QUESTIONNAIRE ON PROPOSED CHANGES TO THE LISTING RULES

The purpose of this questionnaire is to seek views and comments from market users and interested parties regarding the issues discussed in the Combined Consultation Paper on Proposed Changes to the Listing Rules (the "Combined Consultation Paper") published by The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), in January 2008.

Amongst other things, the Exchange seeks comments regarding whether the current Main Board Listing Rules and Growth Enterprise Market Listing Rules should be amended.

A copy of the Combined Consultation Paper can be obtained from the Exchange or at http://www.hkex.com.hk/consul/paper/consultpaper.htm.

Please return completed questionnaires on no later than **7 April 2008** by one of the following methods:

By mail or hand delivery to:	Corporate Communications Department Re: Combined Consultation Paper on Proposed Changes to the Listing Rules Hong Kong Exchanges and Clearing Limited 12th Floor, One International Finance Centre 1 Harbour View Street, Central Hong Kong
By fax to:	(852) 2524-0149
By email to:	cvw@hkex.com.hk

The Exchange's submission enquiry number is (852) 2840-3844.

Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages as necessary.

Issue 1: Use of websites for communication with shareholders

Question 1.1: Do you agree that the Rules should be amended so as to remove the requirement that all listed issuers must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong with regard to how they make corporate communications available to shareholders (as proposed in paragraph 1.20(a) of the Combined Consultation Paper)?

☒ Yes

☐ No

Please provide reasons for your views.

This is the approach adopted in the UK and seems sensible. This proposal should reduce the amount of paper wasted in printing large numbers of hard copies of annual reports and other documents. Whilst the proposed amendments will unfortunately not immediately benefit Hong Kong incorporated listed issuers (because Hong Kong law currently requires Hong Kong companies to obtain the consent of the shareholder to the sending of corporate communications by electronic means), listed issuers incorporated overseas will be able to benefit from the amendments provided that they are not otherwise restricted from doing so under the law of their respective places of incorporation.

Question 1.2: Do you agree that the Rules should be amended so as to allow a listed issuer to avail itself of a prescribed procedure for deeming consent from a shareholder to the listed issuer sending or supplying corporate communications to him by making them available on its website?

☒ Yes

☐ No

Please provide reasons for your views.

Any shareholder who wishes to continue to receive physical documents may respond within the specified time frame to elect to continue receiving documents in hard copy. This seems fair.

Question 1.3: In order for a listed issuer under our proposal to be allowed to send or supply corporate communications to its shareholders by making them available on its website, its shareholders must first have resolved in general meeting that it may do so or its constitutional documents must contain provision to that effect. Do you concur that, as in the UK, the listed issuer should also be required to have asked each shareholder individually to agree that the listed issuer may send corporate communications generally, or the corporate communications in question, to him by means of the listed issuer's website and to have waited for a specified period of time before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer's website?

☒ Yes

☐ No

Please provide reasons for your views.

See above comments.

Question 1.4: If your answer to *Question 1.3* is "yes", do you agree that:

(a) the specified period of time for which the listed issuer should be required to have waited before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer's website should be 28 days;

☒ Yes
☐ No

(b) where a shareholder has refused to a corporate communication being made available to him solely on the listed issuer's website, the listed issuer should be precluded from seeking his consent again for a certain period of time; and

☒ Yes
☐ No

(c) if your answer to (b) is "yes", should the period be 12 months?

☒ Yes
☐ No

Please provide reasons for your views.

28 days is a reasonable period of time for shareholders to respond. Shareholders should not be pestered to change their minds if they have elected to continue to receive documents in physical form.

Do you have any other comments you consider necessary to supplement your reply to this *Question 1.4*?

Question 1.5: Do you consider that the Rules should be amended to remove the requirement for express, positive confirmation from a shareholder for the sending of a corporate communication by a listed issuer to the shareholder on a CD?

☒ Yes

☐ No

Please provide reasons for your views.

The same reasoning as set out above should apply.

Question 1.6: Do you agree that the draft Rules at Appendix 1 will implement the proposals set out in Issue 1 of the Combined Consultation Paper?

☒ Yes

☐ No

Please provide reasons for your views.

The Exchange may wish to consider adding that it has the right to require production of any document as well as the furnishing of any information.

Issue 2: Information gathering powers

Question 2.1: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information?

☒ Yes

☐ No

Question 2.2: Do you agree that the draft Main Board Rule 2.12A at Appendix 2 will implement the proposal set out in *Question 2.1* above?

☒ Yes

☐ No

Issue 3: Qualified accountants

Question 3.1: Do you agree that the requirement in the Main Board Rules for a qualified accountant should be removed?

☐ Yes

☒ No

Please provide reasons for your views.

Currently a listed issuer must employ a full-time qualified accountant who must be:

(i) a member of senior management; and

(ii) a member of the HKICPA (or another body recognized by HKICPA when granting exemptions from its membership examination requirements)

We understand that there have been complaints that it is expensive to hire HKICPA members and that the rules discriminate against accountants qualified in other jurisdictions such as mainland China. In this connection, we also note that mainland accounting standards are moving towards convergence with IFRSs. That is to say the mainland accounting standards have been significantly different from IFRSs but are now moving towards convergence.

The consultation paper proposes removing the requirement for a qualified accountant. Given the talk of moving to quarterly reporting for Main Board companies and of reducing the time within which listed issuers must release their annual and interim reports, we would have thought the need for a qualified accountant as a member of the senior management of a listed company is becoming all the more important. In fact, personally we would go further and suggest that there are grounds for saying that all listed companies should be required to retain a full time finance director who is suitably qualified..

We are not that sympathetic with regard to the claims made that it is too expensive for a listed issuer to hire a qualified accountant. We take the view that the cost of hiring a qualified accountant should be seen as one of the day-to-day costs associated with being listed – such as employing a company secretary, retaining INEDs, engaging a share registrar and so forth.

However, to the extent to which one might attach weight to the claims that it is difficult to comply with the qualified accountant requirement or that the current rule discriminates against non-Hong Kong qualified accountants then, to our mind, the issues, raised in the consultation paper suggest not that we abolish the requirement for listed companies to employ a full time qualified accountant but rather that we give further consideration as to who should be permitted to act as a qualified accountant. For example, should the rules be relaxed to permit listed companies to employ an accountant who is qualified in a jurisdiction where there is a recognized and respected body of professional accountants and where the accounting standards employed are HKGAP or IFRSs or very similar?

We recognize that this may be politically sensitive as HKICPA (the pre-eminent accounting body in Hong Kong) is recognized by the Listing Rules as the arbiter of who is or is not qualified to be a qualified accountant for the purposes of the Listing Rules. Whilst the issue of who should be regarded as qualified to be a qualified accountant for Hong Kong listed companies may well be a sensitive issue, we do not believe that the answer is to abolish the requirement that listed companies retain a full time qualified accountant in a senior management position.

Question 3.2: Do you agree that the requirement in the GEM Rules for a qualified accountant should be removed?

☐ Yes

☒ No

Please provide reasons for your views.

See above.

Issue 4: Review of sponsor's independence

Question 4.1: Do you agree that the Rules regarding sponsor's independence should be amended such that a sponsor is required to demonstrate independence at any time from the earlier of the date when the sponsor agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of the price stabilisation period, whichever is the later?

☒ Yes

☐ No

Please provide reasons for your views.

That a sponsor should be independent throughout its engagement (and not just at a snapshot in time) should, would have thought, have been self-evident. In passing, we would comment that the sponsor independence criteria set out in the Listing Rules merely limit dependency rather than requiring any real level of independence.

Question 4.2: Do you agree that the draft Rules at Appendix 4 will implement the proposals set out in *Question 4.1* above?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 5: Public float

Question 5.1: Do you agree that the existing Rule 8.08(1) (d) should be amended?

☒ Yes

☐ No

Question 5.2: If your answer to *Question 5.1* is "yes", do you agree that the existing Rule should be amended as proposed at Appendix 5?

☒ Yes

☐ No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

Given the principal reason for a minimum float requirement is to try to ensure that there will be an open market in the trading of a company's shares, a sliding scale in terms of percentage of total shares which must be in public hands makes sense for companies with large market capitalizations. The proposed new rules are clear and do away with the existing procedure whereby the Exchange has to be asked to exercise its discretion to grant a waiver in respect of the minimum 25% public float requirement. I fully support the proposal. For companies which are permitted to have a lower public float than 25%, consideration might be given to requiring that additional provision be made in such cases to ensure that the public float is diversely held. For example, compliance with such additional provision could be made a condition of such companies being permitted to adopt a lower public float percentage.

Question 5.3: Do you have any other comments on the issue of public float? Please be specific in your views.

No.

Question 5.4: Do you agree that the existing Rule 8.24 should be amended?

☒ Yes

☐ No

Question 5.5: If your answer to *Question 5.4* is "yes", do you agree that the existing Rule should be amended as proposed at Appendix 5?

☐ Yes
☒ No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

The Combined Consultation Paper also proposes that any person controlling 5% or more of the voting rights of a listed issuer should be excluded from being counted as a member of the public and so their shares will not be counted as shares in public hands for the purposes of the minimum public float requirements. Presently connected persons (directors and persons holding 10% or more) are excluded when calculating the public float. Independent third parties holding 5% or more but less than 10% of the voting rights of a listed company are currently counted in public float.

We are concerned that if the new rule is to apply generally to all listed issuers and not just to new applicants for listing at the time of their initial listing, no transitional arrangements or saving provisions have been proposed to cater for those listed companies which may cease to have adequate public float once shareholders holding between 5% and 10% are excluded from the public float. If the new rule will have general application, the Exchange should consider whether such shareholders should be grandfathered into the new definition of "public" (subject, no doubt, to certain provisos) or, if not, the Exchange should consider permitting affected listed issuers a lengthy grace period in which to comply with the new public float requirement.

Question 5.6: Do you consider that there is the need to regulate the level of market float?

☒ Yes
☐ No

Question 5.7: If your answer to *Question 5.6* is "yes", do you have suggestions as to how it should be regulated, e.g. in terms of percentage or value, or a combination of both? Please provide reasons for your views.

It is also proposed to exclude from the public float, shares which are subject to a lock-up of more than 6 months. Given the "open market" rationale behind the minimum public float requirement, it makes sense to exclude from the initial calculation of shares in public hands those shares which are locked up for more than 6 months as these shares, whilst they are untradeable, cannot contribute to there being an open market in the shares. Once such shares are released from the lock-up, they should no longer be excluded from the public float absent any other reason why they should be so excluded.

Issue 6: Bonus issues of a class of securities new to listing

Question 6.1: Do you agree that the requirement for a minimum spread of securities holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) should be disapplied in the event of a bonus issue of a class of securities new to listing?

☒ Yes

☐ No

Please provide reasons for your views.

It is difficult to ascertain whether the minimum spread of holders requirement would be met in the case of bonus issues of a new class of securities due to practical difficulties in determining the beneficial shareholders of a company after listing. The Exchange's proposal is sensible.

Question 6.2: Do you consider it appropriate that the proposed exemption should not be available where the listed shares of the issuer may be concentrated in the hands of a few shareholders?

☒ Yes
☐ No

If so, do you consider the five-year time limit to be appropriate?

☐ Yes
☒ No

Please provide reasons for your views.

We agree that this 'open market' assumption should not apply should there have been any indication within a period of time in the past that the issuer's shares may be concentrated in the hands of a few shareholders. Five years seems a long time.

Question 6.3: Do you agree that the draft Rules at Appendix 6 will implement the proposals set out in *Questions 6.1 and 6.2* above?

☐ Yes
☐ No

Please provide reasons for your views.

We have concern that five years may be too long.

Issue 7: Review of the Exchange's approach to pre-vetting public documents of listed issuers

Question 7.1: Do you agree that the Exchange should no longer review all announcements made by listed issuers?

☒ Yes
☐ No

Please provide reasons for your views.

The move away from pre-vetting towards post-vetting and enforcement is a positive step in the context of the proposed introduction of statutory backing for certain aspects of the Listing Rules.

Question 7.2: Do you have any views on the proposed arrangements and issues the Exchange should consider in order to effect an orderly transition from the current approach to the new approach with a further reduction in the scope of pre-vetting of announcements?

The proposals appear to be sensible.

Question 7.3: Do you support the proposal to amend the pre-vetting requirements relating to:

(a) circulars in respect of proposed amendments to listed issuers' Memorandum or Articles of Association or equivalent documents; and

☒ Yes
☐ No

(b) explanatory statements relating to listed issuers purchasing their own shares on a stock exchange?

☒ Yes
☐ No

Please provide reasons for your views.

Question 7.4: Do you agree that the Exchange should continue to pre-vet (pursuant to a new requirement in the Rules) the categories of documents set out in paragraph 7.50 of the Combined Consultation Paper?

☒ Yes
☐ No

Please provide reasons for your views.

The Exchange has proposed a gradual phased shift away from pre-vetting, with potentially higher compliance risk documents continuing for the time being to be pre-vetted whilst more mundane documents will be post-vetted. This appears to be a sensible way in which to proceed. The move to post-vetting may result in some initial problems in the market in terms of listed companies and/or their advisers failing to comply with their obligations. However, it is to be hoped that post-vetting checking and subsequent enforcement action, which will be all the more effective once statutory backing is introduced, will result in an overall raising of standards with those unable or unwilling to play by the required standards being forced out of the market.

Question 7.5: Do you support the proposal to amend the circular requirements relating to discloseable transactions including the proposal regarding situations where the Rules currently require that expert reports are included in a circular?

☒ Yes

☐ No

Please provide reasons for your views.

Question 7.6: Do you have any comments on the proposed minor Rule amendments described at paragraphs 7.59 to 7.63 of the Combined Consultation Paper? Please provide reasons for your views.

Question 7.7: Do you agree that the draft (Main Board and GEM) Rules at Appendix 7 will implement the proposals set out in Issue 7 of the Combined Consultation Paper?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 8: Disclosure of changes in issued share capital

Question 8.1: Are there any other types of changes in issued share capital that should be included in the Next Day Disclosure Return?

☐ Yes

☐ No

If so, please provide reasons for your views, together with the types of changes.

Question 8.2: Have the various types of changes in a listed issuer's issued share capital been appropriately categorised for the purpose of next day disclosure, bearing in mind the need to strike a balance between promptly informing the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other?

☒ Yes

☐ No

Question 8.3: Is 5% an appropriate *de minimis* threshold for those categories of changes to which it applies?

☒ Yes

☐ No

Please provide reasons for your views.

Question 8.4: Do you have any comments on the draft of the Next Day Disclosure Return for equity issuers?

Question 8.5: Do you have any comments on the draft of the Next Day Disclosure Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

Question 8.6: Is 9:00 a.m. of the next business day an achievable deadline for the Next Day Disclosure Return?

☐ Yes

☐ No

Please provide reasons for your views.

Question 8.7: Do you have any comments on the draft of the revised Monthly Return for equity issuers?

Question 8.8: Do you have any comments on the draft of the revised Monthly Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

Question 8.9: Do you have any comments on the draft of the revised Monthly Return for open-ended CISs listed under Chapter 20 of the Main Board Rules?

Question 8.10: Is 9:00 a.m. of the fifth business day following the end of each calendar month an achievable deadline for publication of the Monthly Return?

☒ Yes

☐ No

Please provide reasons for your views.

Question 8.11: Should the Exchange amend the Rules to require listed issuers to make an announcement as soon as possible when share options are granted pursuant to a share option scheme?

☒ Yes

☐ No

If so, do you have any comments on the details which we propose to require listed issuers to disclose in the announcement?

I believe this is a good proposal. The grant of share options is a sensitive event and the market should be provided with the details as soon as possible after any grant.

Question 8.12: Do you agree that the draft Rules at Appendix 8A will implement the proposals set out in Issue 8 of the Combined Consultation Paper?

☐ Yes

☐ No

Please provide reasons for your views.

Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue

Question 9.1: Do you support the proposal to amend Main Board Rule 13.28 and GEM Rule 17.30 to extend the specific disclosure requirements to other categories of issues of securities for cash and to include additional items of information in the amended Rule?

☒ Yes

☐ No

Please provide reasons for your views.

The content requirements for announcements in respect of the issue of securities under general mandate would seem relevant to any fundraising exercise. The proposal to extend these disclosure requirements to announcements for all issues of securities for cash (irrespective of whether general mandates are involved) seems reasonable and should ensure that the market is provided with timely information about all issues of securities whether under general mandate or not.

Question 9.2: Do you agree that the draft Rules at Appendix 9 will implement the proposal set out in *Question 9.1* above?

☐ Yes

☐ No

Please provide reasons for your views.

Question 9.3: Do you support the proposal to amend Main Board Rules 7.21(1) and 7.26A(1) and GEM Rules 10.31(1) and 10.42(1) to require listed issuers to disclose the basis of allocation of the excess securities in the announcement, circular and listing document for a rights issue/open offer?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 10: Alignment of requirements for material dilution in major subsidiary and deemed disposal

Question 10.1: Should the Rules continue to impose a requirement for material dilution, separate from notifiable transaction requirements applicable to deemed disposals?

☐ Yes

☒ No

Please provide reasons for your views.

It would appear otiose.

Question 10.2: Do you agree that the requirements for material dilution under Main Board Chapter 13 and GEM Chapter 17 should be aligned to those for deemed disposal in Main Board Chapter 14 and GEM Chapter 19?

☒ Yes

☐ No

Please provide reasons for your views.

Question 10.3: Do you agree that the draft Rules at Appendix 10 will implement the proposals set out in *Question 10.2* above?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 11: General mandates

Question 11.1: Should the Exchange retain the current Rules on the size of issues of securities under the general mandate without amendment?

☒ Yes

☐ No

If yes, then please provide your comments and suggestions before proceeding to *Question 11.3* below.

The existing rules permit the granting by shareholders of a general mandate to the directors to issue to independent third parties 20% of the shares in issue at the date of the resolution approving the mandate. The issue price must not be at a discount of 20% or more to the market price. Further, any issue of securities under general mandate will be equally dilutive to the controlling shareholder/directors as it is for minority shareholders. This seems to strike a reasonable balance between protecting minority shareholders from abuse of the general mandate and permitting listed issuers the flexibility to act quickly to take advantage of market conditions to raise capital or to issue securities as consideration for acquisitions. If any tightening is to be made, it may be better to tighten the shareholders' approval requirements rather than the scope of the mandate. For example, the initial grant of the mandate could be made subject to shareholders' approval with the controlling shareholder (or if no controlling shareholder, the directors (other than INEDs) and chief executive) being precluded from voting in favour - which is the current requirement for approval of refreshments.

Question 11.2: Should the Exchange amend the current Rules to restrict the size of the general mandate that can be used to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities to: *(choose one of the following options)*

☐ 10%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should be the percentage of the issued share capital for issuing securities for such other purposes?

☐ 5%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should the percentage of the issued share capital be for issuing securities for such other purposes?

☐ 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)?

☐ a percentage other than 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)? If you support this option, then please state the percentage you consider appropriate. _____

Please provide your comments and suggestions.

Question 11.3: Should the Exchange amend the current Rules so as to exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the granting of the general mandate? (In other words, the listed issuer's issued share capital as at the date of the granting of the general mandate would remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting.)

☐ Yes

☒ No

If yes, please provide your comments and suggestions.

We do not consider there to be a problem with the current rule in this regard.

Question 11.4: Should the Exchange amend the current Rules such that:

(a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmarked price" would apply only to placings of shares for cash;

(b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and

(c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information?

☐ Yes

☒ No

Question 11.5: Do you have any other comments or suggestions in relation to general mandates? Please specify.

We believe that the Exchange's concerns about the use of general mandates to issue options and convertibles has some basis and there might be reasonable grounds to restrict the use of general mandates to issues of listed securities (such as listed shares and listed warrants). We do not believe the general mandate should be restricted to issues for cash.

Further, another possible area for tightening the rules might be to require that any placing of securities to independent third parties for cash be carried out through one or more independent stockbrokers to clients who: (i) are professional investors (e.g. investment funds); or (ii) have been clients of such brokerage firm(s) for at least 12 months with each client being required as a pre-condition to being a placee to make a declaration that he has no connection whether financial, business or family with any of the connected persons of the listed company. If the listed company wishes to place to any person which has such a connection with a connected person, the placing should be put to the listed company's independent shareholders for approval. One might expect that this should not unduly restrict listed companies' ability to raise finance by way of placings as placees with such a connection/relationship might be expected to be willing to accept the delay inherent in obtaining shareholders' approval.

Issue 12: Voting at general meetings

Question 12.1: Should the Exchange amend the Rules to require voting on all resolutions at general meetings to be by poll?

☒ Yes

☐ No

Question 12.2: If your answer to *Question 12.1* is "no", should the Exchange amend the Rules to require voting on all resolutions at annual general meetings to be by poll (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting)?

☐ Yes

☐ No

Question 12.3: If your answer to *Question 12.1* is “no”, should the Exchange amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to make an announcement on the total number of proxy votes in respect of which proxy appointments have been validly made together with: (i) the number of votes exercisable by proxies appointed to vote for the resolution; (ii) the number of votes exercisable by proxies appointed to vote against the resolution; (iii) the number of votes exercisable by proxies appointed to abstain on the resolution; and (iv) the number of votes exercisable by proxies appointed to vote at the proxy’s discretion?

☐ Yes

☐ No

Question 12.4: In the case of listed issuers other than H-share issuers, the Rules currently require 14 days notice for the passing of an ordinary resolution and 21 days notice for the passing of a special resolution. 21 days notice is also required for convening an annual general meeting. In the case of H-share issuers, 45 days notice of shareholder meetings is required under the "Mandatory Provisions for Companies Listing Overseas" for all resolutions. Should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings?

☐ Yes

☒ No

If so, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the "comply or explain" principle)?

Question 12.5: If your answer to *Question 12.4* is "no", should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all annual general meetings, but not extraordinary general meetings (or, depending on the listed issuer's place of incorporation, special general meetings)?

☒ Yes

☐ No

If the answer is "yes", should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the "comply or explain" principle)?

It should be mandatory.

Question 12.6: Do you have any other comments regarding regulation by the Exchange on the extent to which voting by poll should be made mandatory at general meetings or the minimum notice period required for convening shareholders meetings?

For resolutions to approve connected transactions and other resolutions requiring independent shareholders approval, the shareholders' vote must be taken by way of poll. Otherwise shareholders' resolutions are usually passed by a show of hands – i.e. one person, one vote, rather than on a poll – i.e. one share, one vote. As such, the existing Listing Rules requirement of making a poll mandatory where some shareholders may have a different interest from the others endeavours to strike a balance between ensuring that in such, more sensitive, cases the true wishes of the independent shareholders are reflected in the result of the voting whilst avoiding the cost and inconvenience of voting by way of poll on all resolutions including those of a more mundane nature. Having said that, it is hard to see why the voting principle should not always be "one share, one vote" even if this is more time consuming and expensive than voting by show of hands. Notwithstanding the above, if all voting is not to be by poll, then we would suggest tightening the Listing Rules to require that all special resolutions be voted on by way of poll and any resolution where the voting on a show of hands is not unanimous be immediately re-voted upon by way of poll. We believe that this proposal should ensure that the correct result ensues in all votes.

Issue 13: Disclosure of information about and by directors

Question 13.1: Do you agree that the information set out in draft new Rule 13.51B should be expressly required to be disclosed by issuers up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or re-designation?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.2: Do you agree that the relevant information should be discloseable immediately upon the issuer becoming aware of the information (i.e. continuously) rather than, for example, only in annual and interim reports?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.3: Do you agree that, to ensure that the issuer is made aware of the relevant information, a new obligation should be introduced requiring directors and supervisors to keep the issuer informed of relevant developments?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.4: Do you agree that paragraphs (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2) should be amended to clarify that the disclosure referred to in those Rules need not be made if such disclosure would be prohibited by law?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.5: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.1, 13.2, 13.3 and 13.4* above?

☐ Yes

☐ No

Please provide reasons for your views.

Question 13.6: Do you agree that the Rules should be amended to clarify that issuers should publicly disclose in the Appointment Announcements their directors', supervisors' and proposed directors' and supervisors' current and past (during the past three years) directorships in all public companies with securities listed in Hong Kong and/or overseas?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.7: Do you agree that Main Board Rule 13.51(2)(c) and its GEM Rules equivalent, GEM Rule 17.50(2)(c), should be amended to clarify that issuers should publicly disclose their directors', supervisors' and proposed directors' and supervisors' professional qualifications?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.8: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.6 and 13.7* above?

☐ Yes

☐ No

Please provide reasons for your views.

Question13.9: Do you agree that Main Board Rule 13.51(2)(m)(ii) should be amended to include reference to the Ordinances referred to in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii)?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.10: Do you agree that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended so as to put beyond doubt that the disclosure obligation arises where a conviction falls under any one (rather than all) of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii))?

☒ Yes

☐ No

Please provide reasons for your views.

Question 13.11: Do you agree that the draft Rules at Appendix 13 will implement the proposal set out in *Questions 13.9 and 13.10* above?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 14: Codification of waiver to property companies

Question 14.1: Do you agree that the Proposed Relief should provide relaxation of strict compliance with the shareholders' approval requirements of the Rules only to listed issuers that are actively engaged in property development as a principal business activity?

☒ Yes

☐ No

Please provide reasons for your views.

Question 14.2: Do you agree with the proposed criteria in determining whether property development is a principal activity of a listed issuer (described at paragraphs 14.12 and 14.13 of the Combined Consultation Paper)?

☒ Yes

☐ No

Please provide reasons for your views.

Question 14.3: Do you agree that the scope of the Proposed Relief should be confined to acquisition of property assets that fall within the definition of Qualified Property Projects?

☒ Yes

☐ No

Please provide reasons for your views.

Are you aware of any examples of Hong Kong listed issuers encountering difficulties in strict compliance with the Rules when participating in other types of auctions or tenders? If yes, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.

Question 14.4: Do you agree that Qualified Property Projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules set out in Main Board Chapter 14?

☒ Yes

☐ No

If yes, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.

Question 14.5: Do you agree that the scope of the exemption from strict compliance with Main Board Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons should be limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects?

☒ Yes

☐ No

Please provide reasons for your views.

Question 14.6: Do you agree that the General Property Acquisition Mandate is useful to confer protection on shareholders and is necessary as regards property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures)?

☒ Yes

☐ No

If yes, should the General Property Acquisition Mandate include any limit on the size of the Annual Cap by reference to some quantifiable thresholds? Please provide reasons for your views.

Question 14.7: Are the disclosure obligations described at paragraph 14.51 of the Combined Consultation Paper appropriate?

☒ Yes

☐ No

Please provide reasons for your views.

Question 14.8: Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out in Issue 14 of the Combined Consultation Paper?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 15: Self-constructed fixed assets

Question 15.1: Do you agree that the notifiable transaction Rules should be amended to specifically exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary and usual course of its business?

☒ Yes

☐ No

Please provide reasons for your views.

Question 15.2: Do you agree that the draft Rules at Appendix 15 will implement the proposal set out in *Question 15.1* above?

☒ Yes

☐ No

Please provide reasons for your views.

Issue 16: Disclosure of information in takeovers

Question 16.1: Do you agree that the current practice of the Exchange, i.e. the granting of waivers to listed issuers to publish prescribed information of the target companies in situations such as hostile takeovers, should be codified in the Rules?

☐ Yes

☒ No

Please provide reasons for your views.

Where a listed company acquires a company through an acquisition constituting a VSA or a major transaction, the Listing Rules require the listed company to include in its circular to shareholders certain prescribed information on the offeree company, including an accountants' report if the offeree company is not listed in Hong Kong

Shareholders' approval is required for VSAs and major transactions and a major function of the circular is to provide information to shareholders so that they may vote on an informed basis.

The Stock Exchange recognises the difficulties in complying with such disclosure requirements if the offeree company is listed overseas where there may be no or limited access to non-public information on the offeree company (such as in the case of a hostile takeover), or where there are legal restrictions in providing non-public information to the listed company.

In the past, the Stock Exchange has granted waivers from strict compliance with the accountants' report requirements by accepting, among other things, the disclosure of audited financial statements audited by the offeree company's auditors and a HKGAAP or IFRSs reconciliation statement supported by a comfort letter issued by the listed company's auditors. The Stock Exchange mentioned in the Consultation Paper that it had also granted waivers to allow disclosure of public information of the offeree company (such as audited financial statements audited by overseas auditors in lieu of an accountants' report) in an initial circular (issued before shareholders voted on the acquisition) and required the listed company to publish a supplemental circular at a later time when the listed company is able to exercise control or gain access to the offeree company's books and records, whichever is earlier. We are aware of instances of the Stock Exchange granting similar waivers in respect of the acquisition of part of an overseas listed business without requiring any supplemental circular.

The proposed new rules require in such cases that a supplemental circular be issued containing all information required under the Listing Rules which has not been set out in the initial circular.

This means, if an accountants' report is not included in the initial circular, the supplemental circular will have to contain such an accountants' report.

In our opinion this is unnecessarily onerous and in terms of cost/benefit does not seem justified.

This supplemental circular will of course be issued after shareholders have approved the acquisition and the acquisition has been completed and so comes too late to assist shareholders in deciding whether to note to approve or reject the acquisition. To extent it is similar to the offeror being required to carry out post-acquisition financial due diligence on the listed target's published audited accounts and to publish the results. The listed issuer will be required to disclose any price sensitive matters in respect of the target which it discovers post-acquisition under its general disclosure obligations under the Listing Rules (e.g. Rule 13.09 of the Main Board Listing Rules).

Even after the listed company has gained access to the offeree company's books after obtaining control of the target, there may be practical difficulties in preparing a full accountants' report for inclusion in the

supplemental circular. In the case of a hostile takeover in particular, the entire board of directors of the offeree company may well resign upon completion of the takeover and the new board of directors of the offeree company may comprise representatives from the Hong Kong listed company which has become the new controlling shareholder. The new board may have difficulty in providing the necessary representation letter to the reporting accountants for the purpose of compiling an accountants' report in respect of the results and financial position of the offeree company for the past 3 years. Any accountants' report which may be prepared may be so heavily qualified as to render it of little value ot investors.

Whilst the Combined Consultation Paper helpfully sets out the rules/practices in overseas markets when discussing certain other policy issues, unfortunately the equivalent rules in the UK in respect of this particular policy issue have not been discussed.

The United Kingdom Listing Rules do not require the reporting accountants to express any audit opinion ("true and fair view" opinion) on the financial statements of an acquisition target which is listed in the UK or overseas.

If the target is (a) UK listed or (b) listed overseas and there is no material adjustments needed to make the target's financial statements consistent with the offeror's, then no accountant's opinion is required at all. The United Kingdom Listing Rules provide that a reconciliation of the historic financial statements to the offeror's accounting policies is required, supported by an accountants' opinion on the reconciliation, where there are material adjustments needed to make the target's financial statements consistent with the offeror's. This seems a sensible approach and one that the Exchange here should consider following.

For the purposes of completeness, we should mention that the United Kingdom Listing Rules (LR 13.4.3) do require a supplemental circular in certain limited cases, primarily hostile takeovers. The principal financial information required to be included in the supplemental circular is the working capital statement on the enlarged group – no accountants' report on the offeree company is required.

Question 16.2: Do you agree the new draft Rule should extend to non-hostile takeovers where there is insufficient access to non-public information as well as hostile takeovers?

☐ Yes
☒ No

Please provide reasons for your views.

See above.

Question 16.3: Paragraph (3) of the new draft Rule proposes that the supplemental circular must be despatched to shareholders within 45 days of the earlier of the following:

- the listed issuer being able to gain access to the offeree company's books and records for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under Rules 14.66 and 14.67 or 14.69; and
- the listed issuer being able to exercise control over the offeree company.

Do you agree that the 45-day time frame is an appropriate length of time?

☐ Yes
☒ No

Please provide reasons for your views.

It may well be too short a period of time.

Question 16.4: Do you have any other comments on the draft new Rule 14.67A at Appendix 16? Please provide reasons for your views.

Issue 17: Review of director's and supervisor's declaration and undertaking

Question 17.1: Do you agree that the respective forms of declaration and undertaking for directors and supervisors (i.e. the DU Forms) should be streamlined by deleting the questions relating to the directors' and supervisors' biographical details?

☒ Yes
☐ No

Please provide reasons for your views.

Question 17.2: Do you agree that the DU Forms for directors should be amended by removing the statutory declaration requirement?

☒ Yes
☐ No

Please provide reasons for your views.

Question 17.3: Do you agree that the GEM Rules should be amended to align with the practice of the Main Board Rules as regards the timing for the submission of DU Forms by GEM issuers, such that a GEM issuer would be required to lodge with the Exchange a signed DU Form of a director or supervisor after (as opposed to before) the appointment of such director or supervisor?

☒ Yes

☐ No

Please provide reasons for your views.

Question 17.4: Do you agree that the Rules should be amended such that the listing documents relating to new applicants for the listing of equity and debt securities must contain no less information about directors (and also supervisors and other members of the governing body, where relevant) than that required to be disclosed under Main Board Rule 13.51(2) or GEM 13.50(2), as the case may be?

☒ Yes

☐ No

Please provide reasons for your views.

Question 17.5: Do you agree that the application procedures should be amended as discussed in paragraph 17.20 to harmonise with the proposed amendments for the purpose of streamlining the respective DU Forms?

☒ Yes

☐ No

Please provide reasons for your views.

Question 17.6: Do you agree that the draft Rules at Appendix 17 will implement the proposals set out in Issue 17 of the Combined Consultation Paper?

☐ Yes
☐ No

Please provide reasons for your views.

Question 17.7: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information from directors?

☒ Yes
☐ No

Question 17.8: Do you agree that the draft paragraph (c) to the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.7* above?

☒ Yes
☐ No

Question 17.9: Do you agree that paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules should be amended to include detailed provisions for service similar to those of the GEM Rules?

☒ Yes
☐ No

Question 17.10: Do you agree that the proposed amendment to paragraph (e) of the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.9* above?

☒ Yes
☐ No

Question 17.11: Do you agree that the Rules should be amended to make express the ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking?

☒ Yes
☐ No

Issue 18: Review of Model Code for Securities Transactions by Directors of Listed Issuers

Question 18.1: Do you agree with the proposed new exceptions to paragraph 7(d) of the Model Code?

☒ Yes
☐ No

Please provide reasons for your views.

The exceptions are sensible and these types of 'dealing' do not bestow any advantages on the director.

We would further propose that all off-market transactions be exempted. However, if that is unacceptable, we propose in the alternative that (i) dealings between directors of the same listed company and (ii) sales of securities by a director off market to a purchaser who knows the seller is a director of the relevant listed company, be exempted.

With regard to the wording of Appendix 10 (Main Board) paragraph 7 (d)(iii), we would suggest that the Exchange consult with the SFC as to whether it would be appropriate to delete "other than those that are concert parties (as defined under the Takeovers Code)".

Question 18.2: Do you agree with the proposal to clarify the meaning of "price sensitive information" in the context of the Model Code?

☒ Yes
☐ No

Question 18.3: Do you agree that the draft new Note to Rule A.1 of the Code would implement the proposal set out in *Question 18.2* above??

☒ Yes
☐ No

Please provide reasons for your views.

Question 18.4: Do you agree that the current "black out" periods should be extended to commence from the listed issuer's year/period end date and end on the date the listed issuer publishes the relevant results announcement?

☐ Yes
☒ No

Please provide reasons for your views.

Whilst it may well be unpopular with directors of listed companies, we believe it is appropriate to extend

the trading black-put periods.

Given that the directors often have a clear idea as to the likely financial results earlier than the proposed black-out commencement dates, there is clearly concern for minority shareholders about directors' share dealings. Further, one might take the view that directors should not be active traders in the shares of their companies. We suggest that Hong Kong adopt the UK approach where the black-out is (we believe):

- 2 months immediately prior to the preliminary announcement of annual results or half-yearly results (for Hong Kong we could stipulate instead the relevant board meeting date)

- 1 month preceding the announcement of quarterly results (for Hong Kong we could stipulate instead the relevant board meeting date or deadline for publication of the results announcement)

We believe that an extension of this nature to the black-out periods is appropriate.

Question 18.5: Do you agree that there should be a time limit for an issuer to respond to a request for clearance to deal and a time limit for dealing to take place once clearance is given?

☒ Yes
☐ No

Question 18.6: Do you agree that the proposed time limit of 5 business days in each case is appropriate?

☒ Yes
☐ No

Please provide reasons for your views.

Minor Rule amendments

The Exchange invites your comments regarding whether the manner in which the proposed minor Rule amendments set out in Appendix 19 have been drafted will give rise to any ambiguities or unintended consequences.

Do you have any other comments in respect of the issues discussed in the Combined Consultation Paper? If so, please set out your additional comments.

Name	:	John Maguire / Allen Tze	Title	:	
Company Name	:	(The submission is being made in our personal capacities)	Firm ID	:	
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