidation proposals to be considered at their annual general meetings or at meetings to consider other matters. As the costs of share consolidation can be kept at a minimum with minimal inconvenience to the issuers, we consider that issuers should have little difficulty in complying with this new requirement.

147. As a safeguard to ensure that issuers should not, during and after the transitional period, undertake any corporate action that will result in the theoretical value of its share falling below HK\$0.50, we consider it appropriate not to grant listing approval for shares affected by such corporate action, if such approval is required. However, we also recognise the undesirable impact on minority shareholders as a result of the absence of listing approvals for shares that are subject to the issuer's corporate action. Where there is no listing approval, the shares of the issuer after the corporate action may become partly listed and partly unlisted. The existence of such a situation may cause confusion to the market and affect the maintenance of a fair and orderly market. Therefore, the Exchange may require suspension of the issuer's securities from trading. Given that the consequences of such a corporate action shall have the same effect as a privatisation without shareholders' approval, we consider that shareholders of the issuer should be made fully aware of the circumstances and should be given an opportunity to express their views on the corporate action. Accordingly, we consider that prior to undertaking any such corporate action, the issuer should follow the current Main Board Rules regarding privatisation⁴⁶ by:
- (a) obtaining approval from a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting. However, if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted, an issuer will be required to obtain:
 - the approval of at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
 - (b) offering to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

⁴⁶ See Rule 6.12 of the Main Board Rules.

Proposal

148. We will amend the Main Board Rules to introduce a minimum share price of HK\$0.50 as a continuing listing eligibility criterion. Where the moving average of the daily volume weighted share price over 30 consecutive trading days of an issuer is less than HK\$0.50, the issuer will fail to meet the continuing listing eligibility criteria.

Q63. Do you agree with our proposal?

- Agree*
- Agree, but the minimum share price should be (please tick one of the following)*
- HK\$5*
- HK\$2*
- HK\$1*
- Other. Please specify: _____*

Please state reason(s) for your view.

- Disagree. Please state reason(s) for your view.*

149. A transitional period of 12 months will be afforded to those issuers with prices trading below HK\$0.50 to attain the minimum share price of HK\$0.50. After the transitional period and if the issuer still fails to meet the minimum share price requirement, it will be considered as failing to meet the continuing listing eligibility criteria.

Q64. If you agree with our proposal in Q63, do you agree with our proposal to afford a transitional period of 12 months for those issuers whose shares presently trade below HK\$0.50 to comply with the proposed minimum share price requirement?

- Agree*
- Agree, but the transitional period should be (please tick one of the following)*
 - 18 months*
 - 24 months*
 - Other. Please specify: _____*

Please state reason(s) for your view.

- Disagree. Please state reason(s) for your view.*

150. If our proposal as set out in paragraph 148 of this Part C of the Consultation Paper is adopted, we will not, during and after the transitional period, grant listing approvals for the securities to be issued by an issuer in relation to any of its corporate actions that will result in the theoretical value of its share falling below HK\$0.50. “Corporate actions” include bonus issues, share splits, open offers, rights issues, placings and other issues of securities that will generally result in lower theoretical share prices. However, corporate actions such as a rights issue that would otherwise result in a share price below HK\$0.50 will be considered if it is carried out together with other proposals, such as consolidation, that will result in the share price remaining above HK\$0.50.

Q65. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

151. We will amend the Main Board Rules to require that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that will result in the theoretical share price of the issuer falling below HK\$0.50. Accordingly, an issuer, prior to undertaking any such corporate action, will be required, to:
- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
 - (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q66. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

152. We will also amend the Main Board Rules to require issuers to confirm to shareholders when the general mandate is being granted or renewed that shares will not be issued under the general mandate that will result in the theoretical share price falling below HK\$0.50.

Q67. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

MINIMUM TRADING ACTIVITY LEVEL

Issues and current position

153. The Main Board Rules currently do not require an issuer to have a minimum trading turnover for continuing listing.
154. We note that there are issuers in the market that have been dormant in terms of trading activity on the Exchange, with little to no turnover for their securities, for years. The absence or thin trading volume in these issuers may signify either a lack of investors' interest in their securities, or that existing shareholders are holding their shares as a long term investment.
155. We recognise, however, that there are times when external factors not relating to the fundamentals of issuers, such as a general slow-down in the overall market activities, may inhibit the trading in their securities. There are also instances where issuers may have a large number of public investors as shareholders and yet they have only very low trading turnover. It is possible that these investors are holding on to the issuers' securities as long-term investments.
156. To ensure that every issuer listed on the Exchange is able to attract sufficient public interest to warrant its listing status, there may be an argument that it would be appropriate to set a minimum trading activity level as a continuing listing requirement. However, the lack of liquidity may not be indicative of the issuer not being a quality company. Therefore, given the other proposals for continuing listing eligibility criteria, such as the market capitalisation requirement, we consider that minimum trading level should not be a criterion for continuing listing.

Proposal

157. We do not propose to introduce a continuing listing eligibility criterion based solely on trading volume.

Q68. Do you agree with our proposal?

- Agree*
- Disagree. Trading volume should be introduced as a continuing listing criterion. Please state reason(s) for your view.*

REDUCTION IN OPERATING ASSETS AND/OR LEVEL OF OPERATIONS

Issues and current position

158. Under the current Main Board Rules, delisting will commence with trading suspension where an issuer shows signs of insufficiency of operations or assets, characterised by:-
 - (a) financial difficulties to an extent which seriously impair an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or
 - (b) net liabilities as at the balance sheet date⁴⁷.
159. On the basis of the current position referred to in the immediately preceding paragraph 158, we consider it appropriate to introduce a continuing listing eligibility criterion where an issuer's total assets or operations or turnover or after tax profits have been or are to be substantially reduced or depleted as a result of a corporate action⁴⁸. We consider that a decrease in total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year as a result of corporate action should be regarded as substantial. Similar to that proposed in the Corporate Governance Consultation Paper, "total assets" mean the total fixed assets, including intangible assets, plus the total current and non-current assets of an issuer.
160. We consider any corporate action of an issuer that has the effect of decreasing its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year resulting in its remaining business being unable to meet all the initial listing eligibility criteria to have the same effect as a privatisation without shareholders' approval. Accordingly, we consider that shareholders of the issuer should be made fully aware of the circumstances and be given an opportunity to express their views on such corporate action.

⁴⁷ See Paragraph 2.2 of Practice Note 17 to the Main Board Rules.

⁴⁸ For issues discussed under the paragraphs headed "Reduction in Operating Assets and/or Level of Operations" and "Cash Companies" in this Part C of the Consultation Paper, the term "corporate action" refers to any action outside the ordinary and usual course of business of an issuer.

161. On the same rationale as discussed in paragraph 134 of this Part C of the Consultation Paper, it may be difficult for an issuer to ascertain its market capitalisation after the corporate action that has the effect of substantially reducing or depleting its total assets or operations or turnover or after tax profits. Likewise, it may also be time consuming and costly for the issuer to carry out an SDI investigation to ascertain its spread of shareholders before proceeding to undertake such a corporate action. Accordingly, we consider it appropriate not to require the issuer to meet the market capitalisation requirement and the spread of shareholders when demonstrating that its remaining business after the corporate action will be able to satisfy the initial listing eligibility criteria. However, the issuer will still be required to comply with the market capitalisation requirement and the spread of shareholders requirement on a continuing basis.
162. An issuer should not be regarded as failing to meet the continuing listing eligibility criteria if its remaining business, after a corporate action that has the effect of reducing the issuer's total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, still meets all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement. The issuer's latest available published financial information after the corporate action, excluding cash, will be used for the purpose of determining whether its remaining business satisfies the initial listing eligibility criteria.

Proposal

163. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if after a corporate action taken by the issuer, there is a decrease in its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, and its remaining business will be unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis.

Q69. Do you agree with our proposal?

- Agree*
- Agree, but the percentage threshold should be (please tick one of the following)*
 - 50%*
 - 65%*
 - 80%*
- Other. Please specify: _____*

Please state reason(s) for your view.

- Disagree. Please state reason(s) for your view.*

Q70. If the remaining business of an issuer, after a corporate action that has the effect of reducing its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, does not meet the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement, do you agree that the issuer should be subject to the New Delisting Procedures set out in Part E of this Consultation Paper?

- Agree*
- Disagree. Please state reason(s) for your view.*

164. We will also amend the Main Board Rules to require that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that has the effect of substantially reducing or depleting its total assets or operations or turnover or after tax profits and resulting in its remaining business being unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement. Accordingly, an issuer, prior to undertaking any such corporate action, will be required to:
- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
- at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
- (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q71. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

CASH COMPANIES

Issues and current position

165. The Main Board Rules currently provide that an issuer or group (other than investment company) whose assets consist wholly or substantially of cash or short dated securities and which thus ceases to trade, will not normally be regarded as suitable for listing. Consequently, any change in an issuer's position which produces this situation will normally result in a suspension of listing⁴⁹.
166. We consider that our current rule is sufficient to determine whether cash-rich companies without sufficient operations should maintain their listing status. However, we propose to introduce objective criteria to determine what constitutes a cash company. An issuer will be considered a cash company if it undertakes any corporate action that results in 90% of its net assets being cash or short dated securities or portfolio shares investment or other marketable securities. Given that the consequences of such a corporate action shall have the same effect as a privatisation without shareholders' approval, we consider that shareholders of the issuer should be made fully aware of the circumstances and be given an opportunity to express their views on the corporate action. The issuer should, therefore, prior to embarking on any corporate actions that would have the effect of rendering it as a cash company, comply with the Main Board Rules regarding privatisation.

Proposal

167. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if it becomes a cash company. An issuer (other than investment companies, banks, insurance and other similar financial services companies) having 90% of its net assets in cash or short dated securities or portfolio shares investment or other marketable securities will for the purpose of this requirement be considered as a cash company.

Q72. Do you agree with our proposal?

Agree

⁴⁹ See Rule 14.35 of the Main Board Rules.

Agree, but the percentage should be (please tick one of the following)

75%

80%

Other. Please specify: _____

Please state reason(s) for your view.

Disagree. Please state reason(s) for your view.

168. We will maintain the current Main Board Rules governing cash companies but will clarify that the situation must have resulted from any corporate action by the issuer. We will, however amend the Main Board Rules so that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that has the effect of rendering an issuer as a cash company. Accordingly, an issuer, prior to undertaking any such corporate action, will be required to:

- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
- (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q73. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

QUALITATIVE CRITERIA

PROLONGED SUSPENSION

Issues and current position

169. Under the current Main Board Rules, the continuation of a suspension for a prolonged period without the issuer taking adequate action to restore its listing may lead to the Exchange cancelling the listing⁵⁰. There is, however, no specific indication as to what constitutes a “prolonged period”. To maintain a fair and continuous market, and to ensure that a suspension period should be kept as short as reasonably possible, we consider it appropriate to introduce an objective criterion to determine what constitutes a “prolonged period”. In this connection, we consider that a period of 12 months will provide a reasonable benchmark. An issuer will be considered as failing to meet the continuing listing eligibility criteria if for whatever reasons, such as shareholders’ dispute, its securities have been suspended from trading for a period of 12 months.
170. Issuers that have been suspended for more than 12 months because of a delay in publishing their financial results (as discussed in paragraphs 204 to 206 of Part D of this Consultation Paper) will not, *prima facie*, be treated as failing to meet this continuing listing eligibility criterion on the ground of prolonged suspension. However, where there is an indication that an issuer is on the verge of failing to meet the continuing listing eligibility criteria and there are no acceptable or justifiable reasons for the issuer’s prolonged delay in the publication of its results, the Exchange may subject such issuer to the New Delisting Procedures set out in Part E of this Consultation Paper.

Proposal

171. We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if for whatever reasons, its securities have been suspended from trading for a continuous period of 12 months. Issuers that have been suspended for more than 12 months because of a delay in publishing their results will not, *prima facie*, be treated as failing to meet the continuing listing eligibility criteria. However, where there is an indication that an issuer is on the verge of failing to meet the continuing listing eligibility criteria and there are no acceptable or justifiable reasons for the issuer’s prolonged delay in the publication of its results, the Exchange may subject such issuer to the New Delisting Procedures set out in Part E of this Consultation Paper.

⁵⁰ See Rule 6.04 of the Main Board Rules.

Q74. Do you agree with our proposal to treat issuers whose securities have been suspended from trading for a prolonged period as failing to meet the continuing listing eligibility criteria?

- Agree*
- Agree, but the period of suspension should be (please tick one of the following)*
 - 3 months*
 - 6 months*
 - 9 months*
 - Other. Please specify: _____*

Please state reason(s) of your view.

- Disagree. Please state reason(s) for your view.*

*Q75. Do you agree with our proposal not to, *prima facie*, treat issuers whose securities have been suspended from trading for a prolonged period because of a delay in publishing their results as failing to meet the continuing listing eligibility criteria?*

- Agree*
- Disagree. Please state reason(s) for your view.*

PARAGRAPH 38 OF LISTING AGREEMENT

Issues and current position

172. It is currently a continuing obligation, under Paragraph 38 of the Listing Agreement, that an issuer has to carry out a sufficient level of operations or have sufficient assets to warrant its continuing listing. As discussed in this Part C of the Consultation Paper, we consider that the ability of an issuer to carry on a viable business is important for maintaining its listing status. Where an issuer fails to meet the relevant minimum financial standards for continuing listing or has its operating assets and/or level of operations substantially reduced, it will fail to meet the continuing listing eligibility criteria. Cancellation of the issuer's listing status should follow. Accordingly, the sufficiency of operations or assets is more an issue of continuing listing eligibility criteria than continuing obligation criteria.

Proposal

173. We will retain paragraph 38 of the Listing Agreement as a general continuing listing eligibility criterion to supplement the proposed quantitative criterion on reduction in operating assets and/or level of operations as discussed in paragraph 162 of this Part C of the Consultation Paper. The Exchange may subject the issuer to the New Delisting Procedures set out in Part E of this Consultation Paper upon the issuer's failure to comply with paragraph 38 of the Listing Agreement.

Q76. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

PERSISTENT BREACHES OF THE MAIN BOARD RULES

Issues and current position

174. There are instances where issuers may have persistently committed breaches of the Main Board Rules as well as the Listing Agreement and therefore be subject to disciplinary actions. Very often, these breaches could have been avoided if the issuer had exercised due care to ensure compliance with the relevant obligations. Our aim is to promote a high standard of awareness among issuers of the importance of strict compliance with the Main Board Rules. Therefore, the Exchange may in its discretion, having taken into account the frequency and nature of the breaches, subject those issuers that have persistently failed to comply with the Main Board Rules to the New Delisting Procedures set out in Part E of this Consultation Paper. Examples that the Exchange will take into account will be where the issuer has been given repeated sanctions of public censure or public statement involving criticism in accordance with the disciplinary procedures in the Main Board Rules.

Proposal

175. We will amend the Main Board Rules so that the Exchange may, after having taken into account the frequency and nature of the breaches, subject those issuers that have persistently failed to comply with the Main Board Rules to the New Delisting Procedures set out in Part E of this Consultation Paper.

Q77. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

ILLEGAL OPERATION

Issues and current position

176. It is the broad principle under the Main Board Rules that listing is always granted subject to the condition that the Exchange may, at any time, suspend or cancel the listing of any securities in such circumstances and on such conditions as it thinks fit, where it considers necessary for the protection of investors or the maintenance of an orderly market⁵¹.
177. Where an issuer changes its focused line(s) of business and commences operation of activities that are illegal or contrary to the Exchange's general principles, then for the protection of investors or the promotion of fair trading, the Exchange may at its discretion subject the issuer to the New Delisting Procedures set out in Part E of this Consultation Paper.

Proposal

178. We will amend the Main Board Rules so that the Exchange may subject an issuer to the New Delisting Procedures set out in Part E of this Consultation Paper if there exists or occurs any event, condition or circumstances that makes further dealings or listing of the issuer's securities, in the opinion of the Exchange, contrary to the Exchange's general principles.

Q78. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

EXCHANGE'S DISCRETION

179. Where circumstances indicate that the controlling shareholders of an issuer take(s) advantage of the continuing listing eligibility criteria with a view to ultimately achieving privatisation without complying with the requirements for privatisation set out in the Main Board Rules, the Exchange may at its discretion deviate from the New Delisting Procedures set out in Part E of this Consultation Paper.

Q79. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

⁵¹ See Rule 6.01 of the Main Board Rules.

EFFECTIVE DATE

180. We consider that if our proposals regarding the continuing listing eligibility criteria set out in this Part C of the Consultation Paper are adopted, such criteria will become effective immediately when amendments of the Main Board Rules are made. However, we are also mindful that the immediate enforcement of certain of the new rules upon them becoming effective may be too harsh on existing issuers and the grant of transitional periods may be justifiable to enable issuers to take action to comply. Accordingly, we propose for existing issuers that:
- (a) there will be a transitional period of 12 months for issuers to bring themselves to compliance with the following proposed continuing listing eligibility criteria, namely,
 - (i) minimum share price; and
 - (ii) financial standards, namely, financial achievement, and absolute minimum market capitalisation;
 - (b) there will be no transitional period for all of the remaining proposed continuing listing eligibility criteria, namely,
 - (i) insolvency;
 - (ii) total disclaimer of audit opinion or adverse audit opinion;
 - (iii) reduction in operating assets and/or level of operations;
 - (iv) cash companies;
 - (v) prolonged suspension;
 - (vi) paragraph 38 of the Listing Agreement;
 - (vii) persistent breaches of the Main Board Rules; and
 - (viii) illegal operation.

Q80. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

All listing applications that are approved after the amendment of the Main Board Rules will be subject to the new continuing listing eligibility criteria immediately upon listing of their securities on the Exchange. There will be no transitional period.

Q81. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

PART D

CONTINUING OBLIGATIONS

GENERAL

181. Under the current Main Board Rules, all issuers are required to sign a Listing Agreement with the Exchange by which they undertake to comply with the continuing obligations set out in the Listing Agreement as a condition of the listing of their securities⁵². The Listing Agreement creates binding obligations on issuers, as long as their securities are listed on the Exchange.
182. The continuing obligations under the Listing Agreement generally relate to disclosure of information on matters relevant to the issuer's business and securities as well as on other corporate governance matters. The underlying principles of the continuing obligations are to ensure that issuers keep the holders of their securities (and the public) fully informed of all factors which might affect their interests and treat the holders of their securities in a proper manner⁵³.
183. Given that the continuing obligations are essential to maintaining a fair and orderly market and ensuring proper treatment of all shareholders, failure to comply with these obligations will result in the issuer facing disciplinary action. This may eventually lead to suspension of dealings in or cancellation of the listing of their securities⁵⁴.
184. As issuers listed on the Main Board are required in any event to comply with the continuing obligations set out in the Listing Agreement, we consider that these continuing obligations are in effect part of the Main Board Rules. Accordingly, we consider it appropriate to make the continuing obligations requirements part of the Main Board Rules. Where any of the continuing obligations is not met, the issuer will face disciplinary action, and depending on the seriousness of its breach, the issuer may be subject to a range of sanctions⁵⁵.

Proposal

185. We will amend the Main Board Rules to make the continuing obligations requirements contained in the Listing Agreement part of the Main Board Rules. In addition to the continuing listing eligibility criteria as proposed in Part C of this Consultation Paper, on-going suitability for listing would also be assessed with

⁵² See also Rule 13.01 of the Main Board Rules.

⁵³ See also Rule 13.01 of the Main Board Rules.

⁵⁴ See Rule 13.07 of the Main Board Rules.

⁵⁵ See Rule 2A.09 of the Main Board Rules.

reference to compliance with the continuing obligations set out in the Main Board Rules.

Q82. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

PUBLIC FLOAT

Issues and current position

186. It is currently a continuing obligation under the Main Board Rules that the minimum prescribed percentage of securities (as discussed in paragraph 73 of Part B of this Consultation Paper, generally 25% of the issuer's total issued share capital as at the time of listing on the Exchange) must remain in public hands at all times⁵⁶ so as to ensure the existence of an open and fair market. Where the percentage of public float of an issuer falls below the prescribed minimum, which normally is 10% or less of its issued share capital, the issuer's securities would need to be suspended until appropriate steps have been taken by the issuer to restore the public float⁵⁷. However, the Exchange may not require a suspension of the issuer's securities where the shortfall in the prescribed percentage arose 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). Such shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer⁵⁸.
187. For the protection of public investors, we consider that the current continuing obligation with regard to the maintenance of sufficient public float under the Main Board Rules should be maintained. Furthermore, as discussed in paragraph 70 of Part B of this Consultation Paper, there may be potential undesirable consequence for minority shareholders resulting from a lower percentage of public float. Therefore, we consider that the minimum level that the Exchange may require in exceptional circumstances for granting an extension for the issuer to comply with the minimum prescribed percentage without the need for a suspension in trading should likewise be raised to 15% or more of an issuer's issued share capital.

⁵⁶ See Note to Rule 8.08(2) of the Main Board Rules.

⁵⁷ See also Note to Rule 8.08(2) of the Main Board Rules and Listing Decisions Series 30.

⁵⁸ See Note (1) to Rule 8.08(2) of the Main Board Rules.

188. We recognise that there may be instances, such as after the close of a general offer under the Takeover Code or Share Repurchases Code, where the issuer would, practically, require more time to place down or issue new shares so as to restore to the prescribed minimum percentage of public float. However, we would not allow any unreasonable delay. Accordingly, where the Exchange has permitted trading in the securities of the issuer to continue without suspension, the Exchange will closely monitor all trading in the issuer's securities and immediately suspend the issuer's securities if circumstances require.
189. We also recognise that in general offer situations, the public float may be reduced as shares of the issuer will be accepted by the offeror. In these circumstances, the Exchange may consider granting a waiver from the minimum public float requirement until the close of the general offer.
190. There are comments that in general offer situations where the offeror of an issuer intends to privatise the issuer, the offeror may not be able to acquire sufficient shares as to compulsorily buy out the shares of the other shareholders. In these instances, a waiver from the minimum public float requirement should be granted.
191. Likewise, in share repurchases situations under the Share Repurchases Code, there are comments from the market that a waiver from the minimum public float requirement should be granted to an issuer where its public float falls below 25% as a result of its share repurchases. Accordingly, to these commentators, as long as the issuer can maintain at least 15% public float, having an aggregate market capitalisation of not less than certain amount, say HK\$500 million, a waiver from the public float requirement should be granted.
192. The current Main Board Rules give the Exchange the discretion to accept a percentage of between 10% and 25% of the securities to be held by the public post listing if the market capitalisation at the time of listing is over HK\$4,000 million. There are comments that if an issuer fails to have a market capitalisation of over HK\$4,000 million at the time of listing, but subsequently does so after listing, it should be afforded the flexibility to reduce its percentage of securities in public hands. We are of the view that the initial market capitalisation provides a more objective benchmark as the market capitalisation after listing may fluctuate. If we were to accept a decrease of percentage of securities based on market capitalisation after listing, it can be argued that an issuer should also be required to revert to its original percentage should its market capitalisation fall below the benchmarked threshold as set out in the Main Board Rules. Therefore, compliance and monitoring will be difficult and not practical.

Proposal

193. We will maintain the current continuing obligation with regard to the public float such that 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 our current discretion not to require a suspension of the issuer's securities where the shortfall in the prescribed percentage arose 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). Such shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer.

Q83. Do you agree with our proposal to maintain the current continuing obligation on minimum public float?

- Agree*
- Disagree (please tick one of the following)*
 - The minimum public float requirement should be treated as a continuing listing eligibility criterion.*
 - Other views.*

Please state reason(s) for your view.

Q84. Do you agree with our proposal to require an issuer to maintain, at all times after listing, not lower than the prescribed percentage of public float at the time of initial listing?

- Agree*
- Disagree. The percentage threshold of public float that an issuer is required to maintain after listing should be _____. Please state reason(s) for your view.*

Q85. Do you agree with our proposal to retain our current discretion not to require a suspension of an issuer's securities in situations where the shortfall in the prescribed percentage arose 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), and such

shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer?

- Agree*
- Disagree. Please state reason(s) for your view.*

194. We will also amend the Main Board Rules to provide that the Exchange will normally require suspension of an issuer's securities where its public float is 15% or less. However, the Exchange may consider granting a waiver to an issuer in a general offer situation from complying with the minimum public float requirement until such time when the general offer is completed. The issuer must comply with the continuing obligation with regard to the public float immediately after the general offer is completed.

Q86. Do you agree with our proposal to require suspension of an issuer's securities where its public float is 15% or less?

- Agree*
- Disagree. The percentage threshold should be _____. Please state reason(s) for your view.*

Q87. Do you agree with our proposal that a temporary waiver from the minimum public float requirement may be granted in a general offer situation until the general offer is completed?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q88. Do you agree that a waiver from the minimum public float requirement should be granted in general offer situations to privatisate an issuer where the offeror of the issuer is not able to acquire sufficient shares as to compulsorily buy out the shares of the other shareholders?

- Agree. Please answer Q90.*
- Disagree. No waiver should be granted. There should be immediate compliance with the minimum public float requirement after completion of the general offer. Please state reason(s) for your view.*
- Disagree. There is no need to comply with the minimum public float requirement in these situations. Please state reason(s) for your view.*

Q89. Do you agree that a waiver from the minimum public float requirement should be granted in share repurchase situations where an issuer effects repurchases under the Share Repurchases Code resulting in its public float falling below 25%, provided that the issuer can still maintain at least 15% of public float having an aggregate market capitalisation of not less than HK\$500 million?

- Agree. Please answer Q90.*
- Agree, but the market capitalisation should be HK\$._____. Please specify the level and state reason(s) for your view. Please answer Q90.*
- Disagree. No waiver should be granted. There should be immediate compliance with the minimum public float requirement after completion of the repurchases under the Share Repurchases Code. Please state reason(s) for your view.*
- Disagree. There is no need to comply with the minimum public float requirement in these situations. Please state reason(s) for your view.*

Q90. How long do you think the waiver period should be? Please specify the time limit you think is appropriate and state reason(s) for your view.

195. We will also amend the Main Board Rules to clarify that:

- (a) if our proposal with regard to the lower percentage of public float (as discussed in paragraph 74 of Part B of this Consultation Paper) is adopted, the lower percentage of between 15% and 25% that the Exchange may at its discretion accept for issuers with market capitalisation of over HK\$10 billion, will only be applicable at the time of listing and will not be considered post 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; and

Q91. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

- (b) the lower percentage of public float, 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.

Q92. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

196. We will also amend the Main Board Rules to require issuers to include a confirmation of sufficiency of public float in their annual reports, based on information such as filing under the SDI Ordinance, that is available to them.

Q93. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

SPREAD OF SHAREHOLDERS

Issues and current position

197. As discussed in paragraph 75 of Part B of this Consultation Paper, the Main Board Rules currently provide for a minimum spread of shareholders at the time of listing only. Although there is a general public float requirement of 25%⁵⁹, in a number of recent instances there has been a high concentration of public float in the hands of a small number of shareholders.
198. There are views that it is not possible to identify the number of shareholders as securities may be held under the Central Clearing and Settlement System (CCASS) in which the CCASS nominee is the sole registered shareholder in CCASS. To this, we consider that issuers can, in appropriate cases, undertake an investigation under the SDI Ordinance on its shareholders⁶⁰ for the purpose of determining the particulars of the identity of persons interested in their securities. We do recognise the practical problems of costs and time that may be incurred by issuers in ascertaining the number and identities of its shareholders on an ongoing basis. Accordingly, we consider it appropriate to treat the requirement for a minimum spread of shareholders as a continuing obligation rather than as a continuing listing eligibility criterion.

⁵⁹ See Rules 6.01(2) and 8.08(1) of the Main Board Rules.

⁶⁰ See Section 18 of the SDI Ordinance.

199. Given the minimum public float requirement of HK\$50 million at the time of listing, we consider it not unreasonable to require issuers to maintain a minimum of 300, or 1,000 (in case of issuers listed under the market capitalisation/revenue test) shareholders after listing. Where there is an indication that the securities of an issuer may not be held by an adequate spread of shareholders, for example through the relatively low level of trading activity, the Exchange may require the issuer to carry out an SDI investigation. The Exchange may consider granting a waiver where the issuer is subject to a general offer until such offer closes.

200. We recognise that it may be difficult for existing issuers to comply with the new continuing obligation, if adopted, immediately upon it becoming effective. As such, we consider that a transitional period of 18 months is appropriate to enable these issuers to take action to comply. If our proposals with regard to the initial listing eligibility criteria and the new continuing obligation on the minimum number of shareholders are adopted, all existing issuers that are listed before the effective date of the initial listing eligibility criteria will be required to maintain at least 300 shareholders after a proposed prolonged transitional period of 18 months. Where there is an indication at the end of the transitional period that these existing issuers do not have a sufficient spread of shareholders, the Exchange may require them to carry out an SDI investigation.

Proposal

201. We will amend the Main Board Rules to introduce a new continuing obligation in respect of the spread of shareholders. An issuer will be required at all times subsequent to listing, to maintain at least the minimum number of shareholders applicable to the issuer at the time of its initial listing. The Exchange may consider granting a waiver to an issuer in a general offer situation from complying with the minimum number of shareholders requirement until such time when the general offer closes. The issuer must comply with the continuing obligation in respect of the spread of shareholders immediately after the general offer closes.

Q94. Do you agree with our proposal to introduce a new continuing obligation in respect of the spread of shareholders?

- Agree*
- Disagree (please tick one of the following)*
 - The spread of shareholders requirement should be treated as a continuing listing eligibility criterion and not a new continuing obligation.*
 - Other views.*

Please state reason(s) for your view.

Q95. Do you agree with our proposal 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 initial listing?

- Agree*
- Disagree. The minimum number of shareholders that an issuer must maintain subsequent to listing should be _____. Please state reason(s) for your view.*

Q96. Do you agree with our proposal that a temporary waiver from the minimum number of shareholders requirement may be granted in general offer situations until the general offer closes?

- Agree*
- Disagree. Please state reason(s) for your view.*

202. We will amend the Main Board Rules to provide that where there is an indication that the securities of an issuer may not be held by an adequate spread of shareholders, such as when the average monthly turnover of an issuer is below certain reasonable level, say less than 2,000,000 shares, for the last 12 months, the Exchange may require the issuer to demonstrate to the satisfaction of the Exchange that it meets the continuing obligation in respect of the spread of shareholders.

Q97. Do you agree with our proposal?

- Agree*
- Agree, but the threshold of the average monthly turnover for the last 12 months should be _____ shares. Please state reason(s) for your view.*
- Disagree. Please state reason(s) for your view.*

203. If our proposals on the initial listing eligibility criteria as well as our proposal in paragraph 201 are adopted, a transitional period of 18 months will be granted to all existing issuers that are listed before the effective date of the initial listing eligibility criteria to comply with the new obligation. All such existing issuers will be required to maintain a minimum of 300 shareholders after the transitional period.

Q98. Do you agree with our proposal to require all existing issuers to maintain a minimum of 300 shareholders after the transitional period?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q99. Do you agree with our proposal to grant a transitional period of 18 months to all existing issuers to comply with the new continuing obligation in respect of the minimum number of shareholders?

- Agree*
- Agree, but the transitional period should be (please tick one of the following)*
 - 12 months*
 - 24 months*
 - Other. Please specify_____*

Please state reason(s) for your view.

- Disagree. Please state reason(s) for your view*

TIMELINESS OF ACCOUNTS

Issues and current position

204. We consider that financial reports and accounts of an issuer are important information to enable the investors to make informed investment decisions. We disapprove of any delay in the announcement of results as it does not promote good corporate governance practice. Yet, we do not see it justifiable to subject issuers to cancellation of listing solely on the ground of a short delay in announcement of financial results. However, where the circumstances require, we will exercise our discretion under the Main Board Rules⁶¹ to suspend the trading of securities of the non-compliant issuer for the lack of appropriate information to facilitate a fair and orderly market. Trading may only resume after the issuer publishes the requisite financial results.

⁶¹ See Rule 6.01 of the Main Board Rules

205. There are comments that a grace period should be given before suspension of the issuer's securities on its failure to publish timely financial results. As the provision of timely financial information is important to enable investors to make informed decisions, we consider that there should not be any grace period before suspension. We note that another major market⁶² also does not provide for a grace period prior to suspension due to delay in publishing results.

Proposal

206. We will amend the Main Board Rules to subject those issuers that fail to publish their financial results on the due date to an immediate suspension of trading of their securities. Trading may only resume after the issuer publishes the requisite financial results.

Q100. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q101. If you think that a grace period should be given before suspension of the issuer's securities for failing to publish timely financial results, how long do you think the grace period should be (please tick one of the following)

- 2 months*
- 1 month*
- 2 weeks*
- Other. Please specify: _____*

Please state reason(s) for your view.

PROVISION OF INFORMATION TO THE EXCHANGE

Issues and current position

207. Under the current Main Board Rules, an issuer is required to respond promptly to the Exchange's enquiries and to keep the Exchange and the market informed as soon as reasonably practicable of any information relating to the issuer's group which is necessary to enable the public to appraise the position of the issuer's group, and to

⁶² The London Stock Exchange.

avoid the establishment of a false market⁶³. We consider it essential that the information so provided by the issuer to the Exchange should have been made after due care and diligence and should not be misleading, whether by express representation or omission. Where an issuer makes a misrepresentation to the Exchange, omits necessary material information in the course of communicating with the Exchange, or otherwise fails to provide requested information, the issuer will be considered as failing to meet the continuing obligation.

Proposal

208. We will amend the Main Board Rules to introduce a new continuing obligation with regard to the provision of information by the issuer to the Exchange. An issuer will be considered as failing to meet the continuing obligation if it makes a misrepresentation to the Exchange, omits necessary material information in the course of communicating with the Exchange, or otherwise fails to provide requested information.

Q102. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

CORPORATE GOVERNANCE

209. The Exchange has made various proposals on corporate governance matters under the Corporate Governance Consultation Paper. With a view to further enhancing the standards of corporate governance amongst issuers listed on the Exchange and protecting the interests of minority shareholders, the Exchange invites comments from the market as to whether there are any other areas that should be taken into account in formulating further continuing obligations.

Q103. Please state what other areas should be taken into account in formulating further continuing obligations and reason(s) for your view.

⁶³ See Paragraphs 2 and 39 of the Listing Agreement.

EFFECTIVE DATE

210. We propose that if our proposals regarding the continuing obligations set out in this Part D of the Consultation Paper are adopted, such new continuing obligations will become effective immediately when amendments of the Main Board Rules are made. However, there will be a transitional period of 18 months for existing issuers that are listed before the effective date of the initial listing eligibility criteria 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.

Q104. Do you agree with our proposal?

- Agree*
- Agree, but the transitional period (other than that for the spread of shareholders requirement as discussed in Q99) should be _____. Please state reason(s) for your view.*
- Disagree. Please state reason(s) for your view.*

PART E CANCELLATION OF LISTING PROCEDURES

GENERAL

211. Under the current Main Board Rules⁶⁴, the Exchange may cancel the listing of an issuer where:
 - (a) the Exchange considers it necessary for the protection of investors or the maintenance of an orderly market; or
 - (b) the issuer fails in a material manner to comply with the Main Board Rules or the Listing Agreement; or
 - (c) there are insufficient securities in the hands of the public; or
 - (d) the Exchange considers that the issuer does not have a sufficient level of operations or assets to warrant the continued listing of the issuer's securities (such as extreme financial difficulties and net liabilities); or
 - (e) the Exchange considers that the issuer or its business is no longer suitable for listing.
212. Delisting under the current Main Board Rules normally commences with trading suspension where an issuer shows signs of insufficiency of operations or assets, characterised by:
 - (a) financial difficulties to an extent which seriously impair an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or
 - (b) net liabilities as at the balance sheet date⁶⁵.
213. With the introduction of the continuing listing eligibility criteria which set the objective, transparent and fair standards for the Exchange to review the appropriateness of the continuing listing of an issuer, we consider that the existing set of delisting procedures under Practice Note 17 of the Main Board Rules can be replaced with a new set of cancellation of listing procedures. Therefore, we will amend the Main Board Rules to introduce a new set of cancellation of listing procedures to apply where an issuer fails to comply with any of the continuing listing eligibility criteria set out in Part C of this Consultation Paper.

⁶⁴ See Rule 6.01 of the Main Board Rules.

⁶⁵ See Paragraph 2.2 of Practice Note 17 to the Main Board Rules.

214. By introducing a new set of cancellation procedures, we aim at shortening the whole delisting process such that it can be completed:
- (a) not exceeding 6 months where no proposal is submitted, or the proposal submitted by the non-compliant issuer to restore itself to compliance with the continuing listing eligibility criteria is disapproved by the Exchange; or
 - (b) not exceeding 12 months where the non-compliant issuer fails to implement the proposal that has been approved by the Exchange to restore itself to compliance with the continuing listing eligibility criteria.

CANCELLATION OF LISTING PROCEDURES

Issues and current position

215. Under the current Main Board Rules, for the initial 6 months following the suspension, the Exchange will monitor developments. The issuer is expected to announce developments periodically to shareholders. At the end of the period, the Exchange will decide whether to extend the period or proceed to the second stage of the delisting procedures. In the second stage, the Exchange writes to the issuer, drawing attention to its continued failure to comply with the Listing Agreement and requiring it to submit resumption proposals within the 6 months. At the end of the second 6 months, the Exchange will take account of any proposals submitted by the issuer in determining whether to move to the third stage of the delisting procedures. In the third stage, the Exchange will publish an announcement stating that the issuer does not have sufficient assets or operations for listing and imposing a deadline (generally 6 months) for the submission of resumption proposals. At the end of the third stage, if the issuer fails to submit any acceptable resumption proposal, the listing will be cancelled⁶⁶.
216. There are views that the existing delisting procedures under the Main Board Rules are not effective and drag on for a relatively long time for issuers showing clear signs of non-viability and irrecoverability to be delisted. The 18-month period may sometimes be even longer on application by an issuer for an extension to consider a resumption proposal.
217. There is a common argument against delisting of issuers that are in liquidation or receivership that it would deny shareholders an opportunity to exit. Therefore, shareholders, who are blameless for the issuer's lack of performance, would be penalised. We consider that this argument may be fallacious, as very often the rescue of an issuer in financial difficulty involves the issue of a large number of

⁶⁶ See Paragraph 3 of Practice Note 17 to the Main Board Rules.

new shares at deep discount resulting in substantial dilution in the shareholding interests of shareholders. Creditors and controlling shareholders tend to benefit the most from any rescue proposals. The public shareholders may end up getting very little. Further, we consider that the interests of investors can adequately be protected given the transparency of the proposed continuing listing eligibility criteria.

218. To address the issues discussed in paragraphs 216 and 217 of this Part E of the Consultation Paper, we propose to adopt new specific procedures regarding cancellation of listing. These procedures are designed to provide a fair, transparent and effective mechanism with regard to the delisting of issuers from the Exchange. In appropriate circumstances, the procedures offer a reasonable opportunity to those non-compliant issuers to bring themselves back to compliance with the continuing listing eligibility criteria, and at the same time, serve to alert the investing public of the possible imminent delisting or proposed rectifying measures of the non-compliant issuer.

Proposal

219. We will amend the Main Board Rules to introduce new cancellation of listing procedures to apply where an issuer fails to comply with any one or more of the continuing listing eligibility criteria set out in Part C of this Consultation Paper.

Q105. Do you agree with our proposal to introduce new cancellation of listing procedures?

- Agree. Please answer Q106.*
- Disagree. Please state reason(s) for your view.*

NEW DELISTING PROCEDURES

220. Where an issuer is identified as failing to meet any one or more of the following proposed continuing listing eligibility criteria as set out in Part C of this Consultation Paper, the proposed New Delisting Procedures will apply:
- (a) financial standards (paragraphs 128 and 129);
 - (b) absolute minimum market capitalisation (paragraph 131);
 - (c) insolvency (paragraph 136);
 - (d) total disclaimer of audit opinion or adverse audit opinion (paragraph 138);
 - (e) minimum share price (paragraph 148);

- (f) reduction in operating assets and/or level of operations (paragraph 162);
- (g) cash companies (paragraph 167);
- (h) prolonged suspension (paragraph 171);
- (i) paragraph 38 of Listing Agreement (paragraph 173);
- (j) persistent breaches of the Main Board Rules (paragraph 175); and
- (k) illegal operation (paragraph 178).

221. The principles of the New Delisting Procedures will be as follows:

- (a) the Exchange will notify the issuer in writing of the fact that the issuer has failed to meet any one or more of the relevant continuing listing eligibility criteria. The Exchange will also issue an announcement notifying the public of such fact;
- (b) the securities of the issuer will continue trading until the Exchange issues an announcement notifying the date of when the securities of the issuer will cease trading and the listing status of the securities will be cancelled. However, in case of prolonged suspension where the Exchange does not see the justification for the continued suspension, the Exchange may, where circumstances require, exercise its power under the Main Board Rules⁶⁷ to direct resumption;
- (c) the issuer will be required to submit to the Exchange, within 1 month from the date of the Exchange's notification (the "One-Month Period"), a proposal (and not multiple proposals) with definitive action that the issuer has taken, or is in the course of taking, which if implemented, would restore the issuer to long-term, sustained compliance with the continuing listing eligibility criteria (the "Proposal"). The Proposal must demonstrate how the issuer will achieve long-term, sustained compliance with the continuing listing eligibility criteria. Examples of matters that the Exchange will consider in determining whether a proposal is acceptable include whether there is a legally binding agreement that is in compliance with the Main Board Rules and the implementation of which is likely to result in long-term, sustained compliance. If the issuer fails to submit the Proposal within the One-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement. The Exchange will only consider the Proposal. No other proposals will be considered. The Exchange will also not allow any amendment to the Proposal;

⁶⁷ See Rule 6.07 of the Main Board Rules.

- (d) the issuer may appeal against the decision of the Exchange to cancel the listing of its securities upon its failure to submit the Proposal within the One-Month Period in accordance with such procedures and within such time as prescribed by the Exchange from time to time;
- (e) the Exchange will review the Proposal and determine as to whether the Proposal has demonstrated a reasonable case of being able to bring the issuer back to conformity with the relevant continuing listing eligibility criteria. The Exchange will notify the issuer in writing and will require the issuer to issue an announcement notifying the public of its determination relating to the Proposal;
- (f) if the Exchange accepts the Proposal, the issuer has 6 months from the date of the Exchange's notification of determination (the "Six-Month Period") to implement the Proposal. The issuer is required to provide monthly updates of its progress in implementing the Proposal during the Six-Month Period. If the issuer fails to implement the Proposal at the end of the Six-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;
- (g) the Exchange may at its absolute discretion, require immediate suspension of the issuer's securities at any time during the Six-Month Period should circumstances necessitate it;
- (h) if the Exchange does not accept the Proposal, the Exchange will notify the issuer in writing of the determination to cancel the listing of the securities of the issuer and setting out the basis for such decision (the "Decision Letter");
- (i) the issuer will have the right to appeal to the relevant Committee that has the authority to consider the appeal matters ("Relevant Committee") against the decision of the Exchange to cancel the listing of the issuer's securities. The appeal must be lodged by the issuer within such time as prescribed by the Exchange from time to time and set out in the Decision Letter;
- (j) if the issuer does not lodge the appeal within the stipulated period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;
- (k) if the Relevant Committee decides in favour of the Exchange's decision to cancel the listing of the securities of the issuer, the Exchange shall proceed immediately to cancel the listing of the issuer's securities in accordance with the decision of the Relevant Committee and inform the public of the status by way of an announcement; and

- (I) if the Relevant Committee decides that the Proposal is acceptable, the issuer has 6 months from the date of the decision of the Relevant Committee to implement the Proposal. The issuer must inform the public of the status by way of an announcement on the next business day following receipt of the Exchange's notification letter regarding the decision of the Relevant Committee.

Q106. Do you agree with the principles of the New Delisting Procedures that non-compliant issuers will be given an opportunity to submit one proposal (and not multiple proposals) within the specified period to bring themselves back to long-term, sustained compliance with the continuing listing eligibility criteria failing which they would, subject to the process of natural justice, face cancellation of listing?

Agree

Disagree. Please state the reason(s) for your view.

222. For the avoidance of doubt, the appointment of a receiver or provisional liquidator to an issuer that has already been subject to the New Delisting Procedures for failing to meet other continuing listing eligibility criteria will not alter the delisting timetable. An issuer will be immediately delisted if it has been served with a winding up order (or equivalent action in the issuer's country of incorporation).

Q107. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

NEW IMMEDIATE-DELISTING PROCEDURES FOR ISSUERS IN LIQUIDATION

223. When a company fails, the listing status of its securities should be terminated. Accordingly, where an issuer has been served with a winding up order (or equivalent action in the issuer's country of incorporation), the Exchange will immediately proceed to cancel the listing of the issuer's securities. No resumption proposal will be considered.
224. The Exchange will issue an announcement notifying the public of the status and that the issuer's securities will be cancelled with immediate effect from the date of the Exchange's announcement.

Q108. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view.*

Q109. Are there any other circumstances for the New Immediate-Delisting Procedures to apply?

- Yes. Please give details.*
- No.*

SPECIAL CIRCUMSTANCES

General

225. We consider it necessary to have auto-cure provisions as the market capitalisation and the minimum share price of an issuer are subject to volatility and uncontrollable market forces. However, we are also mindful that the share price may be subject to manipulation. Accordingly, we consider that close monitoring of trading pattern during the auto-cure period is necessary. In this regard, we consider that a period of 60 consecutive trading days is sufficiently long for the issuer to demonstrate compliance.

Proposal

Market Capitalisation

226. If the issuer fails to meet the continuing listing eligibility criteria only because of the market capitalisation, and where the issuer re-establishes its market capitalisation to the specified level, and remains above such level for at least the following 60 consecutive trading days, the market capitalisation deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Q110. Do you agree with the proposed auto-cure provision with regard to the market capitalisation?

- Agree*
- Disagree. Please state reason(s) for your view.*

Minimum Share Price

227. If the issuer fails to meet the continuing listing eligibility criteria only because of the minimum share price, and where the issuer's average of daily volume weighted share price exceeds HK\$0.50 and remains above HK\$0.50 for at least the following 60 consecutive trading days, the price deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Q111. Do you agree with the proposed auto-cure provision with regard to minimum share price?

- Agree*
 Disagree. Please state reason(s) for your view.

EFFECTIVE DATE

228. We propose that if our proposals regarding the new cancellation of listing procedures set out in this Part E of the Consultation Paper are adopted, such new procedures will become effective immediately when amendments of the Main Board Rules are made. Issuers that have already been subject to the current delisting procedures under the Main Board Rules before the effective date will be delisted in accordance with the existing Main Board Rules.

Q112. Do you agree with our proposal?

- Agree*
 Disagree. Please state reason(s) for your view.

PART F DISCLOSURE REQUIREMENTS AT THE TIME OF INITIAL LISTING

GENERAL

229. In addition to the quantitative requirements, the Exchange also requires a listing applicant to include, in its initial listing document, a discussion and analysis by its management of the listing applicant's performance and financial position during the three-financial-year track record period (the "Management's Discussion and Analysis"). This discussion and analysis, however, focuses mainly on the disclosure of financial information of the listing applicant.
230. Apart from the Management's Discussion and Analysis, the Main Board Rules currently require the initial listing documents to contain certain specific information⁶⁸. This is to enable investors to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights attaching to such securities⁶⁹.
231. To enable investors to better assess a listing applicant's achievement thereby evaluating and making their investment decisions accordingly, we believe that further qualitative disclosure requirements would be desirable.

Proposal

232. We will amend the Main Board Rules to introduce additional qualitative disclosure requirements to enhance disclosure in the areas of corporate matters, including the pre-listing corporate governance related practices, of a listing applicant so as to enable investors to evaluate and price their investment accordingly.

Q113. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

⁶⁸ See Rule 11.06 and Part A and Part B of Appendix 1 of the Main Board Rules.

⁶⁹ See Rule 11.07 of the Main Board Rules.

PROTECTION OF SHAREHOLDERS' RIGHTS

Over-allotment Option and Price Stabilising Activities

Issues and current position

233. The Main Board Rules currently do not require a listing applicant to disclose information on over-allotment options or price stabilising activities that it or its selling shareholder has entered into in connection with an offering. However in practice, we always require disclosure of these matters in the initial listing documents. Given that these matters have impact on the number as well as the price of the shares of the listing applicant after listing, we consider that codification of our current practice is appropriate.

Proposal

234. We will codify 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.

Q114. Do you agree with our proposal?

- Agree.*

Please state other information which you consider should also be disclosed.

- Disagree. Please state reason(s) for your view.*

DIRECTORS AND BOARD PRACTICES

Information about the Listing Applicant's Past Corporate Governance Practices

Issues and current position

235. To maintain and enhance Hong Kong's position as a leading international financial centre, we consider that it is essential for issuers listed on the Exchange to observe good corporate governance practices. The current corporate governance requirements relevant to the Main Board issuers are set out in Chapter 8 of the Main Board Rules, the Code of Best Practice – as an appendix to the Main Board Rules, as well as in the Listing Agreement.
236. As stated in the Corporate Governance Consultation Paper, we aim to benchmark these corporate governance standards against the best current international practices, having considered the circumstances in Hong Kong. Accordingly, we consider it appropriate to require a listing applicant to disclose its past corporate governance practices in the initial listing document, such as internal control and board practices using the Code of Best Practice as benchmark, so that investors could be in a better informed position to assess the listing applicant's achievement. We hope that by introducing such a new requirement, listing applicants will be encouraged to adopt good corporate governance practices well before their listing.

Proposal

237. We will amend the Main Board Rules to require a listing applicant to disclose in the initial listing document its corporate governance practices during the three-financial-year track record period. Disclosure should include:
- (a) the corporate governance practices, particularly in relation to directors, board practices and shareholders' rights, adopted by the listing applicant;
 - (b) whether the listing applicant was able to meet the minimum standard in the Code of Best Practice and its own code (if any). If not, details of any deviations or non-existence of the minimum standard should be disclosed;
 - (c) whether the listing applicant had an audit committee or other specialised committees, and details on their role and function, composition and work performed by such committee; and

- (d) internal controls over the listing applicant's financial, operational and compliance matters and risk management.

Q115. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

CORPORATE REPORTING AND DISCLOSURE OF INFORMATION

Information about the Persons in Control of the Listing Applicant

Issues and current position

238. To address any concern on whether the listing applicant is able to carry on its business independently of the controlling shareholder (inclusive of its associates) after listing, we consider it appropriate to require the listing applicant to disclose, in the initial listing document, the matters that it relied on in forming an affirmative view in this respect.

Proposal

239. We will amend 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.

Q116. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

Accounts and Financial Information

Issues and current position

240. The current Main Board Rules require the latest financial period reported on by reporting accountants to be not more than 6 months before the date of the initial listing document⁷⁰.
241. We note that currently a listing applicant may at the discretion of its directors include a net tangible asset statement (“NTA Statement”) in the initial listing document disclosing its unaudited assets. However, the NTA Statement does not show details of the breakdown of the net tangible asset value.
242. We consider that financial reports and accounts of a listing applicant are important information to enable investors to make informed decisions, and evaluate the risks, if any, involved in investing in its securities. There are comments that the financial information included in the initial listing document should be more up-to-date. We also note the practical difficulty that listing applicants may face if we require more up-to-date audited accounts to be included in the initial listing document. To strike a balance between the provision of more up-to-date information and practicality, we consider that the alternative of including more up-to-date management accounts offers a reasonable compromise.

Proposal

243. We will 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.

Q117. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

⁷⁰ See Rule 8.06 of the Main Board Rules.

244. We will introduce an additional requirement 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 as at the date of the management accounts so disclosed. 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.

Q118. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

The Management

Issues and current position

245. The current Main Board Rules requires disclosure of information about every director and senior manager or proposed director and senior manager⁷¹. To promote a higher corporate governance standards, we consider that the listing applicant should disclose in its initial listing document more detailed information about the expertise, experience and qualification of these persons.
246. If our proposals set out in paragraphs 53, 99 and 104 of part B of this Consultation Paper are adopted, 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 from the trading record requirement or financial standards requirement should disclose details of the relevant management expertise and experience in the line of business and industry of the listing applicant.

⁷¹ See Paragraph 41 of Part A of Appendix 1 of the Main Board Rules.

Proposal

247. We will amend 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.

Q119. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

248. We will amend 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 from the trading record requirement or financial standards requirement, where appropriate.

Q120. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

Prospects of the Group

Issues and current position

249. Where the listing applicant includes a profit forecast in the initial listing document, the current Main Board Rules⁷² do not specifically require that the forecast or estimate is to be prepared on a basis consistent with the accounting policies normally adopted by the listing applicant. However, in practice we always require the forecast or estimate to be prepared on such basis. We consider that a codification of our current practice is appropriate.

⁷² See Paragraph 34(2) of Part A of Appendix 1 of the Main Board Rules.

Proposal

250. We will codify 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.

Q121. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.

EFFECTIVE DATE

251. We propose that if our proposals regarding the new disclosure requirements set out in this Part F of the Consultation Paper are adopted, such new disclosure requirements will become effective immediately when amendments of the Main Board Rules are made. Listing applicants that have submitted their listing application before such amendments will be encouraged to make similar disclosure in their initial listing document.

Q122. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view.