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The Exchange clarifies position on requirement waivers to GEM listing candidates

Apparent misperceptions seem to have arisen concerning waivers to listing requirements granted to some Growth Enterprise Market (GEM) listing candidates – as reflected by some media reports. The Stock Exchange of Hong Kong has not granted any preferential waivers, and hopes the following information will clarify the situation.

1. Reducing the moratorium period for management shareholders from two years to six months.

On November 26, 1999, the Securities and Futures Commission and the Exchange announced that the Exchange could consider waiver applications on a case by case basis. The Exchange could reduce the moratorium period if it was satisfied that the management shareholders were able to demonstrate a high level of commitment to the long-term development of the company's business.

The Exchange believes that GEM's moratorium period should be in line with the practice of other growth markets. For example, NASDAQ has no exchange rules imposing a lock up requirement. This practice is widely supported by the financial market.

Far Eastern Polychem Industries Limited was the first GEM company which applied for and was granted a waiver in January 2000. SFC did not disapprove this waiver. Besides tom.com, two other companies have been granted the same waiver.

2. Increasing Staff Stock Option Limit to 50 per cent of tom.com's issued capital

For nearly a year, the Exchange and SFC have been jointly consulting the market on proposals to relax staff stock option plans for all listed companies to reflect changes in corporate cultures. They drafted rule changes to Chapter 17 of the Main Board Listing Rules and agreed that these changes would also apply to GEM.

Discussion about the 50 per cent share option limit has been continuing for about six months, and some other GEM listing applicants have also been granted this waiver.

The increase to 50 per cent will require shareholders' approval for every 10 per cent to be issued, up to 50 per cent, and is subject to other conditions.

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企業傳訊部 **Corporate Communications Department**
香港中環港景街一號國際金融中心一期 11 樓 11/F., One International Finance Centre, 1 Harbour View Street, Central, Hong Kong
電話 Telephone: 2522 1122 圖文傳真 Facsimile: 2845 3554

The proposed rule changes to increase the limit to 50 per cent were submitted to the Exchange Council and approval was granted on February 21. The proposed rules changes were then submitted to the SFC for approval.

The Exchange believes the proposed relaxation of stock option limits is in line with international trends for incentivising the management of growth companies. The options encourage employees to commit themselves to the company and make greater contribution for the benefit of the company, its shareholders and themselves, and do not affect investor protection.

All proposed waivers and rule amendments have followed market consultation and detailed deliberation. In addition, the Exchange believes it was acting with SFC consent pending formal approval. This has been the normal practice in the past since rule changes usually involve lengthy procedures, which could discourage some worthy applicants.

The Exchange has given no preferential waivers to any company and has, as always, acted in the best interests of Hong Kong and the investing public. This is in line with its mission to build Hong Kong into a premier regional and international capital formation centre.

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