

***Addendum to Joint Announcement on the  
Market Consultation and Changes to the Rules governing the Listing of Securities  
on The Growth Enterprise Market ("GEM")***

*(Note: This document is published on the HKEx and the GEM websites only and has not  
been published in the newspapers)*

**Details of the  
Results of the Market Consultation and the  
New Provisions relating to the Share Option Scheme**

The Securities and Futures Commission and The Stock Exchange of Hong Kong Limited issued a joint announcement on July 27, 2001 (the "Announcement") to announce the proposed amendments to the Rules governing the Listing of Securities on the Growth Enterprise Market (the "GEM Listing Rules") and the results of a market consultation conducted from May to June 2000 on the proposed rule changes. It was stated in the announcement that details of the results of the market consultation and the new provisions relating to the share option scheme will be disclosed on the GEM website.

**A. RESULTS OF THE MARKET CONSULTATION**

A total of 165 written submissions representing different interests groups were received. The respondents represent a wide spectrum of the market including 26 sponsors, 13 professional firms, 13 financial institutions, 2 professional associations, 39 companies including 14 GEM listed issuer, 14 Main Board GEM listed issuers and 11 new listing candidates and other companies, and 72 individuals. The individuals included a group of 60 respondents who completed a standard form posted on a financial website to indicate their agreement with a commentary on that website. All these 60 responses were then submitted to the Exchange indirectly via that website, with minor comments in a few cases. Whether these 60 responses were counted as one single response or as separate responses, the option preferred by the majority would remain the same except in respect of three areas: moratorium period for initial management shareholders who are controlling shareholders, moratorium period for initial management shareholders who are not controlling shareholders, and active business pursuit period and accountants' report requirements. In these areas where the majority views differed, the SFC and the Exchange took into account both treatments in its analysis.

A table showing the responses in respect of each of the options is in [Appendix A.](http://www.hkgem.com/aboutgem/e_table0727.pdf)( [http://www.hkgem.com/aboutgem/e\\_table0727.pdf](http://www.hkgem.com/aboutgem/e_table0727.pdf) )

## **B. NEW PROVISIONS RELATING TO THE SHARE OPTION SCHEME**

The major amendments to Chapter 23 of the GEM Listing Rules governing share option schemes were outlined in the Announcement. As waivers will be granted to GEM applicants based on the rule amendments from the date of the Announcement, and in order to allow GEM listed issuers to prepare for the implementation of the new requirements, detailed principles of such rule amendments are set out below. It should be noted that the discussion below is not exhaustive and covers only those provisions which are material and are the subject of the transitional arrangements.

### **Adoption of the Scheme**

#### *GEM Listed Issuers*

- ◆ Shareholders' Approval – GEM Listing Rule 23.02(1) will be amended to allow all shareholders to vote for the adoption of a new scheme;
- ◆ Circular Requirement – GEM Listing Rule 23.02(1) will be amended to require the following inclusions in the circular required for the adoption of the scheme:
  - information on the terms of the scheme set out in GEM Listing Rule 23.03;
  - an explanation as to how the terms of the scheme, in particular, the minimum period, the performance target, and the basis for determination of the exercise price would serve the purpose of the scheme;
  - information relating to any directors of the GEM listed issuer who are trustees of the schemes or have a direct or indirect interest in the trustees;
  - the GEM listed issuer is also encouraged to disclose the value of all options on the shares of the listed issuer that can be granted under the scheme if they had been granted at the latest practicable date prior to the approval of the scheme, using the Black-Scholes option pricing model, the binomial model or a comparable generally accepted methodology to calculate the value. Description of the model, the assumptions used and other relevant information should be included. Where the GEM listed issuer considers such disclosure to be inappropriate, it must state the reason for such non-disclosure in the circular.

In addition, the circular must be despatched to the shareholders no later than the date on which the GEM listed issuer gives notice of the general meeting to approve the scheme. Furthermore, the scheme document must be made available for inspection at a place in Hong Kong for a period of not less than 14 days before the date of the general meeting and at the general meeting;

- ◆ Announcement Requirement – The GEM listed issuer is required to publish an announcement on the outcome of the shareholders' meeting for adoption of the scheme on the next business day; and
- ◆ Circulation of the Scheme to the Participants – The GEM listed issuer must provide a summary of the terms of the scheme, and details relating to changes in the terms of the scheme, to all participants, and a copy of the scheme document to any participant who requests a copy.

### *GEM Applicant*

- ◆ Shareholders' Approval – Schemes adopted before listing do not need to be approved by shareholders after listing;
- ◆ Pre-IPO Schemes – If schemes adopted before listing do not comply with Chapter 23 of the GEM Listing Rules, no further options may be granted from such schemes after listing, but options granted before listing may continue to be valid after listing; and
- ◆ Prospectus Disclosure - The new applicant must disclose in the prospectus full details of all outstanding options and their potential dilution effect on the shareholders upon listing, and the impact on the earnings per share arising from the exercise of such outstanding options.

### **Terms of the Scheme**

GEM Listing Rule 23.03 sets out provisions which must be included in the terms of the schemes. The rule amendments will modify these provisions to relax current restrictions to the scheme, and add new provisions to enhance the information disclosure to the shareholders to help them evaluate the merits of the scheme.

- ◆ GEM Listing Rule 23.03(1) will be amended to require disclosure of the participants of the scheme and the basis of determining the eligibility of the participants (*see note*). Participants will be defined in the amended Chapter 23 to include any discretionary object of a participant which is a discretionary trust;
- ◆ GEM Listing Rule 23.03(2) will be amended to limit the total number of securities which may be issued upon exercise of all options to be granted under the scheme, and any other schemes (the "Scheme Shares") as follows:
  - An overall limit will be imposed such that the number of securities which may be issued upon exercise of all outstanding options granted and yet to be exercised under the scheme and any other schemes must not exceed 30% of the securities in

issue from time to time.

- At the time of adoption of a new scheme, the Scheme Shares must not exceed 10% of the issued shares of the GEM listed issuer at the date of shareholders' approval of the scheme (the "Scheme Mandate Limit"). Options lapsed in accordance with the terms of the scheme will not be counted for the purpose of calculating the 10% limit.
- The GEM listed issuer may renew the Scheme Mandate Limit at any time subject to shareholders' approval. However, the Scheme Mandate Limit as "refreshed" must not exceed 10% of the securities in issue as at the date of approval of the limit. Options previously granted under the schemes (including those outstanding, cancelled, lapsed in accordance with the scheme or exercised options) will not be counted for the purpose of calculating the limit as "refreshed". A circular must be sent to shareholders.
- The GEM listed issuer may also seek separate shareholders' approval for granting options beyond the 10% limit to participants specifically identified by the issuer before such approval is sought. A circular must be sent to shareholders containing a generic description of the identified participants, the number and terms of the options to be granted, the purpose of granting options to the identified participants, and how these options serve such purpose.
- ◆ GEM Listing Rule 23.03(3) will be amended to limit the total number of securities issued and to be issued upon exercise of the options granted and to be granted to each participant (including both exercised and outstanding options) in any 12-month period up to the date of grant not to exceed 1% of the securities in issue. Any further grant of options in excess of the limit must be subject to shareholders' approval with such participant and his associates abstaining from voting. A circular must be sent to the shareholders disclosing the identity of the participant, the number and terms of the options granted and to be granted. The number and terms of options to be granted to such participants must be fixed before shareholders' approval and the date of board meeting for proposing such further grant should be taken as the date of grant for the purpose of calculating the exercise price;
- ◆ GEM Listing Rule 23.03(4) will be amended to require the period within which the option must be exercised to be not more than 10 years from the date of the grant (*see note*);
- ◆ GEM Listing Rule 23.03(5) will be amended to state the amount, if any, payable on application or acceptance of the option and the period within which payments or

calls must or may be made or loans for such purposes must be repaid;

- ◆ GEM Listing Rule 23.03(6) will be further clarified and a provision added that for the purpose of calculating the exercise price where a GEM listed issuer has been listed for less than 5 business days, the new issue price shall be used as the closing price for any business day falling within the period before listing;
- ◆ GEM Listing Rule 23.03(10) will require the issuer to state the circumstances under which options will automatically lapse (*see note*);
- ◆ GEM Listing Rule 23.03(11) regarding the administration of the scheme will be deleted;
- ◆ GEM Listing Rule 23.03(14) will be amended to require the GEM listed issuer to include a provision for the cancellation of options granted but not exercised. The rule amendment will also clarify that new options may be issued to an option holder in place of his cancelled options only if there are available unissued options (excluding the cancelled options) within the Scheme Limit (*see note*);
- ◆ GEM Listing Rules 23.03(17) and 23.06 will be replaced by new provisions requiring that the specific terms of the scheme that can be changed by directors or scheme administrators without the approval of shareholders be stated in the terms of the scheme. For greater certainty, changes of the following provisions of the scheme require shareholders' approval:
  - alterations of the provisions relating to the matters set out in GEM Listing Rule 23.03 to the advantage of participants;
  - alteration to the terms and conditions of a scheme which are of a material nature, except where the alterations take effect automatically under the existing terms of the scheme;
  - any change to the authority of the directors or scheme administrators in relation to any alteration to the terms of the scheme.

The amended terms of the scheme must still comply with the relevant requirements of Chapter 23.

- ◆ A new requirement will be added to state the purpose of the scheme;
- ◆ A new requirement will be added to state the minimum period, if any, for which an option must be held before it can be exercised;
- ◆ A new requirement will be added to state the performance targets, if any, that must be achieved before the options can be exercised, or a negative statement to that effect; and
- ◆ A new requirement will be added to disclose the transferability of options, and restricts the options granted under the scheme must be personal to the respective grantee, and may not be transferred or assigned.

*Note: The proposed rules do not include specific requirements in relation to these matters.*

## **Grant of Options to Connected Persons**

- ◆ A new provision will be added to require any grant of options to a connected person or its associates to be approved by independent non-executive directors (excluding an independent non-executive director who is the grantee of the options). Where any grant of options to a substantial shareholder or an independent non-executive director or their respective associates will result in the securities issued and to be issued upon exercise of all options already granted and to be granted (including options exercised and outstanding) to such person in the 12-month period up to the date of grant to exceed the higher of 0.1% of the securities in issue and an aggregate value, based on the closing price of the securities at the date of each grant, of HK\$5 million, such grant of options must be subject to shareholders' approval taken on a poll. All connected persons must abstain from voting, except that any connected person may vote against the resolution provided that his intention to do so has been stated in the circular;
- ◆ In addition, shareholders' approval as described above is also required for any change in the terms of options granted to a participant who is a substantial shareholder, an independent non-executive director or their respective associates;
- ◆ The circular must contain the following:
  - details of the number and terms of the options to be granted to each participant, which must be fixed before shareholders' approval, and the date of board meeting for proposing such further grant should be taken as the date of grant for the purpose of calculating the exercise price;
  - a recommendation from the independent non-executive directors (excluding any independent non-executive director who is a grantee) as to voting; and
  - information relating to any directors of the GEM listed issuer who are trustees of the schemes or have a direct or indirect interest in the trustees; and
- ◆ The requirements for the granting of options to a director or chief executive of a GEM listed issuer set out above do not apply where the participant is only a proposed director or chief executive of the GEM listed issuer.

## **Unlisted Subsidiaries of a GEM listed issuer**

GEM Listing Rules 23.03(6), 23.04 and 23.05 applicable to schemes of unlisted subsidiaries are replaced by the following:

- ◆ the restrictions on exercise price applicable to schemes of the GEM listed issuer does not apply to the scheme of the unlisted subsidiary if the subsidiary's securities are not listed on the Exchange;
- ◆ Where the unlisted subsidiary applies for a listing on the Exchange or on an overseas exchange, the exercise price of any options granted after the GEM listed issuer has contemplated a separate listing of such subsidiary up to the listing date must not be lower than the new issue price (if any). In particular, this restriction applies to any options granted during the six-month period before the lodgment of the listing application up to the listing date; and
- ◆ The scheme must provide for any necessary adjustment of exercise price of options granted during such period to not lower than the issue price.

The Exchange emphasizes that the above provisions on share option schemes represent some of the principles of the proposed amendments to the existing rules, and are published to facilitate GEM applicants and listed issuers to apply for New Waivers or prepare for the adoption of new schemes, or amendment of their existing schemes, as appropriate. Accordingly, the above disclosures should be used as a guideline only, and cannot be interpreted as, or relied upon, as the new rules on share option schemes.