

Strictly private and confidential

Hong Kong Exchanges and Clearing Limited
8/F., Two Exchange Square
8 Connaught Place
Central
Hong Kong

23rd Floor Gloucester Tower
15 Queen's Road Central
Hong Kong
T +852 2845 6639
F +852 2845 9099

www.herbertsmithfreehills.com

Our ref
3174

Date
19 March 2025

By email (response@hkex.com.hk)

Dear Sir/Madam,

Re: Consultation Paper on Proposals to Optimize IPO Price Discovery and Open Market Requirements

We refer to the Consultation Paper on proposals to optimize IPO price discovery and open market requirements (the "**Consultation Paper**") issued in December 2024 and are pleased to respond with comments. Unless otherwise defined, all capitalised terms used in this letter shall have the same meanings as defined in the Consultation Paper.

We have not completed the questionnaire and prefer to respond in letter format which we trust is acceptable.

We set out our comments on the specific proposals in the table below.

Question 1

1.1 Do you agree with our proposal to exclude securities that do not contribute to an open market in trading in Hong Kong from the calculation of the public float by:

(a) requiring the public float percentage of securities new to listing be calculated normally by reference to the total number of securities of that class only (as set out in paragraph 44 of the Consultation Paper)?

Global CEO
J J G D'Agostino MH

Managing Partner, China
C K J Fan

Managing Partner, Disputes
S J Chapman KC [^]

Partner, Regional Head of Practice - Finance
W W H Ku

[^] King's Counsel, England and Wales

H E Cassidy
J M Copeman +
A J Crockett
M C Emsley
H H S Lau
B O Lohr
A M W Z Luke
T M Mak

+ Not resident in Hong Kong

F Mok
P S Quinn
K S H Sanger
R M K Shek
Z Shen
J Sung
T C P Tong
K A Wombolt

**Senior Registered
Foreign Lawyers:**
D Y Chen #
D W Kim *
J Kong #
Y Mao #
A Vasey *

Admitted in New York (USA)
* Admitted in England and Wales

Senior Consultants:
H J Tang

Of Counsel:
S M S Hui
M S M Ko
M K L Wong
Y Xu

Herbert Smith Freehills is a Hong Kong partnership which is affiliated to Herbert Smith Freehills LLP (an English limited liability partnership). Herbert Smith Freehills LLP, its subsidiaries and affiliates and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.



(b) in the case of a PRC issuer with no other listed shares, requiring the numerator of its public float percentage to be calculated by reference to its H shares only, such that any shares it has in issue that are in the class to which H shares belong would only be included in the denominator (as set out in paragraph 45 of the Consultation Paper)?

(c) in the case of a PRC issuer with other listed shares (e.g. A shares listed on a PRC stock exchange), requiring the numerator of its public float percentage to be calculated by reference to its H shares only, such that any other listed shares it has in issue would only be included in the denominator (as set out in paragraph 45 of the Consultation Paper)?

(d) in the case of an issuer with other share class(es) listed overseas, requiring the numerator of its public float percentage at listing to be calculated by reference to only the shares of the class for which listing is sought in Hong Kong, such that any shares of other classes it has in issue would only be included in the denominator (as set out in paragraph 46 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the Stock Exchange's proposals to exclude securities that do not contribute to an open market trading in Hong Kong from the calculation of the public float in the way outlined in question 1.1. We consider that these proposals would bring Hong Kong more in line with the regimes in other markets as outlined in the Consultation Paper.

In addition, these changes will better reflect a genuine Hong Kong public float. Historically, the inclusion of A shares in the numerator did not accurately reflect the shares that made up the public float in Hong Kong.

In relation to an issuer with shares listed overseas, we agree that the numerator for the purposes of calculating the public float should only reflect those shares that are to be listed in Hong Kong. Again, this will better reflect the public float in Hong Kong.

1.2 Do you agree with our proposal to modify the requirement of MB Rule 8.09(1) (GEM Rule 11.23(2)(a)) to clarify that the minimum market value in public hands requirement applies to the securities for which listing is sought (as set out in paragraph 47 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposal to amend Rule 8.09(1) to clarify that the minimum value in public hands should be measured by securities for which listing is sought.

Question 2

2.1 Do you agree that we should exclude from the definition of "the public" any person whose acquisition of securities has been financed by the issuer and any person who is accustomed to take instructions from the issuer (as set out in paragraph 64 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that persons who have been financed by the issuer and persons who are accustomed to taking instructions from the issuer should be excluded from being considered part of the public. Where financing has been provided by the issuer or the issuer's instructions are typically followed by a shareholder, there may be concerns regarding the independence of such an investor.



We note that this change would result in shares that are held by trustees on behalf of an issuer's share scheme participants ceasing to fall within the definition of "the public". We agree with this approach, when combined with the proposal to regard those unvested shares held by independent trustees for the benefit of scheme participants that are not core connected persons to be shares held in public hands. We agree that where neither the trustees of a share scheme nor the scheme beneficiaries are core connected persons of the issuer, the unvested scheme shares should be considered as independently held and in public hands. The independent trustees should be viewed as independent third parties given they are less likely to be influenced by the company and the beneficiaries of the scheme would be treated as public shareholders if they were to hold the shares directly.

2.2 If your answer to Question 2.1 is "yes", do you agree with our proposal to regard shares held by an independent trustee which are granted to independent scheme participants and unvested as shares held in public hands (as set out in paragraph 65 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

Please refer to our response to question 2.1.

Question 3

3.1 Do you agree that we should replace the current minimum initial public float thresholds with tiered initial public float thresholds according to the expected market value of the class of securities for which listing is sought on the Exchange at the time of listing?

Please give reasons for your views and any alternative suggestions.

We agree that the current minimum initial public float thresholds should be modified.

The current process of applying for public float waivers is cumbersome and creates uncertainty for issuers and working parties. Until the outcome of the waiver application is known an issuer does not have any certainty on the offering size and selling efforts required. We believe that this could be a barrier for some of the larger listing applicants choosing to list in Hong Kong.

We consider it sensible to update the rules with appropriate sliding thresholds based on the applicant's size as this creates certainty and provides a nuanced approach which still ensures that the initial public float is a meaningful, yet manageable, size.

As noted in the Consultation Paper, we agree that the current system can create anomalies for those companies that are just below the current HK\$10 billion offering size (depending on the waivers granted by the Stock Exchange) which leads to unfair treatment, particularly given the current fixed nature of the public float requirement.

We agree that a tiered approach should be taken to setting the initial public float thresholds. A tiered approach, whilst more complicated, will provide clear and manageable thresholds for issuers that are appropriately adjusted to reflect the market value of the issuer. This will ensure that there is a proportionate yet sufficiently large public float in Hong Kong for all issuers, safeguarding the sufficiency of tradable shares in the Hong Kong market.

We note at paragraph 83 of the Consultation Paper that these proposals would be subject to the outcome of a further consultation on the ongoing public float requirements set out in Section I.B.2. However, we would encourage the Stock Exchange to implement the changes to the initial public float requirements first rather than waiting for the second consultation exercise. As mentioned above, the existing waiver application process can act as a disincentive for larger



issuers seeking a listing in Hong Kong and these barriers should be removed as soon as possible. Waivers could be used, to the extent required, or the Stock Exchange could exercise its discretion not to require suspension to address any ongoing public float concerns after listing if a new applicant's public float falls below the initial public float listing thresholds or the thresholds set in note (1) to Rule 8.08(1).

3.2 If your answer to question 3.1 is "yes", do you agree with the proposed tiered initial public float thresholds (as set out in Table 5 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

As noted in our response to question 3.1, we agree with the suggested tiered approach to the initial public float thresholds as it strikes a good balance by setting a fixed percentage public float for issuers with a smaller market value but reflecting that, for larger companies, a smaller percentage threshold can be adopted whilst still achieving a sufficient number of shares in public hands.

In respect of the thresholds proposed, we consider that these seem sensible when compared to the approaches taken by other international stock exchanges and the existing structure of the public float waiver thresholds.

3.3 If your answer to question 3.2 is "yes", do you agree that the proposed tiered initial public float thresholds should be applied to any class of equity securities new to listing on the Exchange, except for (a) the initial listing of A+H issuers (and other prescribed types of issuers); and (b) a bonus issue of a new class of securities (as set out in paragraph 79 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the tiered approach should apply to any class of equity securities new to listing (save for the excepted categories set out in the Consultation Paper proposal). We note that this would include convertible equity securities, options and warrants, which we consider should be treated in the same way as shares for these purposes.

3.4 If your answer to question 3.1 is yes, do you agree that all issuers disclose, in their listing documents, the initial public float threshold that is applicable to the class of securities they seek to list on the Exchange?

Please give reasons for your views and any alternative suggestions.

We agree that the applicable initial public float threshold should be disclosed in the listing document. This is consistent with the current requirement that the percentage public float immediately after listing is disclosed in the listing document. The applicable public float threshold will be valuable information for investors, given the size of the Hong Kong public float may have an impact on the ongoing liquidity of the shares in the Hong Kong market.

3.5 If your answer to question 3.2 is yes, do you agree that the same tiered initial public float thresholds (as set out in Table 5 of the Consultation Paper) should be applied to GEM issuers?

Please give reasons for your views and any alternative suggestions.

In principle, we support this proposal. We note that typically the market capitalisation of GEM issuers will be smaller than for Main Board and, therefore, the higher tier thresholds may not be



relevant. However, to the extent that there are larger issuers wanting to list on GEM, they should have the opportunity to benefit from the tiered public float thresholds in the same way and at the same levels as Main Board listing applicants.

Question 4

4.1 If our proposed initial public float thresholds (see proposals in Section I.B.1 and Section I.D.1 of Chapter 1 of the Consultation Paper) are supported by the market, we seek views on the appropriate ongoing public float requirements for:

- (a) Issuers, subject to the initial public float tiers proposed (see Table 5 in Section I.B.1 of Chapter 1 of the Consultation Paper); and
- (b) A+H issuers and other prescribed types of issuers (see Section I.D.1 of Chapter 1 of the Consultation Paper).

Please give reasons for your views and any alternative suggestions.

We believe that issuers should have flexibility to maintain a lower public float after listing. We note the current issues identified in the Consultation Paper with the existing public float requirements. In our experience, the obligation to maintain a fixed public float at the same level as is required at listing unnecessarily constrains listed issuers and can prevent them from conducting otherwise legitimate and beneficial transactions such as on market share repurchases.

We note that under the current regime, the Stock Exchange will normally require suspension of trading where the percentage of an issuer's public float falls below 15% (or 10% in the case of an issuer that has been granted a lower public float waiver at the time of listing). This already recognises some flexibility in ongoing public float maintenance before suspension is required. We suggest that a possible approach could be for the ongoing public float requirement to follow a similar approach to the current suspension rule. The Stock Exchange could permit a lower ongoing public float at a discount to the tiered initial public float requirements at listing, adopting a similar ratio to the current suspension threshold. We note that the current suspension rate of 15% represents 60% of the standard 25% requirement at listing and the lower suspension threshold of 10% for larger cap companies represents 40% of the standard 25% requirement at listing. A similar reduction could be applied to the ongoing public float requirements, with the amounts adjusted as necessary to ensure that they are suitable and sufficient for the respective tiers.

If the proposed initial public float tiers are adopted, we would suggest that the ongoing public float requirements are similarly tiered, also by reference to thresholds (i) as a percentage of shares or (ii) for larger companies, a monetary amount applicable when they do not meet the percentage threshold. We have set out some initial ideas as to how this might be structured.

For Tier A, given this is a percentage threshold, the ongoing requirement should be more straightforward and could be a lower percentage, potentially adopting one of the thresholds at which the Stock Exchange will currently suspend trading under Rule 13.32(3).

For issuers in Tiers B-D, this will be more complicated as the percentage public float at listing could vary for each issuer within the ranges, given these initial thresholds applicable at listing are proposed to be formulated as the higher of (i) a percentage based on the dollar amount of market value of securities in public hands; and (ii) a fixed percentage. We suggest that the ongoing public float requirement may need to be similarly formulated by reference to (i) a tiered fixed percentage by Tier (which could be set at a single level for companies within that Tier at



listing) representing a reduction compared to the percentage Tier used at the time of listing; and (ii) a minimum monetary amount as an alternative for large companies which don't meet a relevant percentage but that the value of public shares still represents a significant value. In respect of the monetary amount, further analysis would be needed to determine how this should be calculated, for instance whether it should be a daily snapshot or an average over a defined period (to avoid breaches as a result of short-term price fluctuations). In addition, our suggestion in relation to a monetary amount would only work if immediate suspension was not triggered – please see our response to question 4.3 below in relation to our thoughts regarding suspension.

For very large cap companies, a low percentage of total shares could still represent a very significant number of shares available for trading in the Hong Kong market which should be accommodated in the formulation. In our view, for such companies, so long as a public float with a sufficient critical mass by dollar amount is maintained in Hong Kong, the percentage figure is less important. It may, therefore, be appropriate to take the view that even if an ongoing minimum public float percentage is not met, the company would still be considered to have a sufficient public float provided that the public float represents a percentage that results in the market value of shares held in public hands being above an alternative monetary threshold.

As such, a possible approach could be to adopt a formulation as follows:

"an ongoing public float of at least (i) []% or (i) a percentage that would result in the market value of the securities in public hands being at least [HK\$]; "

For A+H issuers and other prescribed types of issuers, a similar formulation could be adopted by reference to the H shares.

As noted in our response to question 3.1, we would encourage the Stock Exchange not to delay implementation of the changes to the initial public float requirements pending a second consultation exercise on this aspect.

4.2 Should issuers be allowed the flexibility to maintain a lower public float level, after listing, than that required at listing, in view of the issues we have described in the Consultation Paper (see paragraphs 102 to 109 of the Consultation Paper)?

Please give reasons for your views.

Please see our response to question 4.1 above.

4.3 Should the existing regulatory approach of suspending trading of issuers with public float below a prescribed level (see paragraph 92(c) of the Consultation Paper) be maintained, in view of the issues we have described in the Consultation Paper (see paragraphs 110 to 111 of the Consultation Paper)?

Please give reasons for your views.

We do not believe that the existing approach of suspending the trading of issuers whose public float drops below the prescribed level should be maintained. We note from the case statistics quoted in the Consultation Paper that out of the 161 cases where the public float requirement was breached, 121 cases were as a result of takeovers which resulted in 35 cases of suspension of trading. Given the Listing Rules requirement for the offeror to restore the public float, we consider that suspension would be counterproductive and should be employed only in serious cases of prolonged delay in restoring the public float.



As noted in the Consultation Paper, when trading is suspended, shareholders do not have the ability to trade and so are unable to divest their shares and exit a company. We also believe that an automatic suspension can create difficulties for a listed issuer to restore its public float by removing the ability for a willing controlling shareholders to sell its shares in the market.

We consider that a preferable approach may be to continue to permit trading even once an issuer's public float has dropped below the (as we propose, lowered level) ongoing public float requirements, with a requirement for the issuer to make announcements (at the time the public float requirement is breached and periodically thereafter until it is restored). This will enable continued trading with appropriate information being provided to inform the market. Issuers that are in breach of the public float requirement could be identified a stock marker so that they can be readily identified by investors who can then trade at their own risk.

However, we also suggest that issuers should continue to be under an obligation to take steps to restore the public float to the ongoing public float requirements.

The Stock Exchange would still retain its general discretion to suspend dealings where it considers that there are insufficient securities in the hands of the public under the existing Rule 6.01(2), but this should be reserved for the most serious cases. We note from the case statistics quoted in the Consultation Paper that only two issuers were ultimately delisted after the 18-month suspension period during the review period of January 2017 to September 2024.

4.4 Do you agree that ongoing public float requirements should be applied to shares only (as set out in paragraph 118 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposal that ongoing public float requirements should only be applied to shares. We agree with the rationale for this articulated in the Consultation Paper, noting that convertible securities, options and similar rights will be exercised over time which would make it impractical for an issuer to maintain a public float threshold as the number of securities will naturally decrease.

4.5 Do you agree that an OTC market should be established in Hong Kong (as set out in paragraph 119 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We can see the merit in an OTC counter to enable trading in securities that have been delisted. However, the benefit would need to be weighed against the cost and effort of regulating such OTC market, particularly if the number of participating stocks would be low. This may particularly be the case if the number of companies delisted by the Stock Exchange further reduces as a result of implementing the proposals in the Consultation Paper.

Careful thought should be given as to which stocks would be eligible for trading on the OTC. For example, would this only be available for stocks that had been delisted due to public float issues, or would issuers that have been delisted for other reasons or in other circumstances also be able to participate.

4.6 What are your views on:

- (a) the potential benefits and risks of establishing an OTC market;
- (b) functions that an OTC market should serve; and



(c) whether such OTC market should be open to retail investors?

Please give reasons for your views.

We see benefit in an OTC market to provide a trading platform for shares in issuers that have delisted from the Stock Exchange. However, the light regulation of an OTC market and lowered disclosure obligations significantly increases the risk for investors.

Given the additional risks posed to investors participating in the OTC market, if an OTC market is introduced, we would suggest that retail investors are only able to participate as sellers and only institutional investors should be permitted to buy shares in the OTC market.

Question 5

5.1 Do you agree with our proposal to mandate disclosure of actual public float in listed issuers' annual reports?

Please give reasons for your views and any alternative suggestions.

We agree that mandatory disclosure of the actual public float should be required in listed issuer's annual reports given that the Stock Exchange has already received feedback from investors that this would be useful information in addition to the existing sufficiency statement.

5.2 If your answer to Question 5.1 is "yes", do you agree with the details proposed to be disclosed (as set out in paragraph 126 of the Consultation Paper), including that only persons connected at the issuer level would be required to be identified on an individually named basis in the disclosure of shareholding composition (as set out in paragraph 126(b)(i)(1) and (2) of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposals in the Consultation Paper to require disclosure of the composition of ownership of shares as at the end of the relevant financial year, split between public and non-public shareholders. We believe this will provide additional transparency on the share ownership structure of issuers that will be welcomed by investors.

5.3 If your answer to Question 5.1 is "yes", do you agree that issuers should be required to disclose the relevant information based on information that is publicly available to the issuer and within the knowledge of its directors (as set out in paragraph 127 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the information disclosed should be based on publicly available information and within the knowledge of the directors. As noted in the Consultation Paper, it may be difficult to derive the exact amounts of shareholdings from filings made under Part XV of the SFO, and this may cause practical difficulties for issuers in making the required disclosures. However, where directors have specific knowledge of non-public shareholders that is not immediately ascertainable from public sources (or can readily obtain it), this should be required to be disclosed.

Question 6



6.1 Do you agree that the Exchange should require a minimum free float in public hands at the time of listing for all new applicants (as set out in paragraph 139 of the Consultation Paper)?

Please give reasons for your views.

We agree with the proposal to introduce a minimum free float in public hands at the time of listing. We believe this is appropriate to ensure that there are sufficient securities available for trading on the Stock Exchange.

6.2 If your answer to Question 6.1 is “yes”, do you agree with our proposed initial free float thresholds (as set out in paragraph 140 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We consider that the initial free float thresholds proposed in the Consultation Paper seem sensible, noting that 70% of new listings on the Stock Exchange would have been able to meet the free float requirement over the period reviewed. However, we would suggest that before the proposals are finalised, the Stock Exchange also check the compliance rate that would have been achieved by listed issuers during a more recent period, for example during the years 2023 to 2024, to ensure that equivalent compliance would also have been achieved in periods of more challenging market conditions. The alternative tests cater for the different sized listing applicants and provide a minimum floor to ensure that at least HK\$50 million is available as a free float for those issuers at the smaller end of the listing spectrum (ie 10% of the 25% public float where the listing applicant has the minimum market capitalisation of HK\$500 million permitted under Rule 8.09(2)).

We note that the HK\$600 million alternative test is based on the current free float threshold for Specialist Technology Companies. Given this is already in place for those companies, we believe it would be appropriate to adopt an approach consistent with this for all types of issuer who rely on this alternative.

6.3 If your answer to Question 6.1 is “yes”, do you agree with our proposed modification of the initial free float thresholds to PRC issuers (as set out in paragraphs 142 to 143 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposed modification of the initial free float thresholds for PRC issuers such that this is only referenced to the H shares in the same class as those for which listing is sought. This recognises that, particularly in the case of A+H shares, a free float threshold as a percentage of both the A+H may be too high and function as a barrier to listing in Hong Kong for such companies. We consider this to be a welcome relaxation to ensure that the Hong Kong market remains competitive and attractive.

6.4 If your answer to Question 6.1 is “yes”, do you agree with our proposal to apply the proposed initial free float requirement to shares only (as set out in paragraph 144 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We support the proposal to only apply the free float requirements to shares, and not to extend the requirement to convertible securities, options and other securities. We agree with the



rationale in the Consultation Paper. Given that typically such securities are not subject to lock up restrictions or other restrictions on disposal, a free float requirement should not be necessary.

6.5 If your answer to Question 6.1 is “yes”, do you agree that shares considered to be in public hands that are held by an independent trustee under a share scheme should not be counted towards the proposed initial free float requirement (as set out in paragraph 145 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that shares held by an independent trustee under a share scheme should not be counted towards the initial free float requirement. Share scheme or share award shares are held in the trust until they vest and so are not available for trading until they are vested in the grantee.

6.6 If your answer to Question 6.1 is “yes”, do you agree that existing free float related requirements for Biotech Companies and Specialist Technology Companies should be replaced with the proposed initial free float requirement so that the same requirement applies to all issuers (as set out in paragraph 146 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the same free float requirements should apply to Biotech Companies and Specialist Technology Companies in the interests of rule consistency.

Question 7

7.1 Do you agree with our proposed revised minimum thresholds on shares to be listed on the Exchange for A+H issuers and other prescribed types of issuers (as set out in paragraph 162 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the current requirement to meet the Minimum 15% Threshold can place an unduly onerous burden on larger A+H issuers, which can result in such issuers being required to list with a larger offering size than they want, purely to satisfy that requirement. In addition, given waivers are sometimes sought for this requirement, we consider it preferable to have clear rules that can be met by the majority of applicants, rather than a practice of relying on waivers. Whilst it is important that issuers are required to list a meaningful portion of shares in Hong Kong to ensure a vibrant market with investor activity, the new thresholds proposed in the Consultation Paper would, in our view, still achieve this whilst providing a helpful relaxation in the requirements.

7.2 Do you agree that the minimum initial public float thresholds for A+H issuers and other prescribed types of issuers should be the same as the minimum thresholds on shares to be listed on the Exchange (as set out in paragraph 164 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the minimum initial public float thresholds for A+H issuers and other prescribed types of issuers should be the same as the minimum thresholds on shares to be listed on the Stock Exchange. Having a single requirement for both minimum initial public float and minimum thresholds on shares to be listed simplifies the regime and achieves the intended purpose.



7.3 Do you agree with our proposal to remove the minimum market value requirement for the class sought to be listed by issuers with other share class(es) listed overseas and H shares of PRC issuers (as set out in paragraph 166 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the minimum market value requirement for such issuers can be removed as it will no longer be necessary. The minimum market value will be sufficiently addressed by the overall requirement for shares with a market value of HK\$125 million to be held in public hands in Hong Kong.

Question 8

In respect of the lock-up requirement on IPO securities placed to cornerstone investors, would you prefer to:

- (a) retain the existing six-month lock-up (as set out in Option A in paragraph 205 of the Consultation Paper); or
- (b) allow a staggered release of the six-month lock-up (as set out in Option B in paragraph 205 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

Whilst we believe that lock up requirements for cornerstone investors are important as they demonstrate investment commitment of the cornerstone investors, we do not have strong views on the appropriate length of the lock up.

Question 9

9.1 Do you agree that at least 50% of the total number of shares initially offered in an IPO should be allocated to investors in the bookbuilding placing tranche (as set out in paragraphs 227 and 228 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposal to require that at least 50% of the total number of shares initially offered will be allocated to investors in the placing tranche. This will ensure that there is a meaningful size of placing tranche subject to the bookbuilding process which will have a positive impact on the overall IPO price discovery process.

9.2 If your answer to Question 9.1 is “yes”, do you agree that the proposed requirement should not be applied to the initial listing of Specialist Technology Companies (as set out in paragraphs 229 of the Consultation Paper)?

Please give reasons for your views.

We believe that the existing regime for Specialist Technology Companies should be maintained. This is a new requirement designed specifically for Specialist Technology Companies to assist with the price discovery process following a public consultation process.

Question 10



10.1 Do you agree with the proposed removal of the guideline on minimum spread of placees, being not less than three holders for each HK\$1 million of the placing, with a minimum of 100 holders in an IPO placing tranche (as set out in paragraph 230 of the Consultation Paper)?

Please give reasons for your views.

We agree with the proposed removal of the guideline on the minimum spread of placees. We believe that the existing regime does not ensure there is a genuine spread of investors as the current requirement can, in practice, be circumvented. As noted in the Consultation Paper, an issuer may place a small number of shares to many shareholders but this may not be reflective of a genuine investor spread. We support the proposal which gives more flexibility to the listing applicants and syndicate to determine the appropriate spread of investors in the context of the IPO and prevailing market conditions.

10.2 Do you consider that other safeguarding measures should be implemented to ensure an adequate spread of holders in the placing tranche, in light of the proposal (as set out in paragraph 230 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We do not consider that any additional safeguards are necessary. The Placing Guidelines, as proposed to be amended, would still set an expectation that the "securities to be placed must have an adequate spread of holders, the number depending on the size of the placing". This should be sufficient protection and would enable the Stock Exchange to intervene in any transaction where there was an inadequate spread of shareholders raised market manipulation concerns.

Question 11

11.1 Do you agree with the proposal to require issuers to adopt either Mechanism A or Mechanism B with respect to a minimum allocation of offer shares to the public subscription tranche (as set out in paragraphs 248 to 250 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We support a mechanism that gives a choice to the listing applicant and syndicate as to the minimum public offer allocation required. We note the significant drop in market activity by retail investors as compared to the levels in 1997 as explained in the Consultation Paper and consider that this is an opportune time to reset the requirements for the public subscription tranche allocation more in line with international norms.

The proposal will enable the listing applicant and syndicate to select the preferred option depending on expected investor interest and market conditions, whilst preserving retail participation. Institutional investors will have greater certainty that their allocations will not be adjusted which should be a positive factor in their decision to participate in the Hong Kong market.

11.2 If your answer to Question 11.1 is "yes", do you agree with the proposal to require Specialist Technology Companies to only adopt the existing initial allocation and clawback mechanism designed for them, i.e. Mechanism A (as set out in paragraph 251 of the Consultation Paper)?



Please give reasons for your views.
We agree that Specialist Technology Companies should continue to be required to comply with the existing regime. Limiting the initial allocation to the public tranche to 5% is in line with the regulatory expectation for these companies that institutional investors will, by necessity, be the price setters for these IPOs.
Question 12
12.1 Do you agree that we should retain the Allocation Cap? Please give reasons for your views.
We agree that the Allocation Cap should be retained. This provides a level of protection to retail investors that the retail tranche will not be unfairly increased in circumstances where the demand in the placing tranche is less strong.
12.2 If your answer to Question 12.1 is "yes" and subject to the proposals on minimum allocation of offer shares to the public subscription tranche (as set out in paragraph 248 of the Consultation Paper) being adopted, do you agree with the proposed consequential amendments to the triggering conditions of the restrictions on Reallocation and PO Over-allocation (as set out in paragraph 262 of the Consultation Paper)? Please give reasons for your views and any alternative suggestions.
We agree with the consequential amendments proposed. The proposed changes are necessary as consequential changes to align the reallocation percentages with the proposed minimum initial public offer allocation requirements.
12.3 If your answer to Question 12.1 is "yes" and subject to the proposals on minimum allocation of offer shares to the public subscription tranche (as set out in paragraph 248 of the Consultation Paper) being adopted, do you agree with the proposed consequential amendments to lower the proposed Maximum Allocation Cap Percentage Threshold from 30% to 15% (as set out in paragraph 263 of the Consultation Paper)? Please give reasons for your views and any alternative suggestions.
We agree that the Maximum Allocation Cap Percentage Threshold should be lowered from 30% to 15%. This is a proportionate reduction reflecting the proposed changes to the minimum initial public offer allocation.
Question 13
13.1 Do you agree that the Existing Pricing Flexibility Mechanism should be amended to include upward pricing flexibility? Please give reasons for your views and any alternative suggestions.
We agree that upward pricing flexibility should be permitted, subject to the ability of the retail investor to opt out (which we assume can be achieved in the Stock Exchange's proposal by not opting in). This will give issuers greater flexibility to adjust the price to take account of market



conditions and feedback from the bookbuilding process and enable issuers to raise additional funds when there is strong market support.
<p>13.2 If your answer to Question 13.1 is “yes”, do you agree with our proposals to adopt an offer price adjustment limit of 10% in both directions (as set out in paragraph 281 of the Consultation Paper)?</p> <p>Please give reasons for your views and any alternative suggestions.</p>
<p>We consider that a 10% price adjustment in either direction should provide a reasonable level of cushion for a listing applicant when setting its indicative share price or price range.</p>
<p>13.3 If your answer to Question 13.1 is “yes”, in respect of the initial offer price range, would you prefer adjustment to be made:</p> <p>(a) up to 30% of the bottom of that range (as set out in Option A of paragraph 282 of the Consultation Paper); or</p> <p>(b) up to 20% of the bottom of that range (as set out in Option B of paragraph 282 of the Consultation Paper)?</p> <p>Please give reasons for your views and any alternative suggestions.</p>
<p>We do not have strong views on this question.</p>
<p>13.4 If your answer to Question 13.1 is “yes”, do you agree with the Proposed Opt-in Arrangement (as set out in paragraphs 283 to 284 of the Consultation Paper)?</p> <p>Please give reasons for your views and any alternative suggestions.</p>
<p>We do not have strong views on this question.</p>
<p>13.5 If your answer to Question 13.1 is “yes”, do you agree with our proposal to extend the current disclosure requirements (as set out in paragraph 285 of the Consultation Paper)?</p> <p>Please give reasons for your views and any alternative suggestions.</p>
<p>We agree with the proposal. We believe that such disclosure will be important for investors to understand how the fluctuations in the proceeds of the offering (either up or down) will impact the business of the new applicant and its future plans and use of proceeds. This may have an impact on their investment decision.</p>
Question 14
<p>Do you agree with our proposals to make consequential and housekeeping amendments to the Placing Guidelines (as set out in paragraphs 302 and 303 of the Consultation Paper and Appendices I and II to the Consultation Paper)?</p> <p>Please give reasons for your views and any alternative suggestions.</p>
<p>We agree with the specific minor amendments articulated in the Consultation Paper under Question 14 as consequential or clarificatory amendments.</p> <p>We also note that the Stock Exchange is proposing to amend paragraph 11 of the placing guidelines with regard to the information that is required to be provided to the Stock Exchange</p>



before dealings in securities can commence, although we do not see any explanation or rationale for these changes in the Consultation Paper.

We note that the Stock Exchange is proposing that the names, address and identify cards of the beneficial owners of all placees who are companies must be provided to the Stock Exchange in FINI. Previously this requirement was limited to nominee companies. We wanted to clarify whether this amendment is intended to require information on all beneficial owners of a corporate placee (ie every shareholder of the corporate placee) or only the ultimate beneficial owners of a corporate placee (ie any individual who ultimately holds 30% or more)? In our view, the latter would make more sense as otherwise, as currently drafted, every single shareholder or beneficial owner of a corporate placee would need to be listed out in the FINI system which would be an overly onerous task, particularly for placees with lots of shareholders, and would not provide meaningful information to the Stock Exchange. If a corporate placee is a listed company, it would be an impossible task to provide details of all beneficial owners. It would be helpful if the Stock Exchange could further clarify the requirements within the placing guidelines (or supplementary guidance).

We also note that, if the current amendments proceed, the final sentence of paragraph 11 should also be amended as it relates to additional information that the Stock Exchange may require and suggests that this could include details of beneficial ownership. If beneficial ownership information becomes a mandatory requirement, this example should be deleted or replaced with other likely information required.

Question 15

Do you agree with our proposal to disapply the proposed initial public float requirement in the case of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe for or purchase shares (as set out in paragraph 306 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposed disapplication of the proposed initial public float requirement in the case of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe for or purchase shares. The protections set out in paragraph 306 should suffice to ensure an adequate initial public float.

Question 16

Do you agree with our proposal to add new provisions under Appendices D1A and D1B to the Main Board Listing Rules to require disclosure of the minimum prescribed percentage of public float in listing documents (as set out in paragraph 311 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that this is a good opportunity to align the disclosure requirements under Main Board and GEM in this regard. The minimum prescribed percentage of public float should be included in listing documents for Main Board issuers as useful information for investors.

Question 17



Do you agree with our proposal to waive the initial free float requirement for overseas issuers that have, or are seeking, a secondary listing on the Exchange (as set out in paragraph 315 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that, given the existing public float requirement does not apply to overseas issuers seeking a secondary listing in Hong Kong, such companies should also be exempt from the initial free float requirement.

Question 18

Do you agree with our proposal to repeal the requirement that PRC issuers list H-shares that have an expected market value, at the time of listing, of HK\$50 million (as set out in paragraph 319 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the HK\$50 million expected market value requirement for H shares for PRC issuers should be repealed if the proposals in the Consultation Paper are introduced. Such a requirement will no longer be necessary.

Question 19

Subject to the proposals on minimum allocation of offer shares to the public subscription tranche (as set out in paragraph 248 of the Consultation Paper) being adopted, do you agree with the proposed consequential amendment to enable GEM listing applicants to choose either Mechanism A or Mechanism B (as set out in paragraph 325 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the mandatory public offer requirements for GEM listing applicants should be adjusted consistent with the approach for Main Board, permitting such companies to opt for either Mechanism A or Mechanism B which would set the level of the public subscription tranche. Although this could reduce the public offer from the current 10% to 5% under Mechanism A (subject to clawback), GEM listing applicants should be able to benefit from the same flexibility as Main Board listing applicants in structuring the offer.

Question 20

20.1 Do you agree with our proposals on the determination of market capitalisation for new applicants that have other classes of shares apart from the class for which listing is sought or are PRC issuers (as set out in paragraph 333 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree with the proposal. This will provide the market with clarity on how the market capitalisation should be calculated for new applicants with other classes of shares that are unlisted. We also welcome the Stock Exchange's intention to issue guidance on how to determine the market value of shares listed on other regulated markets which we believe will provide useful additional clarity to the market.



20.2 Do you agree with our proposal to introduce an equivalent GEM Listing Rule provision on the basis for determining the market value of other class(es) of shares for a new applicant (as set out in paragraph 335 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the GEM Listing Rules should include equivalent requirements for determining the market value of other classes of shares. We do not believe there is any reason why a different approach would be needed for GEM as compared to Main Board in this regard. We believe that greater consistency in approach between Main Board and GEM will be helpful to the market in providing a standardised system for calculating the market value of a new applicant across both boards.

Question 21

Do you agree with our proposal to amend the Listing Rules (MB Rule 12.02 (GEM Rule 16.07)) to require issuers to publish a formal notice on the date of issue of a listing document for offers or placings where any amount placed is made available directly to the general public (as set out in paragraph 339 of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the reference to the percentage thresholds should be deleted as they are redundant.

Question 22

22.1 Do you agree with our proposal to amend Chapter 18B of the Main Board Listing Rules so that the open market requirements of MB Rule 8.08 do not apply to Successor Company's warrants (as set out in paragraph 349(a) of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the open market requirements of Main Board Rule 8.08 should not be applied to a Successor Company's warrants given that the spread of warrant holders is outside of the control of the Successor Company.

22.2 Do you agree with our proposal to amend Chapter 18B of the Main Board Listing Rules so that the minimum market value requirement of MB Rule 8.09(4) does not apply to SPAC Warrants and Successor Company's warrants (as set out in paragraph 349(b) of the Consultation Paper)?

Please give reasons for your views and any alternative suggestions.

We agree that the minimum market value requirements should not apply to SPAC Warrants and Successor Company warrants given the difficulties in determining their market value.

Question 23

Do you agree with our proposal to amend MB Rule 18C.08 so that the 50% minimum requirement is to be determined by reference to the total number of shares initially offered in the IPO (as set out in paragraph 352 of the Consultation Paper)?



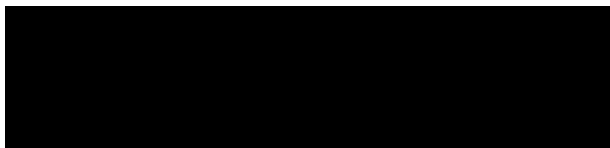
Please give reasons for your views and any alternative suggestions.

We agree that the 50% minimum requirement should be calculated by reference to the number of shares initially offered in the IPO (before any adjustments). This will set a clearly defined minimum requirement that is not subject to future events.

Please let us know if you have any queries in relation to the above.

We confirm that we are happy for the contents of this letter to be made publicly available as part of the consultation process.

Yours faithfully,



Herbert Smith Freehills