
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 will contribute to protecting the environment by significantly reducing the quantity of printed material received by shareholders. The implementation of this amendment will put pressure on the Standing Committee on Company Law Reform to speed up the process of amending the Companies Ordinance to facilitate dissemination of corporate communications by electronic means.

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.

Deemed consent is sensible given that failure to respond is likely to reflect shareholder inertia rather than shareholder objection. In addition the proposal is in line with the procedures for deeming consent in respect of sending summary financial reports. We would, however, recommend going further and adopting the Australian position, where shareholders are not asked whether they want to receive hard copies but are entitled to receive them if they ask for them.

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.

We advocate adopting the Australian position. See response to 1.2.

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.

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

Nil.

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.

This will contribute to protecting the environment by reducing the quantity of printed material sent to shareholders.

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.

We agree that the draft Rules will implement the Exchange's proposals, but, for the reasons given above, disagree in detail with the proposals.

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.

Following convergence of accounting standards in Mainland China and in Hong Kong, the need for Hong Kong qualified accountants for H share issuers for the purpose of compliance with Hong Kong accounting and reporting standards has reduced.

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 answer to 3.2 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.

We agree with the reasons set out in paragraph 4.3 of the Combined Consultation Paper.

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.

The proposed reduced public float requirements apply only to new issuers. We recommend that the reduced public float requirements also apply to existing issuers. If a lower public float is appropriate for large cap new issuers, why should it not be equally appropriate for large cap existing issuers?

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

See our response to 5.5 below.

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 change proposed should not be made. The exchange seems to be recommending the change because cornerstone investors in IPOs with holdings of between 5% and 10% are thought to have influence (by board representation for example) which makes them in effect non-public shareholders. Whether or not this is the case, it is not an argument for ordinary portfolio investors to be treated as not members of the public, particularly where those investors are themselves (as is the case with many institutional investors) representing large numbers of individual investors whose funds are being managed by a single investment manager.

Lowering the threshold will make it easier than it already is for unscrupulous minority shareholders to acquire sufficient shares (often a very small number) to cause the public float to fall below the required percentage and then put unfair pressure on controlling shareholders to buy all of the shares held by the unscrupulous shareholder and place those shares out at a loss to the controlling shareholders.

We are of the view that Rule 8.24 should be amended so that the onus of restoring the public float should be on the person who causes the breach. In most normal circumstances, the issuer has no control over the identity of those interested in its shares or in the number of shares in which they are interested. These are matters determined by third party buyers and sellers of its shares. This means that the issuer can neither prevent a person from causing a breach by acquiring shares nor force a shareholder to remedy the breach by disposing of shares. The issuer can issue new shares to the public so as to dilute the holdings of existing shareholders, but it is doubtful whether it is lawful for it to do this if it has no genuine need for new capital.

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.

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.

We agree with the reasons set out in paragraph 6.5 of the Combined Consultation Paper.

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 with the reasons set out in paragraph 6.3 and the proposal set out in paragraph 6.6 of the Combined Consultation Paper.

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.

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.

We agree with the reasons set out in paragraphs 7.8 - 7.11 of the Combined Consultation Paper. We would go further and advocate a system where no prevetting is compulsory, but issuers could request prevetting of any stock exchange announcements or circulars.

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?

Nil.

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.

We believe that in general listed issuers should be free to decide themselves whether to seek pre-vetting. We think it is unlikely that pre-vetting would be requested for the documents to which this question refers.

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.

See our response to 7.1 above.

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.

We agree with the reasons set out in paragraph 7.56 of the Combined Consultation Paper.

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.

The proposal set out in paragraph 7.62 will mean that the Exchange's disclaimer statement will have to be included in all notices of general meetings (Rule 13.37), proxy forms (Rule 13.38), notices of board meetings (Rule 13.43), annual reports (Rule 13.46), interim reports (Rule 13.48), announcements on changes of directors and other changes (Rule 13.51). This is too cumbersome and not necessary. We propose that documents issued under Chapter 13 of the Listing Rules need not include the Exchange's disclaimer statement.

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.

Our answering yes is without prejudice to our view that the proposed Note 5 to Rule 13.52 should exclude all documents, circulars, announcements of notices issued under Chapter 13 of the Listing Rules.

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.

Nil.

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.

The proposed 5% de minimis threshold is in line with the 5% disclosure threshold under the Securities and Futures Ordinance.

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

The notes to the Next Day Disclosure Return should set out / provide for the following:
(a) the closing market price per share should refer to closing market price per share on the last trading day where share trading has been suspended;
(b) in Note 5, the issued share capital should exclude shares repurchased but not yet cancelled;
(c) in order for the correct closing balance to be reported, events exempted under the proposed Rule 13.25A(3) will become discloseable in the Next Day Disclosure Return if a subsequent event under the proposed Rule 13.25A(2) takes place during the same month and before the next monthly return falls due;
(d) voluntary disclosure in respect of events covered under the proposed Rule 13.25A(3).

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?

Same as the comments under Question 8.4.

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?

Nil.

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?

Nil.

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?

Nil.

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?

Nil.

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.

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.

For the avoidance of doubt, any allotment of shares in respect of the exercise of share options should be specifically excluded from the proposed Rule 13.28.

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.

We agree with the reasons set out in paragraphs 10.1 to 10.4 of the Combined Consultation Paper.

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.

We concur with the reasons set out in paragraphs 10.1 to 10.4 of the Combined Consultation Paper.

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.

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.

We propose that the general mandate for issuing shares should be up to 20%, subject to shares being issued wholly for cash shall not exceed 5%.

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.

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 “benchmark 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.

Share allotments in respect of the exercise of share options previously approved at general meeting need not be subject to a specific mandate.

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)?

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?

The proposed lengthening of the 21-day AGM notice and 14-day EGM notice periods is too restrictive and will cause uncertainties and inconvenience to listed issuers and delays in executing transactions which require shareholders' approval at general meetings. We agree with with the arguments against this change set out in the bullet points at the end of paragraph 12.49 of the Combined Consultation Paper and do not believe that the consultation paper makes out the case that investors have insufficient time to consider proposals to be voted on at general meetings. .

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.

Continuous public updating of information about directors will be onerous and give rise to monitoring difficulties. This applies in particular to continuous updating of information about a director's other directorships and appointments.

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.

See answer to 13.1 We think that updating the biographical information about directors in annual reports is sufficient.

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.

The current practice of obtaining directors' updates, e.g. for the purpose of preparing annual reports, is sufficient.

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.

We agree with the reasons set out in paragraph 13.6 of the Combined Consultation Paper.

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.

Yes, but without prejudice to our view that the proposals should not be implemented.

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.

Question 13.9: 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.

We agree with the reasons set out in paragraphs 13.21 to 13.25 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraphs 13.21 to 13.25 of the Combined Consultation Paper.

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.

Nil.

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.

No percentage threshold should be specified. The actual proportions between the revenue and capital elements of a project may need to be adjusted in accordance with market conditions. It would be in the interest of the listed issuer and its shareholders as a whole to retain such flexibility.

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.

We agree with the reasons set out in paragraphs 14.31 to 14.35 of the Combined Consultation Paper.

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.

No. The proposed requirement to provide detailed basis upon which caps are calculated and the proposed working capital statement (see paragraphs 14.40 and 14.41 of the Combined Consultation Paper) should provide sufficient protection to shareholders.

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.

The Waiver and General Property Acquisition Mandate are not meant to provide a general exemption from the disclosure obligations under Rule 13.09 and Chapters 14 and 14A of the Listing Rules.

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.

We agree with the reasons set out in paragraphs 15.8 to 15.9 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraph 16.2 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraph 16.2 of the Combined Consultation Paper.

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.

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.

Nil.

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.

We agree with the reasons set out in paragraphs 17.5 to 17.7 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraphs 17.9 to 17.13 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraph 17.8 of the Combined Consultation Paper.

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.

We agree with the reasons set out in paragraph 17.19 of the Combined Consultation Paper.

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 proposed new exceptions are pragmatic.

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.

We agree with the reasons set out in paragraph 18.7 of the Combined Consultation Paper.

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.

We do not accept that directors are likely to be in possession of unpublished price sensitive information just because a financial period has ended. It is not until the results of the period become known to the directors that they are in possession of the unpublished price sensitive information which those results constitute or may constitute. They will not be in possession of such information until some time after the end of the period, in practice probably until around the time when the current "black out" period starts. They may or may not be in possession of other price sensitive information, but this has nothing to do with the financial calendar and, if they are in possession of such other financial information (or for that matter if they know the results, and those results are price sensitive, before the beginning of the "black out" period), they are precluded from dealing in any event.

We do not, incidentally, think that extending the "black out" period as a means of encouraging companies to report earlier is appropriate. If shorter reporting periods are thought to be appropriate, they should be argued for on their own merits.

We are therefore of the opinion that the current "black out" period of 1 month 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.

The concerns set out in paragraph 18.25 are adequately addressed by the absolute prohibitions set out in paragraphs A.1 and A.2 of Appendix 10 of the Main Board Listing Rules.

The proposed time limit of 5 business days is too restrictive and will place significant and unnecessary administrative burdens on the listed issuers.

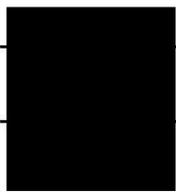
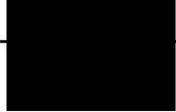
Minor Rule amendments

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.

On issue 2, we do not consider that the Exchange's existing powers to require information from listed issuers are inadequate. A small minority of listed issuers unwilling to provide information promptly in response to enquiries under the Exchange's existing, quite wide, powers does not justify further extension of those powers.

Regarding question 17.11, we do not think that the Exchange can, as a matter of law, amend the terms of a director's undertaking without him agreeing to the change.

Name	:	<u>David Fu</u>	Title	:	<u>Company Secretary</u>
Company Name	:	<u>Swire Pacific Limited</u>	Firm ID	:	
Contact Person	:	<u>David Fu</u>	Tel. No.	:	
E-mail Address	:		Fax No.	:	



Our Ref: CSA/PAC1/23

3rd April 2008

By Hand

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

Dear Sirs,

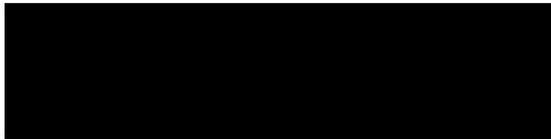
Combined Consultation Paper on Proposed Changes to the Listing Rules

Further to our response submitted via email on 20th March 2008, we are pleased to submit the following supplementary response.

Issue 14: Codification of waiver to property companies.

Given the scale of operations by Hong Kong listed property companies in Mainland China, we recommend that the Waiver be extended so that it applies to public auctions of land in Mainland China conducted by city run land transaction centres. On the basis of our experience, such public auctions are conducted with transparency and integrity (and in a manner which is very similar to the way in which Hong Kong public land auctions are conducted). We suggest that this should address the Exchange's concerns under paragraph 14.17(d) of the Combined Consultation Paper.

Yours sincerely,
For SWIRE PACIFIC LIMITED



David Fu
Company Secretary

