

**Legislative Council**

**Panel on Financial Affairs  
Meeting on 30 December 2008**

**Amendments to Listing Rules arising from the Combined Consultation Paper  
and  
Proposals to Mandate Quarterly Reporting**

**Introduction**

1. This paper summarises the responses of the Hong Kong Exchanges and Clearing Limited (“HKEx”) to the three matters raised by the Panel on Financial Affairs as follows:-
  - Details of the proposed amendments to the Listing Rules to be implemented arising from the Combined Consultation Paper published in January 2008;
  - Plans and timeframe, if any, for the proposed quarterly reporting under the Consultation Paper on Periodic Financial Reporting published in August 2007;
  - Market responses, including feedback of listed issuers on the above two proposals.

**Combined Consultation Paper**

2. On 11 January 2008, the Stock Exchange of Hong Kong Limited (“Exchange”), a wholly-owned subsidiary of the HKEx published a Combined Consultation Paper (“CCP”) on proposals to address 18 substantive policy issues which covers a range of matters designed to enhance corporate governance standards as well as to facilitate the daily operations of the listed issuers and reduce costs of compliance. The CCP is available from the HKEx website at: [http://www.hkex.com.hk/consul/paper/cp200801\\_e.pdf](http://www.hkex.com.hk/consul/paper/cp200801_e.pdf).
3. The conclusion period ended on 7 April 2008. The Exchange received a total of 105 submissions from a wide spectrum of respondents including listed issuers, market practitioners, and professional and industry associations. Except for one respondent who requested the Exchange not to publish his submission, all the submissions are posted on the HKEx website: [http://www.hkex.com.hk/consul/response/combined\\_cp.htm](http://www.hkex.com.hk/consul/response/combined_cp.htm). In addition, the Public Shareholders Group of the Securities and Futures Commission (“SFC”) had also provided its comments on the various issues in the CCP.
4. The consultation conclusions concerning 15 of the 18 substantive policy issues have been finalised and the revised Listing Rules have been approved by the board of the Exchange and the SFC. The revised Listing Rules will become

effective on 1 January 2009. A copy of the consultation conclusion is attached as Appendix I.

5. Overall market feedback indicated general support for the proposals concerning the 15 issues set out above, although certain aspects of the proposals prompted vigorous debate. The remaining three issues, namely Issue 5 (public float), Issue 11 (general mandates) and Issue 15 (self-constructed fixed assets) are under assessment and separate conclusions will be presented to the Exchange Board and the SFC for approval and published in due course.
6. Set out below is a summary of the proposals under each of the 15 issues which have been adopted:

<b>Issue No.</b>	<b>Subject</b>	<b>Summary of the Proposals Adopted</b> <i>(Rule references are to the Main Board Listing Rules.)</i>
1.	Use of websites for communication with shareholders	The Exchange has amended the Rules to introduce a procedure which, if complied with, will permit a listed issuer to deem consent on the part of a shareholder to a corporate communication being made available to him solely on the listed issuer's website.
2.	Information gathering powers	A new Rule has been introduced to codify the powers of the Exchange to gather information from issuers.
3.	Qualified accountants	The Exchange has removed the requirement for a qualified accountant in the Rules and expanded the Code Provisions of Appendix 14 - Code on Corporate Governance Practices regarding internal controls to make specific references to the responsibility of the directors to conduct an annual review of the adequacy of staffing of the financial reporting functions and the oversight role of the audit committee.
4.	Review of sponsor's independence	The Exchange has amended the Rules to require a sponsor to demonstrate independence from the date of submission of Form A1 to the date of listing.
6.	Bonus issues of a class of securities new to listing	The Rules have been amended to disapply the requirement for a minimum spread of securities holders at the time of listing in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares, provided that the existing listed shares of the issuer are not concentrated.

7.	Review of the Exchange's approach to pre-vetting public documents of listed issuers	<p><u>Announcements</u> The Exchange has amended the Rules to implement a progressive phased approach to reduction in pre-vetting activities for different types of listed issuers' announcements.</p> <p><u>Listing documents and circulars of listed issuers</u> The Exchange has removed the circular requirement for discloseable transactions.</p> <p>The Exchange has made amendments to remove from the Rules pre-vetting requirements in respect of circulars for matters of a routine nature that normally do not raise material regulatory concerns, including: circulars for proposed amendments to a listed issuer's Memorandum and/or Articles of Association and explanatory statements relating to listed issuers purchasing their own shares on a stock exchange.</p> <p>The Exchange has also amended the Rules to codify the Exchange's current practice in relation to pre-vetting circulars for significant transactions or arrangements.</p>
8.	Disclosure of changes in issued share capital	<p>The Rules have been amended to require listed issuers:</p> <ul style="list-style-type: none"> <li>• to submit a Next Day Disclosure Return to the Exchange in respect of changes in issued share capital, in some cases by 9:00 a.m. the next business day and in other cases subject to a 5% de minimis threshold and certain other criteria (e.g. aggregation)</li> <li>• for the convenience of listed issuers, the Next Day Disclosure Return has been merged with the current Share Buyback Report</li> <li>• to submit a Monthly Return to provide a regular update on information relating to the listed issuers' share capital and other movements in its securities, including future obligations and commitments to issue shares</li> <li>• to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme to minimise</li> </ul>

		opportunities for backdating such awards
9.	Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue	<p>The Exchange has extended the specific disclosure requirements under the Rules to any issue of securities for cash (and not only cases involving general mandates as under the existing Rules).</p> <p>The Rules have been amended to:</p> <ul style="list-style-type: none"> <li>• require disclosure of additional items of information codifying the disclosure practices in respect of announcements for issues of securities for cash</li> <li>• require disclosure of the basis of allocation of excess shares in the announcement, circular and listing document for a rights issue or an open offer</li> </ul>
10.	Alignment of requirements for material dilution in major subsidiary and deemed disposal	The Exchange has amended the Rules to align the requirements for material dilution in a major subsidiary and deemed disposal such that the requirement for shareholders' consent will be based on a size test threshold of 25% (i.e. the threshold for a major transaction) and that a written certificate may be accepted in lieu of a physical shareholders' meeting.
12.	Voting at general meetings	The Rules have been amended to make voting by poll mandatory on all resolutions at general meetings and to encourage sufficient notice periods to be given for convening such meetings the Exchange has introduced revised provisions in the Code on Corporate Governance Practices.
13.	Disclosure of information about and by directors	The Rules have been amended to require an increased level of continuous disclosure of information about and by directors and supervisors.
14.	Codification of waiver to property companies	The Rules have been amended to codify the conditional waiver that exempts listed issuers actively engaged in property development as a principal business activity from the shareholders' approval requirement under the Listing Rules in certain scenarios of acquisitions of land or property

		development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders.
16.	Disclosure of information in takeovers	A new Rule has been introduced to codify the Exchange's practice of granting waivers to allow listed issuers to publish certain prescribed information on target companies being acquired by the listed issuer in a supplemental circular at a later time when the information becomes available.
17.	Review of director's and supervisor's declaration and undertaking	<p>The Rules have been revised to:</p> <ul style="list-style-type: none"> <li>• streamline disclosure requirements of director's and supervisor's biographical information in the various prescribed forms of declaration and undertaking of directors and supervisors</li> <li>• remove the statutory declaration requirement</li> <li>• codify the Exchange's powers to gather information from directors</li> <li>• include detailed provisions for service of disciplinary proceedings</li> </ul>
18.	Review of Model Code for Securities Transactions by Directors of Listed Issuers	<p>The Model Code has been revised to:</p> <ul style="list-style-type: none"> <li>• introduce three new exceptions to the definition of "dealing"</li> <li>• extend the "black out" period to commence from the listed issuer's financial period end to the date on which the issuer publishes the relevant results announcement</li> <li>• introduce a note to Rule A.1 of Appendix 10 to clarify the meaning of the term "price sensitive information" in the context of the Model Code</li> <li>• impose a time limit for an issuer to respond to a request to deal and a time limit for dealing to take place once clearance is given</li> </ul>

## **Extension of the Black Out Period**

7. In response to the specific concerns raised by Legislative Councillors in their letter to the Chairman of the Legislative Council Panel on Financial Affairs dated 17 December 2008, namely that the extension of the ‘blackout’ period has caused uneasiness amongst market practitioners, we have the following brief comments.
8. The Model Code establishes rules on best practice and is, in particular, concerned with potential or perceived abuse during the periods leading up to the announcement of financial results or other significant announcements of price sensitive information. The Model Code is considered to have an important preventative function in encouraging directors and key employees not to engage in improper conduct. The periods when dealing is prohibited are generally referred to as the “black out” periods.
9. The Model Code imposes restrictions beyond those imposed by law. The purpose of the Model Code can be seen to be: (a) to buttress the statutory provisions in the Securities and Futures Ordinance by creating a mirror obligation that directors, certain employees and those connected with them (Company Insiders) do not abuse unpublished price sensitive information; and (b) to promote investor confidence by creating requirements to remove, or at least mitigate, any suspicion of abuse by Company Insiders of price sensitive information that they may have or be thought to have, especially during periods leading up to an announcement of results.
10. Effective protection against insider trading is critical to market confidence and, over time, liquidity. For individual listed companies failure to adhere to appropriate standards of governance can undermine investor confidence and increases the perception risk that shareholders perceive an “uneven playing field” where a privileged few are able to profit unduly from trading on inside information. The absence of investor confidence can have financially damaging effects; investors may be discouraged from taking a long term interest in the company which may, in turn, erode investor support for fund raising in the primary market and may lead to a higher cost of capital for the listed company; liquidity and valuations may be adversely affected if investors cannot be confident that they will be treated equitably and decide to avoid the securities of certain listed companies.
11. Furthermore, overseas investors may be discouraged from the Hong Kong market by a perception of an uneven playing field. Overseas investors are a vital ingredient in maintaining and developing Hong Kong’s position and aspirations as an international financial centre. However concerns about equitable treatment do not only apply to overseas investors they apply equally to Hong Kong investors including retail investors and participants in the MPF System. Although the MPF System is still comparatively young it has already amassed a substantial amount of assets for the retirement protection of Hong Kong’s working population and

there is significant potential for further growth. Accordingly the revised Model Code will support standards of conduct which over time should benefit the majority of Hong Kong's workforce.

12. The Listing Committee will meet on 30 December 2008 to consider the recent comments from listed issuers, media and four Legislative Councillors together with a letter from the SFC and decide what action or actions the Exchange should take in response to these developments.
13. Amongst other options to consider the Listing Committee have been invited to consider:
  - (a) whether to defer the implementation date of the extended "black out" period and if so by what period; and
  - (b) whether to undertake a review of the new submissions and possible adverse effects arising from the introduction of the new requirements and if so the scope and timing of such a review.

### **Mandatory Quarterly Reporting for Main Board Issuers**

#### Chronology of events

14. We set out below is a chronology of significant events relating to the formulation and evolution of the Exchange's proposals for the introduction of mandatory quarterly reporting for Main Board issuers:-

<b>Date</b>	<b>Description of the Event</b>
31 August 2007	<p>The Consultation Paper on Periodic Financial Reporting was released setting out the Exchange's proposals to implement mandatory quarterly reporting and the rationale for those proposals. The full text of the Consultation Paper is posted on HKEx website at: <a href="http://www.hkex.com.hk/consul/paper/2007831e.pdf">http://www.hkex.com.hk/consul/paper/2007831e.pdf</a>.</p> <p>The Exchange indicated that it preferred to adopt condensed quarterly financial reports rather than the option of UK style interim narrative management statements.</p>
5 February 2008	<p>Listing Committee Policy Meeting: The Listing Committee discussed consultation responses. In response to comments received that more time is needed for Main Board listed issuers to prepare, the Listing Committee decided that before the introduction of formal quarterly reports, as an interim measure, narrative management statements along similar lines to the UK interim narrative management statements should be required. The Listing Committee decided not to proceed with the proposal for a</p>

	phased introduction whereby “large companies” would be required to comply with the rules first with “other companies” allowed an additional transitional period.
13 March 2008	Listing Committee Policy Meeting: the Listing Committee decided on the content of narrative management statements and when formal quarterly reporting should be introduced.
21 April 2008	Listing Committee Policy Meeting: the Listing Committee approved the proposed Consultation Conclusion Paper and the proposed Phase 1 rule amendments. The proposed rules on quarterly reporting were restricted to those governing narrative management statements as the Listing Committee felt that detailed rules on formal quarterly reporting (the Phase 2 rule amendments) could be issued about a year prior to 31 December 2011, the proposed date that formal quarterly reporting would be introduced. The minimum disclosures expected in formal quarterly reports were set out in the proposed Consultation Conclusion Paper so that listed issuers could plan and take the necessary steps to equip themselves with the resources and system enhancement necessary to produce the formal quarterly reports when they became mandatory.
29 April 2008	The Stock Exchange of Hong Kong Limited Board approved the proposed rule amendments for Phase 1.
2 May 2008	The proposed Phase 1 rule amendments were submitted to the Securities and Futures Commission Board (SFC Board) for approval under section 24 of the Securities and Futures Ordinance.
20 June 2008	The decision of the SFC Board was conveyed to the Exchange. The SFC Board concluded that it was unable to approve the Listing Rule amendments to introduce narrative management statements as a transitional measure prior to the introduction of formal quarterly reporting. The SFC Board considered that the Exchange had not submitted an explanation in sufficient detail of the likely effect of the proposed Rules as it did not consult on specific rule changes relating to narrative management statements.
17 July 2008	Listing Committee Policy Meeting: The Committee considered its response to the SFC Board’s decision.  The Listing Committee re-affirmed its earlier decision to introduce mandatory quarterly reporting for Main Board issuers. The Committee also determined that the Consultation on Periodic Financial Reporting provided a sufficient basis on which to make this determination.



	<p>The Committee noted that the Listing Committee and the SFC Board are each independent bodies performing key roles within the three tier structure for listing regulation in Hong Kong. Yet, although there are many lines of communication among the Government, SFC and HKEx and a significant degree of communication at an operational level, there is no formal channel of communication between the Listing Committee and all members of the SFC Board. The Listing Committee remarked on this notable omission and expressed a strong desire to open such a direct channel of communication by establishing a forum which would be open to all members of the Listing Committee and the SFC Board. This mechanism would allow the Listing Committee to understand the SFC Board's position on important policy issues. The Secretary was invited to convey an invitation to the SFC Board.</p>
10 September 2008	<p>The SFC responded to the Listing Committee's invitation and suggested a luncheon meeting.</p>
9 December 2008	<p>Representatives of the Listing Committee and Exchange met with representatives from the SFC.</p>
18 December 2008	<p>Listing Committee Policy Meeting: the Listing Committee met to discuss feedback from the luncheon meeting held on 9 December 2008 and gave further consideration to its proposals to conclude the consultation on quarterly reporting. The Listing Committee decided to withdraw the Listing Rule amendments for Phase 1, which were submitted on 2 May 2008, from the approval process under Section 24 of the Securities and Futures Ordinance and asked the Secretary to the Listing Committee to communicate this decision to the Commission.</p> <p>The Listing Committee also decided that now is the appropriate time for Hong Kong to follow the example of Mainland China by establishing requirements for mandatory quarterly financial reporting albeit with less onerous report content and a more generous reporting timescale. The content of the condensed quarterly financial reports will be along the lines of requirements proposed in the August 2007 Consultation Paper with certain modifications to take into account comments from respondents.</p> <p>The proposals for mandatory requirement for quarterly financial reporting are proposed to take effect for financial quarterly periods ending on or after 31 December 2011.</p> <p>The Listing Rule amendments to implement this proposal will be formally adopted and forwarded to the Commission for approval in the near future.</p>

## Consultation Feedback on the Exchange's Proposals

15. If the SFC approves the Listing Rule amendments to introduce mandatory quarterly financial reporting for Main Board issuers the Exchange will release a consultation conclusions document in due course. The text of that conclusions document has yet to be settled. Nevertheless to provide Legislative Council members with a greater understanding of the Exchange's position we set out below an advanced draft of the likely text of part of that document. The references to question numbers relate to the questions posed in the August 2007 Consultation Paper on Periodic Financial Reporting.

### **“Proposal 2: Introduction of mandatory quarterly reporting for Main Board issuers**

#### Comments received:

##### *Mandatory quarterly reporting (Question 9)*

1. The majority of respondents, who represented mainly Main Board issuers, did not support the introduction of quarterly reporting and most of them expressed concerns on cost and resources issues. An individual investor and a Main Board issuer expressed views that the information was not useful or most investors did not want quarterly reports. An association of investment funds commented that institutional investors generally encourage value proposition and strategies that emphasise long-term management and quarterly reports might result in companies pursuing short-term performance at the expense of long-term strategies. The association subscribed to the merits of quarterly reporting but on balance, felt that the merits may be outweighed by the demerits of the current proposal. Other arguments against the proposal included that:-
  - (i) the proposal will create undue pressure on listed issuers' management, audit committee and also external auditors;
  - (ii) the proposal will result in a short-term management focus;
  - (iii) the accuracy and completeness of quarterly reports may be compromised due to tight reporting deadlines and use of estimates in the preparation of the quarterly reports;
  - (iv) seasonal or property businesses may show misleading results by reporting quarterly and quarterly reporting leads to increases in share price volatility; and
  - (v) the existing Listing Rules on reporting and notification requirements are sufficient.
2. Among those who did not support the proposal, certain Main Board issuers and an association were of the view that there was a considerable difference between

- producing internal management information and external financial reports. Some of the respondents suggested adoption of UK style quarterly narrative management statements.
3. Respondents who supported the proposal mainly represented associations and market practitioners and most of them agreed that the proposal would increase transparency and raise Hong Kong reporting standards in line with the most stringent international practices. Other reasons offered in support of the proposal included that quarterly reporting:-
    - (i) helps investors better understand the performance and financial position of listed issuers;
    - (ii) provides updated information;
    - (iii) facilitates better investor decision-making and protection; and
    - (iv) reduces information asymmetry and risks of insider dealing.
  4. A regulator who supported the proposal raised concern about the implementation timetable in view of the high volume of disclosure compliance requirements for banks from January 2007 following changes in accounting standards. Another regulator and a market practitioner expressed concerns about potential implementation difficulties faced by the market. Most market practitioners welcome more timely communication but noted that the recent changes to accounting standards, in particular the move towards more “fair value” accounting, has significantly increased the burden of preparing financial statements. They commented that the contents of quarterly reports must be meaningful, cost effective and practical.

*Quarterly reporting – deadline in 45 days after the period end (Question 10)*

5. A clear majority of respondents disagreed with the proposal and they mainly represented Main Board issuers. They considered that 45 days was too tight to prepare the proposed quarterly reports. Certain respondents raised concerns on difficulties for September quarterly reports preparation as many working days are lost in October because of Chinese National Day holidays.
6. Among those who did not support the proposal, a market practitioner and an association suggested using the UK style narrative management statements if the 45-day reporting deadline is adopted and a Main Board issuer suggested excluding the condensed consolidated balance sheet and condensed consolidated cash flow statement if the 45-day reporting deadline is adopted.
7. Respondents who agreed with the proposal included professional and trade associations and market practitioners. They agreed that the proposal was consistent with international practices and would provide useful information to investors and reduce insider dealing risks.

*General content of quarterly reports (Question 11)*

8. The majority of respondents who commented on the question disagreed with the proposed contents which were set out in Table 8 to the Consultation Paper. About half of them were Main Board issuers and they were concerned that the proposed disclosures were too extensive. On the other hand, another respondent considered the proposed disclosures as too condensed. One market practitioner commented that the proposed disclosures may result in discrepancies in the contents of quarterly reports required by stock exchanges in the PRC and Hong Kong. Another respondent expressed concern that the proposed disclosures may not provide meaningful disclosures for banks and similar financial institutions.
9. Among those who disagreed with the proposal, there were diverse views as to what should be disclosed. Suggestions included the following:-
  - (i) a preference for UK style narrative management statements;
  - (ii) reduce the detailed disclosure to only key line items for the condensed balance sheet and income statement and remove the forward-looking commentary but agree to the proposed condensed cash flow statement;
  - (iii) adopt IAS 34 or HKAS 34 in providing consistency for interim and quarterly reporting;
  - (iv) apply the same standard of details as half-year reports;
  - (v) provide unaudited financial statements in the same format and to a level of detail similar to annual financial statements subject to some minor modifications; and
  - (vi) provide sufficient information for an investor to analyse the financial health of the company.
10. Around one-fourth of the respondents agreed with the proposed content and they represented a fairly equal distribution amongst Main Board issuers, associations and market practitioners. Most agreed the proposal will provide useful information to facilitate assessing the financial performance of listed issuers on a regular basis for making investment decisions. One market practitioner was of the view that the proposal would bring Hong Kong reporting standards in line with international practices but a quarterly report should not necessarily contain the same amount of information included in half-year reports while another market practitioner considered that the proposal would reinforce the message that quarterly reports should be regarded as short-term high level updates.

*Whether quarterly income statement for the third quarter should contain current quarter results and cumulative year-to-date results together with prior year comparatives? (Question 12)*

11. A majority of respondents supported the proposal as they considered the disclosures proposed were in line with international standards, such as IAS 34 and

HKAS 34; and was useful for trend analysis and comparison of financial performance of listed issuers. One respondent commented that the proposal was consistent with existing GEM Listing Rules.

12. Certain respondents who disagreed with the proposal suggested disclosing only cumulative accumulated year-to-date and its corresponding comparative figures to provide meaningful comparatives especially for businesses with seasonal fluctuations. One respondent suggested following the UK style narrative management statement approach which allows investors to focus on material events which occurred since the last published accounts.

*Whether quarterly income statement for the third quarter should contain the first quarter results and immediately preceding quarter results together with prior year comparatives? (Question 13)*

13. An overwhelming majority of respondents disagreed with the proposal and half of them represented Main Board issuers. Reasons offered against the proposal included:-
- (i) the proposal was unduly complex and burdensome for readers and listed issuers;
  - (ii) investors should be able to refer back, if needed, to the first and second quarters' results as they had been disclosed previously;
  - (iii) half-year report preceding the third quarter report provides more information and there is no need for repeating the first and second quarter results;
  - (iv) the proposal is not consistent with IAS 34 or HKAS 34; and
  - (v) the first and second quarter as a single quarter is too short a time-frame for assessing financial performance and does not provide meaningful comparisons.

*Whether printing and mailing of hard copy of quarterly reports should be required? (Question 14)*

14. An overwhelming majority of respondents, which represented a cross-section of mainly Main Board issuers, associations and market practitioners supported the proposal. Reasons provided by the respondents included cost effectiveness and the environmental impact. Other reasons in support of the proposal included timely release of information to investors and that this proposal would be in line with the web-based disclosure regime.

*Should quarterly reporting be introduced in phases with “large companies” required to comply with the new requirement first? (Question 15)*

15. One-third of the respondents who commented on the question agreed with the proposal. Some of respondents agreed that “large companies” should adopt the practice first as they should have in place good corporate governance practices and systems to do so and the two years delay was adequate for “other companies” to prepare for the proposed changes. One Main Board issuer commented that “large companies” have more resources to tackle the proposed changes. One market practitioner agreed that “large companies” should be required to report earlier due to greater public interest in these companies. However, other market practitioners suggested that more time should be given to “large companies” to facilitate better preparation.
16. A majority of respondents who commented disagreed with the proposal. Over half of them were Main Board issuers, and the rest were market practitioners, associations and retail investors. The main reason was that the proposal was seen as discriminatory to “large companies” and mandatory quarterly reporting, if adopted, should be applied to all listed issuers at the same time.

*Commencement date for mandatory quarterly reporting (Question 16)*

17. An overwhelming majority of respondents who commented disagreed with the proposed commencement date for mandatory quarterly reporting. About half of them were Main Board issuers, and many were also market practitioners and associations. The main reason was that it was not fair and equitable to differentiate “large companies” from “other companies”.

The Exchange’s response and conclusions:

*Mandatory quarterly reporting*

18. The Exchange believes that a more structured flow of information to the market through the introduction of quarterly reporting will provide investors with more timely information and a better understanding of the risks and developments affecting the financial performance and financial position of listed issuers. More regular financial disclosures will provide an opportunity to enhance the quality of the dialogue between issuers and the investing public and will enhance investor confidence as quarterly reporting will enhance transparency and market efficiency, reduce any information asymmetry and in turn reduce the risk of insider dealing.
19. Some respondents, as with the 2002 consultation, suggested that ad hoc disclosures would be adequate and should be regarded as a suitable substitute for quarterly reporting. The Exchange commented in the consultation paper that this is an area of practice which is less well developed in Hong Kong than in some markets, such as the UK. During the consultation period we carried out additional research to determine the extent of a flow of information to investors outside current periodic financial reporting requirements by examining ad hoc disclosures

made by Hong Kong listed issuers pursuant to the general disclosure obligation under Main Board Listing Rule 13.09(1) and its GEM equivalent. Our research indicates that over 50% of listed companies did not issue any ad hoc disclosure during the period from 1 January 2007 to 18 December 2007. This finding supports the view that Hong Kong listed issuers as a whole do not have a well developed practice of regularly updating the market.

20. A number of the ad hoc disclosures of a change in financial performance or condition made in this period and subsequently were published some time after the end of the relevant financial reporting period. These cases raise legitimate concerns about the timeliness of these disclosures and the ability of the issuers in question and their senior management to monitor the issuer's financial performance and financial position update their expectations of the issuer's performance on a regular basis and assess whether prompt disclosure of material developments is needed. The Listing Division is investigating a number of such cases.
21. Under the current Rules, issuers are expected to maintain sound and effective accounting systems and internal controls, and under the Exchange's Code on Corporate Governance Practices, every year, the directors of a listed issuer are required to conduct a review of the effectiveness of the issuer's internal controls. The establishment of an efficient financial reporting and budgeting system and the production of timely and accurate financial information, on at least a monthly basis, are essential prerequisites for a listed issuer to meet its continuing obligations as they relate to disclosure of material changes in its financial performance or financial condition or the issuer's expectation of its performance as well as for quality management decision-making in commercial matters.
22. The Exchange's decision to adopt mandatory quarterly reporting should not be interpreted as a relaxation of the general obligation of disclosure in Listing Rule 13.09(1) and its GEM equivalent. The Exchange, however, expects that the adoption of mandatory quarterly reporting and the discipline of producing regular financial information will put many issuers and their boards in a better position to meet the general obligation of disclosure on a continuous and timely basis.
23. The Exchange appreciates that there will be additional direct and indirect costs in preparing quarterly reports and, in particular formal quarterly financial reports, but the exact costs will vary from company to company. A major reason presented by those dissenting from the proposals for quarterly reporting was that the proposals to introduce formal quarterly reports, which require the disclosure of condensed financial statements, was regarded as too onerous and costly to prepare within the timeframe proposed.
24. In view of the observations above, to the extent that the costs and burdens anticipated by some issuers are a reflection of the underdevelopment of their financial reporting systems and procedures for monitoring compliance with their continuing obligations these are costs which should already be borne by the issuer.

25. Some respondents whilst not in support of quarterly financial reports were receptive to an alternative, namely, UK style narrative management statements which are perceived as being less onerous and costly to implement. This alternative provides, in their view, a more appropriate balance to the benefits and costs of implementing quarterly reporting.
26. We note that, in general, investors would like more information at more frequent intervals and the shorter the reporting period the better; similarly the more information that is provided the better. The Exchange recognises that the value of the information that is provided under its proposals needs to be weighed against the cost of producing that information to ensure that any incremental costs are broadly proportionate and not unduly burdensome.
27. The Exchange accepts that the costs associated with implementation of its proposals will be comparatively easy to distinguish and measure whereas the benefits that accrue from quarterly reporting will be more difficult to quantify, not least because of the intangible nature of some of the benefits expected to accrue. Comparatively little empirical research exists on the impact of the introduction of quarterly reporting in other jurisdictions from which the Exchange can draw reference. Although some respondents cited research which concluded that quarterly reporting had produced an adverse impact, the respondents were not able to provide us with a copy of that research material. However it is clear that there is a wide body of support for anecdotal evidence indicating certain potential adverse consequences of the adoption of quarterly reporting. Concerns of short term thinking by management are one such concern.
28. On the other hand one respondent was able to refer to research studies to support its arguments in favour of the proposal. Specifically, reference was made to the 2000 study “The Economic Consequences of Increased Disclosure” published in the Journal of Accounting Research which showed that more frequent disclosure by German companies resulted in reduced bid-ask spreads and increases in daily turnover evidencing an improvement in market efficiency and liquidity. Another study quoted by the same respondent was published by The Wharton Financial Institutions Center Working Paper Series in 2003 and entitled “Economic Consequences of SEC Disclosure Regulation”. In summary this report concluded that the higher costs associated with stricter SEC reporting requirements were offset by positive stock returns and permanent increases in market liquidity.
29. Although currently many respondents question the value of quarterly reports, the Exchange believes that with the passage of time the value of quarterly financial reporting will be recognised and will come from the discipline gained through repeated preparation of quarterly financial information and more regular communication of such information to shareholders and the investing public. Through the process of preparing quarterly information, both management and investors will gain greater insight into and better understand an issuer’s business cycle and the effects of seasonality, the evolution of the business, the risks the issuer faces and how the issuer addresses such risks through revised strategies. The need to prepare quarterly information will further highlight to issuers the



- need for efficient reporting systems to produce accurate and useful information that is critical for decision-making and Listing Rule compliance. Although there will be costs incurred by listed issuers in establishing and improving reporting systems, these costs should benefit the issuer through better informed management decision-making, more efficient operations and the development of better communication and relationships with its stakeholders.
30. Better informed investors likewise will improve their ability to assess the value and performance of listed issuers, which in turn will attract investors to the more efficiently run enterprises who should benefit from higher market liquidity and lower costs of capital. Quarterly reports which properly explain the impact of developments on the issuer's plans and strategies should also remove the fear expressed by some respondents on the development of "short-termism" following the introduction of quarterly reporting.
  31. The issue of short-termism is one that has attracted significant attention in the US. In 2006 the CFA Institute Centre for Financial Market Integrity and the Business Roundtable Institute of Corporate Ethics co-sponsored a Symposium Series on Short-termism to confirm what academic research in the US suggested concerning short-termism and to make practical recommendations about how corporate leaders and others should tackle the overemphasis in the US market on short term performance. Their paper entitled "Breaking the Short-Term Cycle" provides useful guidance to refocus corporate leaders, asset managers, investors and analysts on long-term value. Many of the suggestions in the document would also appear to be appropriate recommendations for Hong Kong issuers and intermediaries to consider in addressing the possible challenge of short-term thinking were this to materialize in Hong Kong. Other recommendations appear less relevant, for example there would be no need to end the practice of providing quarterly earnings guidance. In Hong Kong there is no established practice of giving such guidance.
  32. One structural factor suggests that Hong Kong listed issuers are better placed than their US counterparts to resist short-termism and instead maintain a focus on long term value. In the US markets the overwhelming majority of listed companies are professionally managed and widely held corporations. In Hong Kong a large majority of issuers are controlled corporations for whom the alignment of shareholder and directors' interests in long-term value should present less of a challenge.
  33. The securities markets in the US and a number of markets in Asia (including the PRC, Tokyo and Singapore) have already adopted quarterly reporting. The UK and European capital markets have also introduced similar obligations which became effective from 20 January 2007. The introduction of mandatory quarterly reporting for Main Board issuers would therefore bring our reporting standards in line with international best practices. Mandatory quarterly reporting is both desirable and needed to reduce information asymmetries and the lack of a structured flow of information in the Hong Kong market. Accordingly, we have decided that formal quarterly reporting will be introduced. In response to the

comments received from the market that more preparation time is needed, a transitional period will be granted. Mandatory formal quarterly reports will only be introduced effective from quarterly periods ending on or after 31 December 2011.

34. The Exchange believes that this move is in the right direction and a lengthy transitional period will provide time for issuers to prepare for formal quarterly reporting.

*Content of quarterly reports*

35. There were diverse views expressed on the proposed content of quarterly reports. At one extreme are those that expressed the view that the proposed disclosures are too extensive and prefer less disclosures, and some of these respondents suggested adoption of UK style narrative management statements. At the other extreme are those that commented that the proposed disclosures are too brief and disclosures similar to annual financial statements subject to some modifications should be provided. There are therefore conflicting views even amongst investors of what disclosures are relevant and useful. The Exchange believes that the original proposal was broadly the right balance between the two extremes. The minimum disclosures currently expected to be included in formal quarterly reports for Main Board issuers for quarters ending on or after 31 December 2011 are based on Table 8 of the Consultation Paper which has been modified to take into consideration some of the comments received from the market, and in particular the need to specify disclosures required by institutions authorised by the Hong Kong Monetary Authority. Listed issuers should therefore plan and take the necessary steps to review the adequacy of their reporting systems and to plan and have the resources required to produce the formal financial quarterly reports when they become mandatory.”

Hong Kong Exchanges and Clearing Limited  
December 2008

**CONSULTATION CONCLUSIONS**  
PROPOSALS IN THE 2008  
COMBINED CONSULTATION PAPER

**November 2008**



**Hong Kong Exchanges and Clearing Limited**  
**香港交易及結算所有限公司**

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## PART A: INTRODUCTION

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1. On 11 January 2008, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**) published a Combined Consultation Paper (**CCP**) on proposals to address 18 substantive policy issues including corporate governance and initial listing criteria, as well as some amendments to improve the clarity, certainty and efficacy of the Listing Rules.
2. This paper presents the results of the consultation concerning 15 of the 18 substantive policy issues. Specifically, the 15 issues are:

Issue no.	Title
1	Use of websites for communication with shareholders
2	Information gathering powers
3	Qualified accountants
4	Review of sponsor's independence
6	Bonus issues of a class of securities new to listing
7	Review of the Exchange's approach to pre-vetting public documents of listed issuers
8	Disclosure of changes in issued share capital
9	Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue
10	Alignment of requirements for material dilution in major subsidiary and deemed disposal
12	Voting at general meetings
13	Disclosure of information about and by directors
14	Codification of waiver to property companies
16	Disclosure of information in takeovers
17	Review of director's and supervisor's declaration and undertaking
18	Review of Model Code for Securities Transactions by Directors of Listed Issuers

3. The consultation period ended on 7 April 2008. The Exchange received a total of 105 submissions from a wide spectrum of respondents including listed issuers, market practitioners, and professional and industry associations. A breakdown of the categories of respondents can be found at Part B of this paper. The submissions are available on HKEx website and a list of respondents is attached as an appendix to this paper (**Appendix**).
4. Overall market feedback indicated general support for the proposals concerning the 15 policy issues set out above, although certain aspects of the proposals prompted vigorous debate.

5. In view of the broad market support, the Exchange intends to implement the proposals outlined in the CCP in respect of the 15 issues, subject to certain modifications as set out in this paper. The remaining three issues, namely, Issue 5 - Public float, Issue 11 - General mandates and Issue 15 - Self-constructed fixed assets remain under assessment and separate conclusions will be published at a later date.
6. Part C of this paper summarises the key points raised in the responses received, and sets out the Exchange's conclusions together with the proposed details of the Rule implementation. This paper should be read in conjunction with the CCP, a copy of which is posted on HKEx website.
7. We have finalised the revised Rules to implement the detailed proposals which are available on HKEx website at "Regulatory Framework and Rules - Rules and Guidelines on Listing Matters - Listing Rules Update for Main Board Listing Rules" and "Regulatory Framework and Rules - Rules and Guidelines on Listing Matters - Listing Rule Update/Interpretation for GEM Listing Rules". The Rules have been approved by the Board of The Stock Exchange of Hong Kong Limited and the Securities and Futures Commission (SFC). The Rule amendments will become effective on 1<sup>st</sup> January 2009 (**Implementation Date**).
8. Unless otherwise specified, all the proposed Rule changes referred to in this paper apply to both the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Main Board Rules**) and the Rules Governing the Listing of Securities on the Growth Enterprise Market (**GEM Rules**) (together referred to as the **Listing Rules** or **Rules**).
9. The Exchange would like to thank all those who responded for sharing their views and suggestions with us.

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## PART B: OVERVIEW OF MARKET RESPONSE

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### The respondents

10. The 105 respondents can be grouped into broad categories as follows:

Category	No. of respondents
Listed issuers	58
Professional and industry associations	15
Market practitioners	22
Statutory regulators	2
Individuals and retail investor representative	8
<b>Total</b>	<b>105</b>

11. A list of the respondents is provided in the Appendix. Except for one respondent who requested the Exchange not to publish its submission, the full text of all the submissions is available on HKEx website at [http://www.hkex.com.hk/consul/response/combined\\_cp.htm](http://www.hkex.com.hk/consul/response/combined_cp.htm) for public reference.

### Overview of the responses

12. The consultation in respect of the proposals under the 15 policy issues set out above was well-received by respondents. Most of our proposals were the subject of positive responses, whilst certain proposals have triggered more active debate.

13. Set out below is a summary of the proposals under each of the 15 issues which have been adopted:

Issue No.	Subject	Summary of the Proposals Adopted
1.	Use of websites for communication with shareholders	The Exchange has amended the Rules to introduce a procedure which, if complied with, will permit a listed issuer to deem consent on the part of a shareholder to a corporate communication being made available to him solely on the listed issuer's website.
2.	Information gathering powers	A new Rule has been introduced to codify the powers of the Exchange to gather information from issuers.

3.	Qualified accountants	The Exchange has removed the requirement for a qualified accountant in the Rules and expanded the Code Provisions of Appendix 14 – Code on Corporate Governance Practices regarding internal controls to make specific references to the responsibility of the directors to conduct an annual review of the adequacy of staffing of the financial reporting functions and the oversight role of the audit committee.
4.	Review of sponsor's independence	The Exchange has amended the Rules to require a sponsor to demonstrate independence from the date of submission of Form A1 to the date of listing.
6.	Bonus issues of a class of securities new to listing	The Rules have been amended to disapply the requirement for a minimum spread of securities holders at the time of listing in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares, provided that the existing listed shares of the issuer are not concentrated in the hands of a few shareholders.
7.	Review of the Exchange's approach to pre-vetting public documents of listed issuers	<p><u>Announcements</u></p> <p>The Exchange has amended the Rules to implement a progressive phased approach to reduction in pre-vetting activities for different types of listed issuers' announcements.</p> <p><u>Listing documents and circulars of listed issuers</u></p> <p>The Exchange has removed the circular requirement for discloseable transactions.</p> <p>The Exchange has made amendments to remove from the Rules pre-vetting requirements in respect of circulars for matters of a routine nature that normally do not raise material regulatory concerns, including: circulars for proposed amendments to a listed issuer's Memorandum and/or Articles of Association and explanatory statements relating to listed issuers purchasing their own shares on a stock exchange.</p> <p>The Exchange has also amended the Rules to codify the Exchange's current practice in relation to pre-vetting circulars for significant transactions or arrangements.</p>
8.	Disclosure of changes in issued share capital	<p>The Rules have been amended to require listed issuers:</p> <ul style="list-style-type: none"> <li>• to submit a Next Day Disclosure Return to the Exchange in respect of changes in issued share capital, in some cases by 9:00 a.m. the next business day and in other cases subject to a 5% de minimis threshold and certain other</li> </ul>



		<p>criteria (e.g. aggregation)</p> <ul style="list-style-type: none"> <li>• for the convenience of listed issuers, the Next Day Disclosure Return has been merged with the current Share Buyback Report</li> <li>• to submit a Monthly Return to provide a regular update on information relating to the listed issuers' share capital and other movements in its securities, including future obligations and commitments to issue shares</li> <li>• to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme to minimise opportunities for backdating such awards</li> </ul>
9.	Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue	<p>The Exchange has extended the specific disclosure requirements under the Rules to any issue of securities for cash (and not only cases involving general mandates as under the existing Rules).</p> <p>The Rules have been amended to:</p> <ul style="list-style-type: none"> <li>• require disclosure of additional items of information codifying the disclosure practices in respect of announcements for issues of securities for cash</li> <li>• require disclosure of the basis of allocation of excess shares in the announcement, circular and listing document for a rights issue or an open offer</li> </ul>
10.	Alignment of requirements for material dilution in major subsidiary and deemed disposal	<p>The Exchange has amended the Rules to align the requirements for material dilution in a major subsidiary and deemed disposal such that the requirement for shareholders' consent will be based on a size test threshold of 25% (i.e. the threshold for a major transaction) and that a written certificate may be accepted in lieu of a physical shareholders' meeting.</p>
12.	Voting at general meetings	<p>The Rules have been amended to make voting by poll mandatory on all resolutions at general meetings and to encourage sufficient notice periods to be given for convening such meetings we have introduced revised provisions in the Code on Corporate Governance Practices.</p>
13.	Disclosure of information about and by directors	<p>The Rules have been amended to require an increased level of continuous disclosure of information about and by directors and supervisors.</p>
14.	Codification of	<p>The Rules have been amended to codify the conditional</p>

	waiver to property companies	waiver that exempts listed issuers actively engaged in property development as a principal business activity from the shareholders' approval requirement under the Listing Rules in certain scenarios of acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders.
16.	Disclosure of information in takeovers	A new Rule has been introduced to codify the Exchange's practice of granting waivers to allow listed issuers to publish certain prescribed information on target companies being acquired by the listed issuer in a supplemental circular at a later time when the information becomes available.
17.	Review of director's and supervisor's declaration and undertaking	The Rules have been revised to: <ul style="list-style-type: none"> <li>• streamline disclosure requirements of director's and supervisor's biographical information in the various prescribed forms of declaration and undertaking of directors and supervisors</li> <li>• remove the statutory declaration requirement</li> <li>• codify the Exchange's powers to gather information from directors</li> <li>• include detailed provisions for service of disciplinary proceedings</li> </ul>
18.	Review of Model Code for Securities Transactions by Directors of Listed Issuers	The Model Code has been revised to: <ul style="list-style-type: none"> <li>• introduce three new exceptions to the definition of "dealing"</li> <li>• extend the "black out" period to commence from the listed issuer's financial period end to the date on which the issuer publishes the relevant results announcement</li> <li>• introduce a note to Rule A.1 of Appendix 10 to clarify the meaning of the term "price sensitive information" in the context of the Model Code</li> <li>• impose a time limit for an issuer to respond to a request to deal and a time limit for dealing to take place once clearance is given</li> </ul>

14. The Rule amendments proposed in the CCP for Issues 1, 2, 6, 8, 9, 10, 14 and 16 have been adopted, either with no changes or only minor amendments.

15. Part C of this paper contains a more detailed discussion of the consultation responses. Set out below are highlights of specific responses that are noteworthy and which, in some cases, have led to a revision of the original proposals.

### **Issue 3**

16. The proposal to remove from the Rules the requirement for a qualified accountant gained majority support, although there was strong opposition from some professional and industry associations. The main concern was that such a proposal might lead to a decline in corporate governance standards. To allay those concerns, the Exchange has decided, together with implementing the Rule amendments as proposed, to expand the Code Provisions in the Code on Corporate Governance Practices regarding internal controls to make specific references to the responsibility of the directors to conduct an annual review of the adequacy of staffing of the financial reporting functions and the oversight role of the audit committee.

### **Issue 4**

17. The proposal to amend the Rule that specifies the period within which a sponsor is required to demonstrate independence has met with majority approval. After considering the arguments for alternative approaches to the start date and the end date of the period during which a sponsor must demonstrate independence, the Exchange has decided to modify the dates originally proposed. Sponsors will now need to demonstrate independence from the date of submission of Form A1 to the date of listing.

### **Issue 7**

18. Whilst a majority of respondents were in favour of reducing pre-vetting of listed issuers' announcements, there were concerns about the potential for a decline in market quality and suggestions that announcements for more significant transactions/arrangements should continue to be pre-vetted. The Exchange noted the concerns raised in the consultation process and has devised guidance on practice and procedures to ensure an orderly transition to the new regimen.
19. Amongst the proposals was a requirement for legal advisers' confirmation that any proposed amendments to the listed issuer's Memorandum and/or Articles of Association comply with the Listing Rules and the laws of the place where the listed issuer is incorporated and that there is nothing unusual about the proposed amendments for a company listed in Hong Kong. The final limb of this proposal was criticised as being vague, and accordingly that it would be difficult and unusual for an issuer's legal advisers to give any opinion or confirmation in the terms proposed in the CCP. In this regard, we have accepted suggestions that the relevant confirmation should be addressed by the individual listed issuers, rather than by their legal advisers.

20. The CCP proposal to include the Exchange's disclaimer statement in listed issuers' documents received some dissenting views. The proposal was said to be unnecessary because the documents in question are signed and published in the name of the listed issuer and its board of directors. However, the disclaimer statement has the effect of negating or clarifying any assumption of responsibility of the Exchange for the contents of listed issuers' documents and in our view, it would not be unduly onerous for Main Board issuers to include such a standard statement in their documents issued under the Rules. We have therefore adopted the CCP proposal. Moreover, as listed issuers' documents are published on HKEx website, the Exchange has modified the content of the disclaimer statement to make it also applicable to HKEx website.

## **Issue 12**

21. Mandatory voting by poll on all resolutions at all general meetings was favoured by a majority of respondents. Those in favour tended to cite fairness and greater shareholder participation. Those against tended to be of the view that there were already sufficient safeguards in place, there was a need to retain some flexibility or it would be unduly burdensome. We are of the view that the higher levels of shareholder participation brought about by voting by poll on all resolutions will serve to further enhance corporate governance and Hong Kong's standing as an international financial centre and have amended the Rules to make voting by poll mandatory at all general meetings.
22. There was substantial opposition to extending the minimum notice period for convening all general meetings to 28 clear calendar days. Many felt that this would result in delay, uncertainty and loss of business opportunities. Noting the views of respondents, we have introduced a Code Provision that at least 20 clear business days should be given for annual general meetings and at least 10 clear business days should be given for all general meetings other than annual general meetings. The "comply or explain" principle underlying the Code Provision for notice periods for general meetings will allow issuers the necessary degree of flexibility to determine for themselves the appropriate balance between shareholder communication and participation and commercial expediency.

## **Issue 13**

23. The proposal for a new Rule requiring an issuer to make continuous disclosure of the information specified in Main Board Rule 13.51(2) (and its GEM Rule equivalent) during a director's or supervisor's term of office was controversial. Many respondents submitted that they would support the proposal if the scope of the continuous disclosure requirement is limited to paragraphs (h) to (v) of the Rule 13.51(2). A number of respondents opined that they would prefer that the information required under paragraphs (a) to (e) and (g) be disclosed periodically. We have accepted this suggestion and have modified the Rule amendments accordingly.

### **Issue 17**

24. Of the proposals submitted for consultation in respect of Issue 17, all but one received majority support. The proposal to introduce a Rule permitting the Exchange to make unilateral amendments to the director's and supervisor's undertakings met with strong opposition. Reasons given include suggestions that a director may be reluctant to give an undertaking if he believes that it is potentially open-ended. In view of the dissenting views, we have decided to withdraw this proposal.

### **Issue 18**

25. The first two of the three proposed exceptions to the definition of dealing in the Model Code were well received. However, the Securities and Futures Commission considered that there was ambiguity in the wording as to whether a director's associates may be able to enjoy the benefit of the exceptions. To address this, we have revised the drafting of the Rule amendments to make the language neutral as to who might be dealing. For consistency, we have also revised some related provisions.
26. The Exchange has also taken note of the concerns raised in respect of the third proposed exception to dealing (that is, "bona fide gifts to a director by a third party") for being unsafe in the sense that the wording, in its original form, may be open to abuse. We have adopted a modified exception which has taken on board some of the respondents' suggestions.
27. The proposal to extend the "black out" period attracted considerable debate. However, no new significant points were added to the debate as a result of the consultation exercise and we have adopted the proposal without modification.
28. A minor revision has been made to the wording of Rule B.8(b) of Appendix 10 to make it clear that a director is not obligated to deal once he has obtained clearance to deal.

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## **PART C: MARKET FEEDBACK AND CONCLUSIONS**

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29. Set out below are the proposals for Rule amendments and some specific comments received, as well as our response to those comments and conclusion for each of the proposals. The Main Board and GEM Rule amendments are available at HKEx website at: “Regulatory Framework and Rules - Rules and Guidelines on Listing Matters - Listing Rules Update for Main Board Listing Rules” and “Regulatory Framework and Rules - Rules and Guidelines on Listing Matters - Listing Rule Update/Interpretation for GEM Listing Rules”.

### **Issue 1: Use of websites for communication with shareholders (Consultation Questions 1.1 to 1.6)**

#### Deeming procedure (Questions 1.1 to 1.4)

##### *The proposal*

30. The Exchange proposed to introduce a procedure which, if complied with, would permit a listed issuer to deem consent on the part of a shareholder to a corporate communication being made available to him solely on the listed issuer’s website.
31. The proposed deeming procedure would comprise a basic requirement that the procedure has been approved by a shareholders’ resolution in general meeting or that there is an enabling provision in the listed issuer’s constitutional documents. In addition, the listed issuer would be required to have asked each shareholder individually for consent and to have waited for 28 days before the shareholder would be deemed to have consented to website communication. A shareholder would not be deemed to have consented if the listed issuer’s request for consent was sent less than 12 months after a previous request made to him for the purposes of the deeming procedure in respect of the same class of corporate communications.

##### *Comments received*

32. This proposal received broad support from the respondents as to each of its features for the reason that it would help reduce operating costs for listed issuers, increase efficiency in communication with shareholders and contribute to environmental protection. Few reasons were given against adopting the procedure, although some respondents observed that listed issuers incorporated overseas would have an unfair advantage over listed issuers incorporated in Hong Kong.

### *The Exchange's response*

33. Currently, the Rules require corporate communications specified under the Rules to be distributed in physical form. However, the Rules do permit a listed issuer, subject to applicable laws and regulations and the listed issuer's own constitutional documents and provided the shareholder expressly consents, to make available corporate communications to the shareholder by electronic means, including by means of publication of the corporate communications on its website.
34. Subject to certain exceptions, a listed issuer incorporated in Hong Kong is also permitted under Hong Kong law to use electronic means to communicate with a shareholder provided the shareholder expressly consents. As regards listed issuers incorporated in Bermuda, the Cayman Islands or the Mainland, there are no provisions in the companies legislation of their respective jurisdictions that expressly permit or prevent the sending of corporate communications to their shareholders by means of electronic communications. However, Main Board Rule 2.07A(1) (and its GEM Rule equivalent) require all listed issuers, irrespective of their place of incorporation, to comply with a standard which is no less onerous than that imposed on a Hong Kong incorporated company under Hong Kong law.
35. The combined effect of the current law and the Rules is therefore that a listed issuer, wherever incorporated, cannot communicate with a shareholder by electronic means without his express consent. The listed issuer cannot, for example, simply refer a shareholder to a copy of a corporate communication required under the Listing Rules which is published on its website. It must send to each shareholder a hard copy of the corporate communication except where that shareholder has expressly consented to receiving the corporate communication in such a manner. Our proposed deeming procedure is a procedure for deeming consent from a shareholder to the listed issuer supplying corporate communications to him by making them available on its website only.
36. While overseas incorporated listed issuers may have an advantage over Hong Kong incorporated listed issuers, we would expect this only to be until amendments to the Companies Ordinance to facilitate greater use of electronic communications (which are currently under consideration) come into effect. Furthermore, under the Electronic Disclosure Project which is now fully in effect, all issuers must in any event have their own websites on which they must publish all corporate communications required under the Rules. The advantage which an overseas incorporated issuer successfully availing itself of the proposed deeming procedure would have over a Hong Kong incorporated issuer pending the anticipated amendments to the Companies Ordinance would only be that it would not also need to send a printed copy of the document to its shareholders (except for those who have expressly asked to be sent a copy).
37. We are aware of the need to safeguard a shareholder's right to receive printed copies of corporate communications without at the same time subjecting him to undue pressure from listed issuers to concede to the website communication method.

We believe that 28 days is a reasonable period of time to require a listed issuer to have waited before deeming consent from a shareholder to website communication. We also consider it reasonable to prevent the listed issuer from deeming such consent where the listed issuer's request for consent was sent less than 12 months after a previous request made to him for the purposes of the deeming procedure in respect of the same class of corporate communications.

38. The requirement that each shareholder be asked individually for consent, the 28-day waiting period and the 12-month ban on further deeming of consent received clear and unequivocal support from the respondents. We appreciate that these requirements may give rise to some administrative work for listed issuers. However, the benefit to shareholders should on balance outweigh the burden on listed issuers. We consider good shareholder database management by the listed issuer to be the key to keeping track of the mode of communication applicable to each individual shareholder and any unexpired 28-day waiting period or 12-month ban on further deeming.
39. Use of electronic communications has become increasingly widespread in recent years amid, among other things, concerns about costs and the environment. The introduction of the deeming procedure will facilitate the greater use of listed issuers' websites for making available corporate communications to shareholders and is in line with developments and trends in other major financial markets. The procedure will also result in greater convenience and more timely access to a listed issuer's corporate communications by investors who are Internet users. At the same time, the reduction in expenditure due to printing fewer hard copies should ultimately be to the benefit of shareholders.
40. It should be borne in mind that, under Main Board Rule 2.07A(3) (and its GEM Rule equivalent), a shareholder will in any event continue to be entitled to receive a printed, hard copy free of charge upon giving notice to the listed issuer to change his choice of communication, irrespective of what preference he may have previously indicated to the listed issuer.

#### ***Consultation conclusion***

41. ***The Exchange has removed the requirement for all listed issuers to comply with a standard which is no less onerous than that imposed under Hong Kong law with regard to how Hong Kong incorporated issuers make corporate communications available to shareholders and has introduced a procedure which, if complied with, will permit a listed issuer to deem consent on the part of a shareholder to a corporate communication being made available to him solely on the listed issuer's website.***
42. ***The deeming procedure includes (in addition to the requirement for a shareholders' resolution in general meeting or enabling provision in the listed issuer's articles of association) the requirement that each shareholder be asked individually for consent and for the listed issuer to have waited for 28 days before***



*the shareholder is deemed to have consented to website communication. A shareholder is not deemed to have consented if the listed issuer's request for consent was sent less than 12 months after a previous request made to him for the purposes of the deeming procedure in respect of the same class of corporate communications.*

#### Use of CD (Question 1.5)

##### ***The proposal***

43. The Exchange also proposed an amendment to make clear that the requirement for express, positive confirmation applied both to the use of electronic means (e.g. emailing a corporate communication to a shareholder) and the use of an electronic format in place of the printed version (e.g. sending a corporate communication to a shareholder on a CD).

##### ***Comments received***

44. A substantial majority of the respondents were in favour of removing 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.
45. Some of the respondents who were in favour of removing such requirement noted that, due to the implementation of the Electronic Disclosure Project, shareholders would in any event be able to download information from listed issuers' websites, thereby questioning the added usefulness of providing a CD.
46. Those who were against removing the requirement objected mainly because they did not consider a CD to be a substitute for a printed copy of a corporate communication as some shareholders could not read CDs.

##### ***The Exchange's response***

47. Currently, listed issuers are required to send printed copies of corporate communications to shareholders unless shareholders have expressly consented to receiving corporate communications by electronic means. In the CCP, we proposed an amendment to Main Board Rule 2.07A(2) (and its GEM Rule equivalent) to make clear that the requirement for express, positive confirmation applied both to the use of electronic means (e.g. emailing a corporate communication to a shareholder) and the use of an electronic format in place of the printed version (e.g. sending a corporate communication to a shareholder on a CD).
48. We note that the majority view was in favour of removing altogether 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.
49. Given the advances in technology that may take place and that it may take some time for new forms of technology to establish themselves as widely accepted modes

of electronic communication, we do not consider it desirable at this stage to expand deemed consent beyond the scope of website-based communication. In any event, we believe that at a practical level listed issuers will prefer to make use of the web-based solution offered by the proposed deeming procedure which, if properly followed by a listed issuer, could obviate the need for it to send the subject corporate communication to a shareholder altogether.

### *Consultation conclusion*

50. *The Exchange has amended Main Board Rule 2.07A(2) (and its GEM Rule equivalent) to make clear that express, positive confirmation is required not only for the use of electronic means (e.g. emailing a corporate communication or its hyperlink to a shareholder), but also for making available a corporate communication to a shareholder in electronic format (e.g. on a CD).*
51. *The Exchange has also made some minor Rule amendments to give better effect to the intention of the Rules under Issue 1. These amendments also address comments received from respondents, where appropriate.*

## **Issue 2: Information gathering powers**

(Consultation Questions 2.1 to 2.2)

### *The proposal*

52. The Exchange proposed to introduce a new Rule to codify the Exchange's general powers to gather information from issuers.

### *Comments received*

53. A majority of the respondents supported this proposal. Most also agreed with the rationale given in the CCP in respect of the proposal although some respondents commented that the scope of the proposed powers appeared to be too wide and should be restricted to verifying compliance with the Listing Rules. Others suggested minor revisions to the wording of the new Rule, some of which we have adopted.

### *The Exchange's response*

54. It is our intention that the new Rule will serve a variety of purposes. For example, the new Rule will:
  - support the collection of information from the market and corporate practitioners, which will assist in policy formulation;
  - support the collection of information which may indicate whether an issuer is and has been in compliance with its continuing obligations under the Rules;

- gather information to ascertain whether an issuer will be able to comply with the Rule requirement to publish information relating to its securities within designated deadlines (e.g. financial reports); and
  - support the investigation of a suspected breach of the Rules by an issuer.
55. In view of the above, we do not agree with the suggestion that the scope of the new Rule be limited to verifying compliance with the Listing Rules.
56. Moreover, the new Rule has codified the scope of the Exchange's information gathering powers at a level that aligns with international practice.

*Consultation conclusion*

57. *The Exchange has adopted the proposed Rule amendments in the CCP with minor modifications reflecting the suggestions made by a number of the respondents.*

**Issue 3: Qualified accountants**  
(Consultation Questions 3.1 and 3.2)

*The proposal*

58. The Exchange proposed to remove from the Rules the requirement for a qualified accountant for both Main Board and GEM issuers.

*Comments received*

59. A majority of respondents supported this proposal for reasons including:
- the primary responsibility for maintaining sound and effective controls over financial reporting should rest with the board of directors instead of any particular person such as the qualified accountant;
  - the decision as to what qualification is the most appropriate for finance personnel should be made by listed issuers themselves and the Exchange should not micro-manage the staff recruitment policy of issuers;
  - there is no mandatory requirement in major overseas securities markets (such as the United States (US), the United Kingdom (UK) or Singapore) for a listed company to employ a qualified accountant as a member of senior management, although, as a matter of good practice, well-run listed companies recognise the value of professional qualified accountants as part of their senior management;

- following substantial convergence of Mainland accounting standards with International Financial Reporting Standards, upon which Hong Kong Financial Reporting Standards are based, the need for H-share issuers to employ Hong Kong qualified accountants for the purpose of compliance with Hong Kong accounting and reporting standards has been reduced; and
  - the existing requirement poses unnecessary practical problems and concerns for H-share issuers.
60. About one third of the respondents disagreed with the proposal. The main reasons included:-
- qualified accountants play an important role in assisting listed issuers in fulfilling their continuing financial reporting obligations and in developing and maintaining effective internal controls for proper financial reporting;
  - the proposal would send a wrong signal to the market on the importance of financial reporting and good corporate governance would decline;
  - as an alternative to removing the Rule, the criteria for persons eligible to be a qualified accountant should be expanded; and
  - a Code Provision should be added to the Code on Corporate Governance Practices so that the audit committee is responsible for reviewing the qualification and experience of the qualified accountant.

***The Exchange's response***

61. The board of directors has the primary responsibility for ensuring that the listed issuer has effective internal controls for proper financial reporting, including adequate accounting systems and appropriate human resources to fulfil its continuing financial reporting obligations.
62. The Exchange acknowledges that professionally qualified accountants play an important role and expects that they will continue to be employed by listed issuers to oversee financial reporting and accounting related matters. However, the appointment of such persons is only one element of the measures a listed issuer may use to ensure that it is able to fulfil its continuing financial reporting obligations.
63. The Exchange believes that the board of a listed issuer should have both the responsibility and freedom to decide the number of personnel and their accounting qualifications which are suitable for the company. We have therefore concluded that it is not appropriate to retain a specific Listing Rule requirement for a qualified accountant as, in our view, it amounts to unnecessary micro-management of an issuer's affairs. The removal of the requirement will provide greater flexibility to listed issuers and enable them to determine how they will meet their specific needs.

64. To address concerns that removal of the specific Listing Rule requirement for a qualified accountant may lead to a decline in corporate governance standards, a Code Provision (Code Provision C.2.2) has been added to the Code on Corporate Governance Practices which will clearly indicate that the board of directors is responsible for reviewing and ensuring that an issuer has in place adequate accounting systems and appropriate human resources at its disposal to enable it to fulfil its continuing financial reporting obligations. Further, the Code has been expanded to specifically provide that the audit committee has an oversight role over the financial reporting function and to review and report to the board on the adequacy of resources, qualifications and experience of staff of the issuer's accounting and financial reporting function, their training programmes and budget.
65. The removal of the Listing Rule requirement for a qualified accountant and the introduction of the above new Code Provisions will provide issuers with the necessary degree of flexibility to determine their own specific needs, whilst ensuring that the issuer maintains an effective system of internal controls. If listed issuers choose to deviate from the Code Provision requirements, they will be required to explain in their Corporate Governance Report why they did not comply.

#### *Consultation conclusion*

66. *The Exchange has removed the requirement for a qualified accountant from the Listing Rules but expanded the Code Provisions in the Code on Corporate Governance Practices regarding internal controls to make specific references to the responsibility of the directors to conduct an annual review of the adequacy of staffing of the financial reporting function and the oversight role of the audit committee.*

## **Issue 4: Review of sponsor's independence**

(Consultation Questions 4.1 to 4.2)

#### *The proposal*

67. The Exchange proposed certain amendments to be made to Main Board Rule 3A.07 (and its GEM Rule equivalent) to require a sponsor 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 the date when the sponsor commences work as a sponsor to the new applicant (**Start Date**) up until the listing date or the end of the price stabilisation period, whichever is the later (**End Date**).

#### *Comments received*

68. A substantial majority of the respondents supported the proposal. Whilst we note that there were opposing views on the proposal, the respondents' concerns largely related to the formulation of the Start Date and the End Date. Similar concerns were raised by some respondents who supported the proposal and they suggested

alternative approaches which might be adopted including modifying the Start Date to be either the date of Form A1 filing or the commencement of the track record period and modifying the End Date, to be either the date of the prospectus or the date of listing.

69. Two respondents made much broader suggestions on modifications to the Rules on sponsor's independence. As these were unrelated to the proposals in the CCP we will continue to monitor the application of the Rules and may consider future amendments in due course to address the concerns raised.

#### ***The Exchange's response***

70. The proposals were generally well received. After considering the arguments for alternative approaches to the Start Date and the End Date, we have decided to modify the original proposal to the effect that the modified Rule will require a sponsor to demonstrate independence from the date of the filing of the A1 Form to the date of listing. The revised Start Date will provide certainty to both the sponsors and the Exchange in terms of implementation and administration. By contrast, although the original proposal has the effect of a longer period during which a sponsor is required to demonstrate independence, the determination of the actual Start Date (that is, the date a sponsor starts its engagement) may be difficult to establish and to verify. The revised End Date better reflects the point in time when the substantive obligations of a sponsor have been discharged.

#### ***Consultation conclusion***

71. ***The Exchange has amended the original proposal such that a sponsor is required to demonstrate independence during the period between the date of submission of the Form A1 and the date of listing.***

### **Issue 6: Bonus issues of a class of securities new to listing (Consultation Questions 6.1 to 6.3)**

#### ***The proposal***

72. The Exchange proposed to disapply 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) in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares. The proposed exemption would not be available where the Exchange had reasons to believe that the shares of an issuer might be concentrated in the hands of a few shareholders and there would be five-year limit for considering whether there were current concerns about a concentration of shareholdings.

### *Comments received*

73. An overwhelming majority of the respondents supported the proposal to disapply the minimum spread requirement in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares.
74. While a majority of the respondents supported the proposal that the exemption should not be available where the listed shares of the issuer might be concentrated in the hands of a few shareholders, some respondents considered that the proposed exemption should apply regardless of whether the shares of the listed issuer are concentrated in the hands of a few shareholders.
75. With respect to the five-year limit for considering whether there is a concentration of shareholdings, a majority of the respondents considered the time limit appropriate while some respondents suggested that the time limit be shortened to periods ranging from 6 months to 3 years. However, those respondents did not express a basis for a shorter time limit.
76. Some respondents were of the view that the focus should be on whether there was a concentration of shareholdings at or close to the time of the bonus issue. This is because there may be situations where there is a concentration of shareholdings within the prescribed time limit but the issuer can satisfy the Exchange that there is no longer any concentration of shareholders at the time of the bonus issue. These respondents proposed that the amendment be revised to cater for this.

### *The Exchange's response*

77. Our proposal to disapply the minimum spread requirement in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares addresses practical difficulties where listed issuers cannot ascertain the identity and number of existing shareholders in the case of a bonus issue of such securities.
78. However, we do not agree that the proposed exemption should apply regardless of whether the shares of the listed issuer are concentrated in the hands of a few shareholders. The Listing Rules require securities trading on the Exchange to have an open and orderly market, and assess this based on parameters including, among other things, minimum number and spread of shareholders. The Exchange believes that a high concentration of shareholdings may be indicative of a lack of an open market. Our proposal operates on the basis that there is an open market in the listed shares. It is not intended to change the requirement for an open market. Accordingly, where there are circumstances to indicate that the shares of an issuer may be concentrated in the hands of a few holders, the exemption should not apply to the bonus issue of a new class of securities convertible into the listed shares.

79. With respect to the comment that the focus should be on whether there was a concentration of shareholdings at or close to the time of the bonus issue instead of a five-year time period preceding the bonus issue, we consider that, where there are particular circumstances or developments in the shareholding of an issuer which may have addressed concerns of a high concentration prior to the bonus issue, a waiver can be considered on an individual case basis. However, to attempt to cater for this in the Rule amendment by imposing a different standard would be equivalent to establishing a second threshold for defining the minimum spread of shareholders. We consider this undesirable.

### *Consultation conclusion*

80. *The Exchange has adopted the proposal to disapply 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) in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares. The exemption is not available where the Exchange has reasons to believe that the shares of an issuer may be concentrated in the hands of a few shareholders and there will be a five-year limit for considering whether there is a concentration of shareholdings. The Exchange has adopted the proposed Rule amendments as set out in the CCP which implement the proposal.*

## **Issue7: Review of the Exchange’s approach to pre-vetting public documents of listed issuers**

(Consultation Questions 7.1 to 7.7)

81. The Exchange proposed to amend the Rules and its administrative practice in respect of the vetting of disclosure materials issued by listed issuers. The objective of the proposed changes is to further shift the Exchange’s regulatory focus from pre-vetting towards post-vetting, monitoring and enforcement.

### Listed issuers’ announcements (Questions 7.1 and 7.2)

#### *The proposal*

82. The Exchange proposed a progressive phased approach to reduction in pre-vetting activities for different types of listed issuers’ announcements. Upon implementation of the proposed Rule amendments, the first phase would commence and only certain types of announcements would continue to be pre-vetted (i.e. announcements for transactions or arrangements that require shareholders’ approval under the notifiable transaction requirements in the Rules and almost all connected transactions). The Exchange would monitor the developments and, subject to SFC approval, implement the new approach on a wider scope of announcements in the next phase. The Exchange’s intention is in due course to cease pre-vetting of all announcements of listed issuers.



### ***Comments received***

83. A majority of the respondents were in favour of the proposal. A number of the respondents supporting the proposal gave comments that were broadly in line with the views of the Exchange in the CCP. Some respondents suggested that the Exchange should enhance the pre-announcement consultation process and post-vetting procedures in view of the additional volume and complexity of listed issuers' enquiries on Rule compliance issues and announcements that would be subject to post-vetting. There was also suggestion that the Exchange should provide more guidance and checklists on Rule compliance issues to assist listed issuers in meeting their obligations under the Listing Rules.
84. Amongst the dissenting views, some respondents were concerned about a possible decline in the quality of disclosure when announcements are no longer pre-vetted by the Exchange. Some considered that announcements for more significant transactions/ arrangements should continue to be pre-vetted. Concerns were also raised that non-compliance with the Rule requirements would only be identified after publication of the announcements and the relevant transactions or arrangements might fail to proceed as announced.

### ***The Exchange's response***

85. Pre-vetting of announcements has been one of the means through which the Exchange gives guidance to listed issuers on Rule compliance issues. The Exchange considers that the respondents' concerns can be addressed by consultation with the Exchange before listed issuers publish their announcements. The consultation process would offer guidance to listed issuers on Rule compliance issues to the same extent as guidance provided under the pre-vetting regime albeit on a voluntary basis upon request by listed issuers.
86. To ensure an orderly transition to the new regimen, the Exchange has devised appropriate standards and procedures for post-vetting announcements and the consultation process for listed issuers seeking guidance on Rule interpretation and listing-related matters. When devising such standards and procedures, the Exchange has taken into consideration the respondents' suggestions set out in paragraph 83 above. To promote a better understanding of the Exchange's practices and procedures for handling listing-related matters and assist listed issuers in meeting their listing obligations under the new vetting regime, the Exchange has published the following guidance materials on HKEx website at "Regulatory Framework and Rules - Rules and Guidelines on Listing Matters - Guidelines and other documents":
- *"Guide on Practices and Procedures for Post-vetting Announcements of Listed Issuers and Handling Matters involving Trading Arrangements prior to Publication of Announcements"* which aims to assist listed issuers in understanding how the Exchange monitors their compliance with the Listing Rules through post-vetting of published announcements and gives guidance on

the Rule requirement relating to disclosure of matters involving trading arrangements in announcements;

- An updated “*Guide on Pre-vetting Requirements and Selection of Headline Categories for Announcements*”<sup>1</sup> which identifies: (i) whether particular announcements require pre-vetting under the revised Listing Rules and provides cross-references to the relevant Listing Rule requirements; and (ii) the generally applicable headline categories for particular announcements;
- “*Guide on Interpretation of Listing Rules and Request for Individual Guidance*” which describes the Exchange’s procedures for giving guidance to listed issuers on the interpretation and application of the Listing Rules, including the information required to be provided by the listed issuer requesting individual guidance; and
- “*Guide on Applications for Waivers and Modifications of the Listing Rules*” which describes the Exchange’s approach in handling listed issuers’ applications for waivers and modifications of Listing Rules and how such applications should be made by issuers.

87. The Exchange has published a new set of Frequently Asked Questions on specific Rule compliance issues concerning issues of securities, notifiable transactions and connected transactions. Listing Decisions on areas where the Exchange may exercise discretion (including aggregation of transactions and the deeming provision for connected persons or transactions) and areas where frequent guidance has been given to listed issuers through the pre-vetting process (e.g. computation of percentage ratios) are also available on HKEx website. The Exchange intends to publish further guidance on specific Rule compliance issues in phases which will be aligned with the implementation of post-vetting for specific categories of announcements.

88. In order to allow more time for the market to accustom itself to the new approach and the Exchange to evaluate the impact of the change in vetting approach, it is currently envisaged that the next phase may only cover announcements regarding major transactions and connected transactions. It may therefore take a further 12 months for the final phase to be implemented to cover all the remaining categories of announcements (i.e. very substantial acquisitions/disposals, reverse takeovers, cash companies and transactions/arrangements which would result in a fundamental change in principal activities after listing). The Exchange will inform the SFC Board regarding the success or otherwise of the implementation of the first phase, with a view to seeking the SFC Board’s approval prior to the implementation of the next phase.

89. In view of the above as well as the majority support shown by the respondents, the Exchange believes that the proposal stated in paragraph 82 above is appropriate.

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<sup>1</sup> The Guide was entitled “*Guide on pre-vetting requirements for announcements*” when it was first published in August 2006. It was subsequently updated and renamed in June 2007.

90. In addition, the Exchange has introduced new Rules (i.e. Main Board Rules 14.23A and 14A.27A (and their GEM Rule equivalents) setting out certain specific circumstances under which a listed issuer must consult the Exchange on the application of the Rules governing aggregation of transactions before it enters into any proposed transaction. The new Rules are introduced with an aim to assist listed issuers in their compliance with the Rules through consultation with the Exchange. The Exchange may nevertheless aggregate transactions pursuant to existing Rules (being Main Board Rules 14.06(6), 14.22 and 14A.25 (and their GEM Rule equivalents)) where no prior consultation was made by the listed issuer. As mentioned in the CCP, the change in vetting approach will not undermine the Exchange's power given by the existing Rules to require aggregation of transactions.

### ***Consultation conclusion***

91. ***The Exchange will implement the proposed progressive phased approach to cease pre-vetting of all announcements of listed issuers. The Rule amendments proposed in the CCP have been adopted with modifications including those described in paragraph 90 above.***

Circulars in respect of proposed amendments to a listed issuer's Memorandum and/or Articles of Association or equivalent documents (Question 7.3(a))

### ***The proposal***

92. The Exchange proposed to remove the pre-vetting requirement in respect of circulars for proposed amendments to a listed issuer's Memorandum and/or Articles of Association. In this connection, the proposed Rules require that the listed issuer should submit the published version of the circular together with a letter from the issuer's legal advisers confirming that the proposed amendments comply with the requirements of the Listing Rules and the laws of the place where it is incorporated or otherwise established and there is nothing unusual about the proposed amendments for a company listed in Hong Kong.

### ***Comments received***

93. A majority of the respondents were in favour of this proposal. Of those who supported the proposal and gave substantive comments, a majority agreed with the views of the Exchange as set out in the CCP.
94. A number of respondents (mainly legal advisers) raised concerns over the proposed requirement regarding the submission of a legal advisers' confirmation. The respondents considered that an issuer's legal advisers would face practical difficulties in giving any factual opinion and confirmation in the terms proposed. It was argued that it would be difficult to determine a clear and unambiguous basis on which the legal advisers might rely in order to give an opinion as to whether the amendments were unusual or otherwise.

95. One of the respondents also suggested that the Exchange should clarify to whom the legal advisers' confirmation is to be addressed.

***The Exchange's response***

96. As explained in the CCP, disclosures in circulars relating to proposed amendments to a listed issuer's Memorandum and/or Articles of Association or equivalent documents are quite straightforward and do not normally raise regulatory concerns. The purpose of the proposed requirement set out in the CCP was to ensure that, while pre-vetting of circulars for proposed amendments to constitutive documents would no longer be required, listed issuers would draw to the Exchange's attention any proposed amendments that are or may be unusual before they publish the relevant circulars. In view of the practical difficulties which some legal advisers would face in opining on this matter, the Exchange has reconsidered the proposal. The revised proposal will still require a legal opinion on whether the proposed amendments comply with the Listing Rules and the laws of the place where the issuer is incorporated or established. As to the confirmation that there is nothing unusual about the proposed amendments for a company listed in Hong Kong, the Exchange considers it acceptable for such confirmation to be given by the listed issuers themselves. Listed issuers may make enquiries with their legal advisers where necessary to determine whether the proposed amendments to the relevant documents are or may be unusual.
97. To address the respondent's comment set out in paragraph 95, the Exchange has clarified in the revised Rules that the legal confirmation of whether the proposed amendments comply with the Listing Rules and the laws of the place where the issuer is incorporated or otherwise established should be addressed to their listed issuer client.

***Consultation conclusion***

98. ***The Exchange has removed the pre-vetting requirement for circulars in respect of proposed amendments to a listed issuer's Memorandum and/or Articles of Association or equivalent documents and adopted the proposed Rule amendments, with the modifications described in paragraphs 96 and 97 above.***

Explanatory statements relating to listed issuers purchasing their own shares on a stock exchange (Question 7.3(b))

***The proposal***

99. The Exchange proposed to remove pre-vetting requirements in respect of explanatory statements relating to listed issuers purchasing their own shares on a stock exchange. In this connection, the proposed Rules would require that the listed issuer should submit the published version of the circular together with, among other things, a confirmation from the issuer that the statement contained the specific information required under the relevant Rule and that neither the statement nor the proposed share repurchase had unusual features.

### *Comments received*

100. A majority of the respondents supported the proposed Rule amendments. Of those who supported the proposal and gave substantive comments, a majority agreed with the views of the Exchange as set out in the CCP.
101. Under the proposed requirement, the listed issuer must confirm, among other things, that neither its explanatory statement nor the proposed share repurchase has unusual features. One respondent who supported the proposal stated that it would be helpful if guidance on the definition of “unusual features” was provided.
102. Those respondents giving dissenting views did not provide any specific reasons for their views.

### *The Exchange’s response*

103. The Listing Rules provide specific disclosure requirements for explanatory statements where a listed issuer purchases its own shares on a stock exchange. In general, the explanatory statements are standard and straightforward documents. The Exchange considers that a listed issuer’s directors should be able to determine whether the issuer’s explanatory statement contain unusual features, having regard to the specific disclosure requirements and dealing restrictions relating to share repurchases set out in the Listing Rules and the issuer’s own circumstances. In any event, a listed issuer may consult the Exchange in advance if it is in doubt as to whether or not the features in its explanatory statement are unusual.
104. In light of the majority support and the above rationale, the Exchange considers it appropriate to adopt the proposal.

### *Consultation conclusion*

105. *The Exchange has removed the pre-vetting requirement for explanatory statements where a listed issuer purchases its own shares on a stock exchange.*

Circulars for significant transactions or arrangements (Question 7.4)

### *The proposal*

106. The Exchange also proposed to amend the Rules to expressly require pre-vetting of those circulars that generally pose a higher risk of non-compliance with the Rules.

### *Comments received*

107. A majority of the respondents were in favour of the proposal. Of those who supported the proposal and gave substantive comments, most agreed with the views of the Exchange as proposed in the CCP.

### *Consultation conclusion*

108. *The Exchange requires pre-vetting of circulars for significant transactions or arrangements set out in the CCP as proposed.*

### Removal of the circular requirement for discloseable transactions (Question 7.5)

#### *The proposal*

109. The Exchange proposed to remove the requirement for publication of circulars in respect of discloseable transactions. The Exchange also proposed consequential Rule changes such that where a discloseable transaction involved an acquisition of mining assets but did not fall within Main Board Rule 18.07(2), or where the listed issuer prepared a profit forecast in respect of the discloseable transaction, the issuer would be required to include in the announcement (or issue a further announcement, as the case may be) the content(s) of experts' reports as required to be included in circulars under the current Rules.

#### *Comments received*

110. There was overwhelming support for the proposal to remove the circular requirement for discloseable transactions.
111. In respect of the consequential Rule changes regarding disclosure of expert reports for profits forecast, a respondent suggested that the Exchange should consider not allowing profit forecasts to be published in respect of discloseable transactions which, by their nature, are not significant to the issuer and do not require a decision to be taken by the shareholders. Other respondents requested a relaxation of the existing reporting requirements for profit forecasts.

#### *The Exchange's response*

112. Given the market support shown, we believe that the proposal to remove the circular requirement for discloseable transactions is appropriate.
113. Under the existing Rules governing the contents of announcements and circulars for notifiable transactions, disclosure of the expert reports for a profit forecast contained in the announcement for a notifiable transaction is only required at the circular stage (that is, within 21 days after the publication of the announcement) even though the expert reports should be available when the announcement is released pursuant to Main Board Rule 14.62 (and its GEM Rule equivalent). We therefore consider that, when removing the circular requirement for discloseable transactions, it would be acceptable to retain the 21-day period for the listed issuer to make a further announcement to disclose the content of the expert reports for a profit forecast issued in connection with a discloseable transaction. This would be consistent with the timing requirement for disclosure of expert reports in respect of major transactions or above.

114. We do not propose to adopt the respondent's suggestion to prohibit listed issuers from including profit forecasts in announcements issued in connection with discloseable transactions as it would be more appropriate for listed issuers to determine whether any such information needs to be disclosed having regard to the general principle set out in Main Board Rule 2.13 (and its GEM Rule equivalent). In respect of those comments suggesting a relaxation of the formal reporting requirements for profit forecasts, the issues fall outside the scope of this consultation and will be considered separately.

#### ***Consultation conclusion***

115. ***The Exchange has adopted the proposal to remove the circular requirement for discloseable transactions and the proposed Rule amendments with the modification set out in paragraph 113 above.***

#### **Related minor Rule amendments (Question 7.6)**

##### ***The proposal***

116. The Exchange proposed to amend: (i) the Main Board Rules relating to inclusion of the Exchange's disclaimer statement in documents issued by Main Board issuers; and (ii) the Main Board and GEM Rules to reflect certain procedures set out in the Memorandum of Understanding dated 28 January 2003 between the Exchange and the SFC regarding review of draft documents for takeover-related matters and share repurchases.

##### ***Comments received***

117. A number of the respondents agreed with the proposed minor Rule amendments. A number of others commented on the proposed amendments to the Main Board Rules relating to the Exchange's disclaimer statement. Among the dissenting views, some respondents considered that it is the listed issuer's responsibility to ensure the accuracy and completeness of its documents, and that the Exchange's disclaimer statement is redundant. Some respondents submitted that the proposed requirement to include the Exchange's disclaimer statement in a wide range of listed issuers' documents is cumbersome and unnecessary. It was also suggested that the Exchange's disclaimer statement should only be required in documents that have been pre-vetted by the Exchange. There were no dissenting views on the minor Rule amendments to reflect the procedures set out in the Memorandum of Understanding with the SFC regarding the review of draft documents.

##### ***The Exchange's response***

118. Under the existing Main Board Rules, the requirement to include the Exchange's disclaimer statement only applies to certain categories of listed issuers' documents. The Exchange proposed to amend the Main Board Rules to require Main Board issuers to include the Exchange's disclaimer statement in any listing document,

circular, announcement or notice issued by issuers pursuant to the Rules. This proposed change to the Main Board Rules is in line with the existing requirement under the GEM Rules.

119. The Exchange's disclaimer statement contained in announcements and other documents issued by listed issuers pursuant to the Rules serves to put readers on notice that the Exchange takes no responsibility for the information disclosed in the particular documents. The disclaimer statement has the effect of negating or clarifying any assumption of responsibility of the Exchange for the contents of listed issuers' documents and it would not be unduly onerous for Main Board issuers to include such a standard statement in their documents issued under the Rules. The Exchange believes that the proposal is appropriate.
120. Moreover, as listed issuers' documents are published on HKEx website, the Exchange has modified the content of the disclaimer statement to make it also applicable to HKEx website.

#### *Consultation conclusion*

121. *The Exchange has adopted the proposed minor Rule amendments with some modification.*

### **Issue 8: Disclosure of changes in issued share capital** (Consultation Questions 8.1 to 8.12)

#### Next Day Disclosure (Questions 8.1 to 8.6)

##### *The proposal*

122. The Exchange proposed Rule amendments requiring listed issuers, due to the potential price sensitivity arising from its dilutive effect on share capital, to promptly disclose any change in issued share capital. Some types of changes would need to be disclosed by 9:00 a.m. the next business day. Other changes, considered less sensitive, would be subject to a 5% de minimis threshold and certain other criteria referred to in paragraph 123 below.
123. The types of changes requiring disclosure by 9:00 a.m. the next business day are placing, consideration issue, open offer, rights issue, bonus issue, scrip dividend, share repurchase, exercise of an option by a director, capital reorganisation and change in issued share capital not falling within any of these categories or within any of the de minimis categories. The de minimis categories comprise changes resulting from an exercise of an option other than by a director, exercise of warrant, conversion of convertible securities and share redemption. A de minimis item is discloseable if it represents 5% of the listed issuer's existing issued share capital. It may also become discloseable if certain relevant Rules apply (e.g. aggregation).



The method of determining when a de minimis item becomes discloseable is more fully described in paragraphs 8.6 to 8.9 of the CCP.

### ***Comments received***

124. An overwhelming majority of respondents agreed that there were no other types of changes in issued share capital that should be included in the Next Day Disclosure Return, that the various types of changes in a listed issuer's share capital had been appropriately categorised for the purpose of next day disclosure and that 5% would be an appropriate de minimis threshold for those categories of changes to which it applied.
125. About two-thirds of the respondents agreed that 9:00 a.m. of the next business day would be an achievable deadline for the Next Day Disclosure Return. Most of these respondents were listed issuers.
126. Some of the dissenting views were as follows:
- that the de minimis threshold should be non-cumulative; and
  - that the period of disclosure should be in line with the filing requirements under Part XV of the Securities and Futures Ordinance (SFO) to avoid confusion and/or that the 9:00 a.m. deadline was impracticable.

### ***The Exchange's response***

127. In formulating the various next day disclosure categories, we have sought to strike the appropriate balance between a prompt flow of information to the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other. The purpose of Next Day Disclosure Returns is to provide information on the change in issued share capital that may be important for investors to enable them to better understand the latest developments in relation to individual listed issuers. Due to the potential price sensitivity arising from its dilutive effect, prompt disclosure is essential in respect of the items which are subject to the next day disclosure regime. By way of analogy, share repurchases are already, under Main Board Rule 10.06(4)(a) (and its GEM Rule equivalent), required to be reported to the Exchange by no later than 9:00 a.m. on the following business day. Such is the degree of market sensitivity that we attribute to the next day disclosure items.
128. For the convenience of listed issuers, we have merged the Next Day Disclosure Return with the Share Buyback Report in the form currently set out in Appendix 5G to the Listing Rules. The intention is that, on a share buyback, a listed issuer will only need to submit one form instead of two and that it will not have to enter the same information more than once.
129. The merged Next Day Disclosure Return comprises two sections. Section I deals with disclosure under Main Board Rule 13.25A (the new Next Day Disclosure

regime) and Section II deals with disclosure under Main Board Rule 10.06(4)(a) (the current Share Buyback Report). Share repurchases are discloseable under both Main Board Rule 13.25A and Main Board Rule 10.06(4)(a), in which case a listed issuer needs to complete both sections.

130. We have made some drafting and formatting changes (to the Next Day Disclosure Return for equity issuers and the Next Day Disclosure Return for Collective Investment Schemes listed under Chapter 20 other than listed open-ended Collective Investment Schemes) for greater clarity and user-friendliness. Some of these are to address drafting comments raised by respondents. We have also made amendments to the Rules of a consequential nature arising from the merger of the Next Day Disclosure Return with the Share Buyback Report (including an amendment of the headline categories in Appendix 24 of the Rules).
131. In line with the substantive requirement in new Main Board Rule 13.25A, which will require disclosure of changes in issued share capital (i.e. the provision does not distinguish between different classes of shares), references in the Next Day Disclosure Return for equity issuers to “ordinary” shares has been deleted from the Return. At the same time, “Description of securities” is added to the top of the Return to make it clear that the Return is applicable to all classes of securities. In practice, we expect most changes in issued share capital to be the result of changes in the number of issued ordinary shares.
132. We note the clear market support for each of the various aspects of our proposal in relation to the Next Day Disclosure Returns. The submission and publication of these Returns will help ensure that the investing public is informed more promptly of potentially price sensitive changes in the issued share capital of listed issuers and will facilitate compliance with shareholder interest disclosure obligations under the SFO.

### ***Consultation conclusion***

133. ***The Exchange has amended the Rules to require listed issuers to submit a Next Day Disclosure Return to the Exchange in respect of changes in issued share capital, in some cases by 9:00 a.m. the next business day and in other cases subject to a 5% de minimis threshold and certain other criteria (e.g. aggregation), and to reflect the incorporation of the current Share Buyback Report into the Next Day Disclosure Return.***

### **Monthly Return (Questions 8.7 to 8.10)**

#### ***The proposal***

134. The Exchange proposed Rule amendments requiring listed issuers to submit a Monthly Return to provide an update on a fixed monthly basis on information relating to the listed issuers’ share capital and other movements in its securities, including future obligations to issue shares, by 9:00 a.m. of the fifth business day following the end of each calendar month.

### *Comments received*

135. Few comments were received in respect of the Monthly Return. There were comments questioning the deadline and the need to submit a Monthly Return even when there has been no change in the issued share capital.
136. One respondent felt that the differences between "Total No. of options outstanding at close of the month" and "No. of new shares of issuer which may be issued pursuant thereto as at the close of the month" need to be clarified as they could refer to the same thing.
137. A substantial majority of the respondents agreed that 9:00 a.m. of the fifth business day following the end of each calendar month would be an achievable deadline for publication of the Monthly Return.

### *The Exchange's response*

138. We are mindful of the need to avoid wherever possible the creation of an unnecessary burden on listed issuers. We would expect a listed issuer to have retained soft copies of previously submitted Monthly Returns so that, where there has been no change since the previous Monthly Return, the listed issuer could simply "reuse" a copy of the last submitted Return (which should contain most if not all of the information relevant to the month to be reported on), modified as appropriate. In the longer term, we intend to provide an online template for completion and submission in which, by default, the information from the last submitted Return will appear. Therefore, the submission of a Monthly Return even where there has been no change since the previous Return should not constitute an unreasonable administrative burden on listed issuers. From the investor's perspective, we consider it more user-friendly to have one uniform mode of providing the latest information on a listed issuer than to have to refer the investor to a second document in the form of a previously submitted Return.
139. Upon reflection, we no longer consider it necessary to require disclosure in the Monthly Return of the total number of options outstanding. We consider it sufficient for the listed issuer to disclose in the Monthly Return the number of new shares which may be issued pursuant to the options. We have amended the Monthly Return accordingly.
140. We note the clear market support for each of the various aspects of our proposal in relation to the Monthly Returns. The submission and publication of these Returns should help ensure that the investing public is informed of the overall structure of a listed issuer's issued share capital as well as future obligations to issue shares. It should also facilitate compliance with shareholder interest disclosure obligations under the SFO.
141. We have also made some drafting and formatting changes (to the Monthly Returns for equity issuers and the Monthly Returns for Collective Investment Schemes listed under Chapter 20 of the Listing Rules) for greater clarity and user-friendliness.

We have also made a consequential amendment to the headline categories in Appendix 24 of the Main Board Rules (and its GEM Rule equivalent) to incorporate the Monthly Return.

***Consultation conclusion***

142. ***The Exchange has amended the Rules to require listed issuers to submit a Monthly Return to the Exchange to provide an update on a fixed monthly basis on information relating to the listed issuers' share capital and other movements in its securities, including future obligations to issue shares, by 9:00 a.m. of the fifth business day following the end of each calendar month.***

Disclosure of share option grants (Question 8.11)

***The proposal***

143. The Exchange proposed Rule amendments to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme to prevent backdating of such a grant to minimise opportunities for backdating such awards.

***Comments received***

144. A substantial majority of the respondents agreed that listed issuers should make an announcement as soon as possible when share options are granted pursuant to a share option so as to prevent backdating.
145. A broad range of comments was received. However, many of the comments made against this proposal (such as the comment that a grant of share options may not always be material) do not appear to address the principal purpose of our proposal, namely greatly reducing the opportunity for backdating rather than the disclosure of price sensitive information.

***The Exchange's response***

146. We note the strong support for the proposal that listed issuers should make an announcement as soon as possible when share options are granted pursuant to a share option.

***Consultation conclusion***

147. ***The Exchange has amended the Rules to require listed issuers to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme.***

**Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue**  
(Consultation Questions 9.1 to 9.3)

Extend specific disclosure requirements to any issue of securities for cash (Question 9.1)

*The proposal*

148. The Exchange proposed to extend the specific disclosure requirements under Main Board Rule 13.28 (and its GEM Rule equivalent) to any issue of securities for cash (and not only cases involving general mandates as under the existing Rules).

*Comments received*

149. A substantial majority of the respondents supported this proposal. These respondents commented that the proposed Rule amendments would promote greater consistency of information disclosure in announcements, enhance transparency and provide a deterrent to listed issuers taking action contrary to the interests of minority shareholders.

150. Amongst the dissenting views, one respondent commented that the proposed Rules would add an unnecessary burden on listed issuers. Another respondent was concerned that the proposed disclosure requirement might be considered as an additional obligation on a Hong Kong issuer who would be required to notify the Companies Registry regarding allotment of shares and file a return on the particulars of a contract relating to a share allotment for non-cash consideration.

*The Exchange's response*

151. The disclosure obligation under the proposed Rules arises when a listed issuer agrees to issue securities for cash, which aims to ensure that the market is informed of the matter on a timely basis. The proposed Rules do not require any further disclosure by the listed issuer upon the issue and allotment of the relevant securities.

152. While Hong Kong issuers are required to comply with their statutory obligations to file notifications and returns with the Companies Registry, it is also important for them to observe the Listing Rule requirements to ensure that immediate disclosure is made of any information which is reasonably expected to have a material effect on market prices of listed securities and is necessary for shareholders and the public to appraise the position of the listed issuers.

153. The Exchange does not agree with the comments that the proposed Rules would add an unnecessary burden on listed issuers.

## Disclosure of additional items of information (Question 9.1)

### ***The proposal***

154. The Exchange proposed to require disclosure of additional items of information to codify the disclosure practices in respect of announcements for issues of securities for cash.

### ***Comments received***

155. A substantial majority was in favour of this proposal.
156. In respect of the proposed changes to disclosure requirements for announcements, those who disagreed were concerned with certain items of information required. Two respondents stated that the requirement to disclose the “principal terms of the underwriting/placing arrangements” might be commercially sensitive. Another respondent commented that the definition of “principal terms” was unclear.
157. With regard to the disclosure of the “basis for determining the issue price of each security”, two respondents objected for the reason that such information would not be meaningful as the issue price would usually be arrived at after arm’s length negotiations between the parties. One respondent also submitted that it would be more useful to investors to require disclosure of a comparison of the issue price with the closing market price of securities, which is the current practice.
158. Two respondents disagreed with the requirement for disclosing “any other material information with regard to the issue...”. They were of the view that the intent of Main Board Rule 13.28 should be to set out the specific requirements for the disclosure of information relating to the issue of securities for cash rather than to duplicate some of the general principles for disclosure under Main Board Rule 2.13.

### ***The Exchange’s response***

159. The proposed Rules only require disclosure of the “principal terms of the underwriting/placing arrangements” with regard to the issue of securities. When a listed issuer enters into an underwriting/placing agreement, its directors are in the best position to determine whether the terms of the agreement are material and require disclosure according to the circumstances of its particular case. We are of the view that concerns about commercial sensitivity of the terms of the underwriting/placing arrangements should not override disclosure obligations where the information is material for investors’ consideration. Given this and the majority support from the respondents, we believe that the proposed requirement is appropriate.
160. Regarding the disclosure of the “basis for determining issue price”, the existing GEM Rule 17.30 already requires disclosure of such information. The proposed amendment to Main Board Rule 13.28(4) codifies the existing disclosure practices for announcements in respect of issues of securities even though currently such

disclosure is not explicitly required in the Main Board Rules. The existing Rules already contain specific disclosure requirements relating to the market price of the relevant securities. The Exchange therefore does not consider it necessary to take on board the suggestion made by the respondents.

161. Main Board Rule 2.13 is a general disclosure standard requiring information to be accurate and complete in all material respects and not be misleading or deceptive. A requirement to disclose “any other material information regarding the issue” in Main Board Rule 13.28 serves to make it explicit that material items in respect of the issue should be disclosed, which would align with the existing requirement under GEM Rule 17.30. On balance, we consider it appropriate to align such requirements for issue of securities under Main Board Rule 13.28 with GEM Rule 17.30.

#### Disclosure for the basis of allocation of excess shares (Question 9.3)

##### ***The proposal***

162. The Exchange proposed to require disclosure for the basis of allocation of excess shares in the announcement, circular and listing document for a rights issue or open offer.

##### ***Comments received***

163. A significant majority of respondents supported this proposal. Those in favour considered that the proposal would enhance transparency and the requirement that allocations of securities available for excess applications would be done on a fair basis.
164. Of those who expressed dissenting views, one respondent commented that the disclosure would be unduly burdensome and would not provide particularly insightful disclosure. Another respondent considered that the information would be hypothetical and could become potentially misleading if there was only a minor under-subscription.

##### ***The Exchange's response***

165. The Exchange does not agree with the views of the respondents as set out in paragraph 164. The intention of the proposed Rule change is to help to ensure that the allocation principle is provided to shareholders to allow them to assess whether to apply for excess securities given that their funds would be locked up during the period of application for these securities. In practice, such disclosure has been made by listed issuers in respect of their proposed rights issues or open offers and we are not aware of any practical difficulties for listed issuers in this regard.

### *Consultation conclusion*

166. *In view of the majority support and the underlying reasons given, the Exchange has adopted the proposed amendments to Main Board Rules 7.21, 7.26A(1), 13.28 and 13.29 (and their GEM Rule equivalents) with minor modifications.*

## **Issue 10: Alignment of requirements for material dilution in major subsidiary and deemed disposal** (Consultation Questions 10.1 to 10.3)

### *The proposal*

167. The proposal involved alignment of the requirements for material dilution in a major subsidiary and deemed disposal such that the requirement for shareholders' consent would be based on a size test threshold of 25% (i.e. the threshold for a major transaction) and that a written certificate might be accepted in lieu of a physical shareholders' meeting.

### *Comments received*

168. All respondents supported the proposal, giving reasons including that:

- the proposal would remove the anomalous treatments applicable to dilution in a major subsidiary and a deemed disposal;
- a consistent approach should be used which would be easier to follow;
- the requirements for material dilution and notifiable transactions should be aligned in order to deter listed issuers from taking action contrary to the interests of minority shareholders and in order to properly inform such minority shareholders of actions that dilute the value of their shareholdings; and
- it would help reduce difficulties in Rule adaptation when a GEM issuer transferred to the Main Board if the differences were simplified.

169. One respondent also suggested that his interpretation of the rationale behind note 2 to Rule 13.36 should be maintained, that is, if the subsidiary itself is listed then the transaction conducted by the listed subsidiary should not be subject to approval by a listed parent. For example, where the listed subsidiary conducts a placing of new shares by way of a general mandate and the placing would constitute a major transaction for the listed parent, the placing should not be subject to approval by shareholders of the listed parent. It is the respondent's view that in doing so the best interests of the minority shareholders of the listed subsidiary may be subjugated to the personal interests of the listed parent and its shareholders (through the approval process).



### ***The Exchange's response***

170. The Exchange disagrees with the respondent's interpretation of Note 2 to Rule 13.36 which, when read in its entirety, only provides exemption in much more restricted circumstances, that is, where the listed parent's interest in the listed subsidiary would not be materially diluted by the issuance of new shares. In other words, the current Listing Rules do not contain an exemption in the situation described.
171. There may be a practical concern that, where shareholders of the listed parent disapprove the major transaction (being the material dilution in the interests of the listed subsidiary), there is a question of whether it is practical or legal for the shareholders of the listed parent to stop the placing if the directors of the listed subsidiary have executed the transaction pursuant to proper authority (i.e. a valid general mandate). To address this concern and to comply with the Rule, we think that it is reasonable for the listed parent to seek a mandate from its shareholders on the possible dilution of interest in the listed subsidiary prior to it approving the general mandate proposed by its listed subsidiary. The potential dilution effect should be clearly set out for its shareholders at that time.
172. Further, under the current proposals, the threshold required for shareholders' action at the parent level in the event of a material dilution of a subsidiary increases from 5% to 25% based on the percentage ratio test. This would effectively reduce the circumstances where approval at the listed parent's level is required for share issuance by the listed subsidiary to situations where the size of the dilution is very material to the listed parent and would constitute a major transaction.

### ***Consultation conclusion***

173. ***In view of the unanimous support, the Exchange has adopted the proposed Rule amendments as set out in the CCP.***

## **Issue 12: Voting at general meetings**

### **(Consultation Questions 12.1 to 12.6)**

#### Voting by poll (Questions 12.1 to 12.3)

#### ***The proposal***

174. The Exchange sought views on the extent to which voting by poll should be made mandatory at general meetings.
175. Other than for certain transactions (such as connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting), the Rules do not currently require voting by poll on all resolutions at general meetings.

### *Comments received*

176. Mandatory voting by poll on all resolutions at all general meetings was favoured by a majority of respondents. Those in favour tended to cite fairness and greater shareholder participation as significant factors in adopting a mandatory requirement. Those against tended to be of the view that there were already sufficient safeguards in place, there was a need to retain some flexibility or it would be unduly burdensome.
177. One respondent cited situations where an issuer is faced with prolonged and disruptive questioning from a small group of shareholders or where amendments to resolutions are proposed at the meeting which are clearly aimed at disrupting and frustrating the proceedings. The respondent considered that such procedural matters should best be left to voting initially on a show of hands and, if deemed appropriate by the Chairman, or the requisite number of shareholders, subsequently by poll.

### *The Exchange's response*

178. We believe that mandatory voting by poll will, going forward, effectively serve to streamline the voting process and promote greater shareholder discussion and involvement in the affairs of the listed issuer, thereby further enhancing corporate governance. Many listed issuers in Hong Kong now already aspire to this higher level of corporate governance and voluntarily vote all meeting resolutions by poll, even where this is not required under the Rules and independently publish the next day voting results that have been reviewed by a scrutineer.
179. As mentioned in paragraphs 12.10 and 12.35 of the CCP, we considered in 2004 that it might not be justifiable to require voting by poll for all resolutions given the additional time and costs that may be incurred by issuers. Since the implementation of the 2004 Rule amendments, however, there are views in the market that any additional time and costs incurred as a result of conducting a vote by poll may be relatively small. From a listed issuer's perspective, the meeting venue in any event needs to be booked for a minimum period of a few hours in order to allow sufficient time for any ensuing deliberation. Therefore, the extra costs involved of engaging a scrutineer and additional management time are justified for the benefit of greater shareholders' participation.
180. We appreciate a listed issuer's desire for some degree of flexibility where a resolution is not a substantive item of business. The availability and development of electronic voting services should help provide a pragmatic solution to these concerns for many issuers.
181. We understand that electronic voting is now widely used at annual general meetings in the US, South Africa and the UK. Recently, companies in Australia, Canada and Hong Kong have also begun using the technology. The technology was first used at a Hong Kong based annual general meeting of a major, HSI constituent stock listed issuer in mid-2007. Typically, each eligible shareholder is provided at the meeting

for voting purposes with a handheld electronic keypad automatically linking him to his individual voting rights based on the size of his shareholdings. The chairman is able to monitor the progress of the voting electronically and, upon conclusion of the voting, the final result is ascertainable instantaneously. Usually, the cost of the service is based on the number of keypads required (i.e. the number of shareholders voting) and accounts for only a small part of the total cost of the facilities provided by the listed issuer in connection with the meeting (e.g. room rental, scrutineer's fees etc.).

182. Electronic voting can therefore provide a speedy solution to voting by poll, including voting on procedural issues and resolutions proposed during the course of meetings, thereby minimising any disruptive effect they may have on the meeting.
183. We are of the view that the higher levels of shareholder participation brought about by voting by poll on all resolutions will serve to further enhance corporate governance and Hong Kong's standing as an international financial centre. For the reasons given above, we feel that on balance these benefits outweigh the additional administrative cost and considerations which voting by poll entails.

#### ***Consultation conclusion***

184. ***The Exchange has amended the Listing Rules to make voting by poll mandatory at all general meetings.***

Notice of general meetings (Questions 12.4 and 12.5)

#### ***The proposal***

185. The Exchange sought views on the minimum notice period required for convening general meetings.
186. The Companies Ordinance, which applies to listed issuers incorporated in Hong Kong, requires 14 days' notice for the passing of an ordinary resolution and 21 days' notice (as well as a 75% majority) for the passing of a special resolution. 21 days' notice is also required for convening an annual general meeting. The Rules contain provisions which extend the same requirements for notice periods to listed issuers incorporated in Bermuda and the Cayman Islands by requiring that they incorporate such provisions into their constitutional documents.
187. The Companies Ordinance requires "special notice" to be given to convene a meeting for certain resolutions (e.g. removal of a director or auditor). Where special notice is required, notice of the intention to put forward the resolution must be given to the company at least 28 days before the meeting at which it is to be put forward. The company must then give notice of the resolution when it calls the relevant meeting (e.g. at least 14 days' notice to convene an extraordinary general meeting to vote on an ordinary resolution). If that is not practicable, notice can be given in newspapers or in any other mode allowed by the articles at least 21 days

before the meeting. This provision applies only to listed issuers incorporated in Hong Kong.

188. 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.

#### *Comments received*

189. A clear majority of the respondents were against amending the Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings, citing delay, uncertainty and loss of business opportunities. Those that favoured the proposal were mostly custodians and investors and the majority considered that it should be a Rule amendment.
190. In addition, many respondents did not favour extending such a minimum notice period to just annual general meetings (and not extraordinary or special general meetings).

#### *The Exchange's response*

191. The flow of information from the listed issuer to its shareholders can in some instances take some time, especially shareholders holding their shares through a number of intermediaries. The potential for shareholders to be faced with tight deadlines within which to act was described in paragraphs 12.43 to 12.50 of the CCP. In particular, as highlighted in paragraphs 12.44 and 12.45 of the CCP, where statutory holidays fall within the notice period and/or the deadline for receipt of voting instructions by Central Clearing and Settlement System (CCASS) or the custodian is earlier than usual because the listed issuer has stipulated an address outside Hong Kong for the lodging of proxies, investors may not have sufficient time to respond.
192. Noting the views of respondents, we have introduced a Code Provision in the Code on Corporate Governance Practices that at least 20 clear business days (equivalent to 28 clear calendar days) should be given for annual general meetings. This formulation addresses any adverse impact of public holidays, provides some flexibility yet a clear direction in respect of best practice standards. Since business transacted at general meetings other than annual general meetings is less likely to be of a routine nature and therefore less likely to have been anticipated and often of a time-sensitive nature, we propose to introduce a Code Provision that at least 10 clear business days (equivalent to 14 clear calendar days) should be given for all general meetings other than annual general meetings. The "comply or explain" principle underlying the Code Provision for notice periods for general meetings will allow issuers the necessary degree of flexibility to determine for themselves the appropriate balance between shareholder communication and participation and commercial expediency.

193. The new Code Provision should encourage conduct which facilitates the exercise of shareholders' rights on an informed basis.

*Consultation conclusion*

194. *The Exchange introduced a new Code Provision that 20 clear business days be given for annual general meetings and 10 clear business days be given for all other general meetings.*

**Issue 13: Disclosure of information about and by directors**  
(Consultation Questions 13.1 to 13.11)

Requiring continuous disclosure of information in Main Board Rule 13.51(2) and its GEM Rule equivalent (Questions 13.1 and 13.2)

*The proposal*

195. The Exchange proposed a new Main Board Rule 13.51B (and its GEM Rule equivalent) which would require an issuer to make continuous and immediate disclosure of the information specified in Main Board Rule 13.51(2) (and its GEM Rule equivalent) during the term of a director's or supervisor's office with the issuer.

*Comments received*

196. A majority of the respondents supported this proposal.

197. Those in favour believed that the proposed information requirement is important to investors and would promote investors' understanding of the issuers, thereby bringing about transparency and greater investor confidence in issuers.

198. Those who were against the proposal gave reasons including that:

- some of the information required under the proposed Rule 13.51B is already covered in the annual report. It does not serve a great deal of purpose to include the information in the continuous disclosure requirement regime;
- if the relevant information is material, it would have been caught under Rule 13.09;
- the new requirement is onerous, adding to the administrative burden of issuers; and
- a majority of the respondents with dissenting views opined that the proposed information disclosure requirements are excessive, onerous and add little value

to the market. A number of these respondents expressed the view that periodic disclosure of biographical details of the directors and supervisors is adequate.

### ***The Exchange's response***

199. Having considered the views expressed, the Exchange found that, on balance, the arguments (including those set out in paragraph 198 above) are stronger for limiting the scope of continuous and immediate disclosure of information to those items set out in paragraphs (h) to (v) of Rule 13.51(2), leaving paragraphs (a) to (e) and (g) of the same Rule to be disclosed on a periodic basis. Paragraphs (h) to (v) are considered more important when compared with the other provisions because the occurrence of these may cast doubt on the integrity of the directors involved and their suitability for continuing to serve as directors of the issuers. Paragraph (f) is excluded because such disclosure is already required under the disclosure of interest provisions of the SFO. We have therefore decided to modify the original proposal.

### ***Consultation conclusion***

200. ***The Exchange has adopted a modified Rule 13.51B, that is, to limit the requirement for continuous and immediate disclosure to paragraphs (h) to (v) of Rule 13.51(2), permitting the information required under paragraphs (a) to (e) and (g) to be disclosed periodically in annual and interim reports.***

Continuous disclosure of director's and supervisor's biographical details – other changes (Questions 13.3 to 13.9)

### ***The proposal***

201. The Exchange proposed to:

- introduce a new obligation requiring directors and supervisors to keep the issuers advised of any changes in the information required under Rule 13.51(2);
- clarify that the disclosure referred to in Rule 13.51(2) and the new draft Rule 13.51B need not be made if prohibited by law;
- require disclosure of directors' and supervisors' current and past directorships (for the past three years) in all public companies with securities listed in Hong Kong and/or overseas; and
- require disclosure of directors' professional qualifications.

### ***Comments received***

202. Each of the above proposals met with overwhelming support from those who responded to the questions.

203. In respect of the new provision that requires directors and supervisors to keep the issuer advised of any changes of circumstances previously disclosed under Rule 13.51(2), most respondents recognised that the requirement would be necessary to enable the issuers to make the relevant disclosures.
204. A substantial majority agreed that, for the sake of clarity, the Rules should be amended to specify that disclosures under paragraphs (u) and (v) of Main Board Rule 13.51 need not be made if prohibited by law.
205. With regard to the proposed requirements for disclosure of “professional qualifications” and current and past directorships of directors and supervisors for the past three years in all public companies, most respondents who gave comments expressed the view that such information is useful for shareholders and investors to judge the competence of directors and supervisors.

### ***Consultation conclusion***

206. ***In view of the overwhelming support and the reasons set out above, the Exchange has adopted the relevant Rule amendments as proposed in the CCP.***

### **Continuous disclosure of director’s and supervisor’s biographical details – amendments to Main Board Rule 13.51(m) (Questions 13.10 to 13.11)**

### ***The proposal***

207. The Exchange proposed to:

- amend Main Board Rule 13.51(2)(m)(ii) 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); and
- amend Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) 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)).

### ***Comments received***

208. Respondents who commented on the amendments to Main Board Rule 13.51(2)(m)(ii) largely agreed that this amendment would ensure consistency between the two sets of Listing Rules. Some respondents suggested minor amendments to the drafting of the Rule which we adopted. One respondent queried whether it is necessary to state in the Rules each reference to the Ordinance and to those Ordinances which have been repealed.
209. Most commentators on the proposal to clarify Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) agreed that the move is desirable. One respondent,

however, contended that the proposed amendment would in fact widen the scope of the disclosure obligation on the basis that the current wording means that the three limbs under the Rule are cumulative and must all be satisfied.

### *The Exchange's response*

210. With regard to the question whether it is necessary to state in the Rules each of the Ordinances and the repealed Ordinances, the Exchange would point out that unspent convictions are discloseable, irrespective of whether the relevant Ordinance has since been repealed.
211. The Exchange disagrees with the respondent's interpretation of Main Board Rule 13.51(2)(m) (and its GEM Rule equivalent) set out in paragraph 209 above. The intention of the Rule is for the disclosure obligation to arise where a conviction falls within any one of the three limbs under the Rule, rather than when all three limbs have been satisfied. A minor amendment has been made to eliminate any potential ambiguity to the Rule in this connection.

### *Consultation conclusion*

212. *The Exchange has adopted the Rule amendments as proposed in the CCP with minor modification.*

## **Issue 14: Codification of waiver to property companies (Consultation Questions 14.1 to 14.8)**

213. The Exchange proposed to codify a conditional waiver of general effect (**Proposed Relief**) which exempts listed issuers actively engaged in property development as a principal business activity (**Qualified Issuers**) from the shareholders' approval requirement of the Listing Rules in certain scenarios of acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders (**Qualified Property Projects**).

### Eligibility of the Proposed Relief (Questions 14.1 and 14.2)

#### *The Proposal*

214. The Exchange proposed that the Proposed Relief would apply to Qualified Issuers only. The proposed criteria in determining whether property development was a principal activity of a listed issuer would include reference to certain disclosure formats in the issuer's latest published financial statements as set out in the CCP.



### *Comments received and the Exchange's response*

215. A substantial majority of the respondents supported this proposal. Most also agreed with the rationale for the proposal which is to relieve companies who face hardship and practical difficulties in conducting property transactions. The Exchange has therefore proceeded with the proposal as published in the CCP.

### Scope of the Proposed Relief (Questions 14.3 to 14.5)

#### *The Proposal*

216. The Exchange proposed that the scope of the Proposed Relief should be confined to: (a) Qualified Property Projects solely but should allow such projects to contain a portion of a capital element as opposed to being restricted to projects that are of a revenue nature only; and (b) Qualified Property Projects involving 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**).

#### *Comments received*

217. A majority of the respondents supported the proposal to confine the relief to Qualified Property Projects only and concurred with the Exchange's view that there are no compelling reasons to extend the dispensation of shareholders' approval requirements to auctions of non-property assets, non-public auction processes or property auctions overseas. Some respondents requested an extension of the scope of the Proposed Relief to cover other jurisdictions, in particular Mainland China, as well as non-public auction processes.
218. A majority of the responses were in favour of the Exchange's proposal that a certain level of the capital element should be permitted for Qualified Property Projects. Nevertheless, for those that supported the introduction of a percentage threshold for the capital element within a Qualified Property Project, there were wide variances in the suggested percentage cap, ranging from zero to 50%.
219. On the proposal to confine exemption to Type B property joint ventures, a substantial majority of the respondents supported this and the Exchange's rationale to confine the exemption so as not to compromise the safeguards designed to protect minority shareholders under Chapter 14A.

#### *The Exchange's response*

220. Unlike public auctions, terms (including the price) in private auctions or tender are subject to changes and negotiations between the vendor and the bidders and such changes may not be transparent or objective to an outside observer. A lack of transparency does not justify the dispensation of shareholders' approval.

221. In addition, the frequency of listed issuers participating in public property land auctions overseas other than Mainland China has been much less than in Hong Kong. Therefore, the extent of the burden caused by strict compliance with the Rules is less.
222. The Exchange is therefore of the view that the difficulty for strict compliance with the Rules is relatively unique to property companies participating in Qualified Property Projects in Hong Kong and it is inappropriate to extend the Proposed Relief to other jurisdictions or non-public auction processes.
223. The Exchange considers that the proposal to allow a certain level of the capital element within Qualified Property Projects is appropriate. The Exchange believes, however, that there are practical implementation issues should a cap be set using forecast figures, which in turn are subject to adjustments throughout the development of the project.
224. The relaxation of the scope of the Proposed Relief to cover non-Type B property joint ventures is unwarranted since a conflict of interest, whether actual or perceived, exists in other types of property joint ventures with connected persons where the interests of the minority shareholders could potentially be compromised by the action of the controlling shareholder vis-à-vis those connected persons.
225. In view of the above observations, the Exchange has adopted the above proposals as set out in the CCP but has not specified a cap on the extent of the capital element in the Qualified Property Projects.

#### Conditions of the Proposed Relief (Questions 14.6 to 14.7)

##### ***The Proposal***

226. The Exchange proposed that the Proposed Relief would require: (a) Qualified Issuers entering into Type B property joint ventures to obtain in advance, at its annual general meeting, a General Property Acquisition Mandate (**GPA Mandate**) together with the proposed annual cap to engage in the acquisition of Qualified Property Projects; and (b) that Qualified Issuers, save for exemption under the Proposed Relief, would continue to be subject to the other requirements of the Rules, including the general obligations of disclosure under Main Board Rule 13.09.

##### ***Comments received***

227. A majority of the respondents agreed that the GPA Mandate was useful for conferring protection on shareholders and was necessary for property joint ventures with connected persons. However, views were diverse on the limit on the size of the annual cap. A few agreed with the idea of setting a cap, without any suggestion on what threshold should be used. One respondent suggested using a certain percentage of total assets as a threshold.

228. The proposal not to relax the disclosure requirements under Main Board Rule 13.09 received unanimous support.

*The Exchange's response*

229. The Exchange is of the view that no limit on the annual cap is necessary as there already exists other safeguards pertaining to the terms and conditions of the Proposed Relief and shareholders have the right to vote against the GPA Mandate should they disapprove of the annual cap proposed by directors.

230. With majority support for both proposals, the Exchange has proceeded with the Rule amendments as published in the CCP.

*Consultation conclusions*

231. *Given the majority support the Exchange received with respect to all of the proposals discussed above, the Exchange has adopted all the relevant Rule amendments as proposed in the CCP.*

**Issue 16: Disclosure of information in takeovers**  
**(Consultation Questions 16.1 to 16.4)**

Codifying current practice of granting waivers (Question 16.1)

*The proposal*

232. The Exchange proposed to introduce a new Rule to codify the current practice of granting waivers to listed issuers to publish prescribed information of the target companies in a supplementary circular at a later time when the information becomes available.

*Comments received*

233. A substantial majority of the respondents supported this proposal. These respondents commented that the codification of the current practice will reduce the need for waivers and provide the market with more clarity, which will become more relevant with increased acquisitions by listed issuers. This proposal will facilitate hostile acquisitions by listed issuers and help address the practical difficulties in preparing circulars where information on the target company is not publicly available or otherwise accessible.

234. Amongst the dissenting views, two respondents commented that the requirement for an accountants' report in the supplemental circular is unnecessarily onerous and not cost justified in view of the marginal benefits.

235. Two respondents raised concerns about the change in management of the target company upon completion of the takeover. They commented that the new board of directors may lack understanding and familiarity with the target company and may not be able to provide the written representations to the reporting accountants for the purpose of compiling an accountants' report for inclusion in the supplemental circular.

***The Exchange's response***

236. The proposal is intended to provide timing relief to allow listed issuers to comply with the disclosure requirements for certain non-public information at a later time when the information becomes available. We are of the view that any request for dispensation from the requirement to prepare a full accountants' report should be considered on a specific case basis.

237. We consider that the target company, as a public company, should have established internal control and financial reporting systems such that the new board of directors should be able to provide the necessary representation to the reporting accountants. Where there are particular circumstances, we will consider granting waiver on an individual case basis where it is appropriate and justified.

Extension to non-hostile takeovers (Question 16.2)

***The proposal***

238. The Exchange also consulted the market on whether the new Rule should be extended to non-hostile takeovers where there is insufficient access to non-public information.

***Comments received***

239. A substantial majority of the respondents supported this proposal. These respondents do not consider that a distinction between hostile and non-hostile takeovers should be made. A few respondents suggested that the new Rule should cover situations where information cannot be obtained because of regulatory or contractual restrictions on disclosure. Some respondents contended that the proposal should cover takeovers by way of takeover offers or schemes of arrangements, and recommended offers as well as hostile offers.

***The Exchange's response***

240. The new Rule is intended to cover acquisitions of listed companies where the listed issuer has no or only limited access to non-public information on the target company. We have amended the wording to make reference to an "acquisition" rather than "takeover offer". We have also modified the new Rule to include situations where there are "regulatory restrictions" in providing non-public information to the listed issuer.

### Time for despatch of supplemental circular (Question 16.3)

#### *The proposal*

241. The Exchange proposed that the supplemental circular should be despatched to shareholders within 45 days.

#### *Comments received*

242. A majority of respondents supported the 45-day time frame. Those in favour considered that the length of time appeared reasonable and suggested that a further extension can be granted by the Exchange if necessary.

243. Of those who expressed dissenting views, one respondent suggested that the deadline be shortened to 30 days whereas a number of respondents suggested that the deadline be extended to periods ranging from two to three months, with further extension subject to reasonable grounds. The respondents considered that additional time is required for the issuer to make a proper assessment of the target company and prepare the necessary information for disclosure in the circular as the target company may adopt different accounting standards and its businesses may cover many geographical locations with large scale operations.

#### *The Exchange's response*

244. The Exchange does not agree with the views of these respondents. The 45-day time frame was proposed having regard to previous waivers granted. In view of this and the majority support shown by the respondents, we believe that the 45-day time frame is reasonable. Any request for an extension of deadline will be assessed on a specific case basis having regard to all facts and circumstances.

#### *Consultation conclusion*

245. *The Exchange has adopted the relevant Rule amendments in respect of the above three proposals as set out in the CCP with minor modifications.*

## **Issue 17: Review of the Director's and Supervisor's Declaration and Undertaking (DU Forms) (Consultation Questions 17.1 to 17.11)**

### Streamlining the DU Forms (Questions 17.1 to 17.6)

#### *The proposal*

246. The Exchange proposed to streamline the DU Forms by:

- removing the questions concerning director's and supervisor's biographical details;
- removing the statutory declaration requirement;
- amending the GEM Rules to align with the practice of the Main Board Rules as regards the timing of submission of the DU Forms;
- amending the Rules so that the listing documents relating to new listing applicants for the listing of equity and debt securities must contain no less information about directors and supervisors than that required under Main Board Rule 13.51(2); and
- amending the listing application procedures to harmonise with the proposed amendments to streamline the DU Forms.

### *Comments received*

247. An overwhelming majority of the respondents supported the proposal to remove the questions relating to directors' and supervisors' biographical details. Most agreed with the Exchange that the move would help to avoid duplication and reduce administrative burden.
248. A substantial majority of the respondents also favoured removing the statutory declaration requirement in the DU Forms. Respondents shared the Exchange's views that the assurance of true, accurate and complete information relating to a director's personal details would be achieved through enforcement of the dual filing requirements and under section 384 of the SFO. Moreover, these respondents agreed with the Exchange that often the statutory declaration causes administrative inconvenience to directors, particularly where they are executed outside Hong Kong. A couple of respondents holding dissenting views argued that statutory declarations were appropriate and imposed a higher standard on the declaring party.
249. The remaining proposals also met with substantial majority support for reasons including the promotion of consistency and clarity in the Rules.

### *The Exchange's response*

250. As stated in the CCP, a main rationale underpinning the Exchange's proposal to streamline the DU Forms is to remove duplication.
251. In view of the proposed adoption of a new Main Board Rule 13.51B (and its GEM Rule equivalent, that is, issuers must disclose certain changes in the biographical details of directors and supervisors continuously and immediately upon the issuer becoming aware of the changes), there would be a duplication for requiring the same information in the DU Forms.

252. The support received from the market demonstrated agreement with the rationale set out in the CCP.

***Consultation conclusion***

253. ***The Exchange has adopted the relevant Rule amendments as proposed in the CCP.***

Codifying the Exchange's powers to gather information from directors (Questions 17.7 and 17.8)

***The proposal***

254. The Exchange proposed to amend the Directors' Undertakings to codify its powers to gather information from directors.

***Comments received***

255. A substantial majority of the respondents were in support of the proposed amendment. A number of the respondents raised a concern which they also stated in their responses to Issue 2 of the CCP, that is, the scope of the proposed powers might be too wide and should be restricted to verifying compliance with the Listing Rules.

256. Some respondents suggested a slightly revised wording for the Rule which was taken into consideration when drafting the new provision.

***The Exchange's response***

257. For the same reasons given in Issue 2 above, the amendments to the Undertakings should be adopted to codify the Exchange's powers to gather information from directors. For the sake of completeness of the Rules and for enforcement purposes, the Exchange considers it appropriate to include a similar provision in the Directors' Undertakings (Part 2 of Forms B and H of the Main Board Rules and Part 2 of Forms A and B of the GEM Rules). This proposal and the reasons given received majority endorsement.

***Consultation conclusion***

258. ***The Exchange has adopted the relevant Rule amendments as proposed in the CCP with a minor change.***

Amending the Main Board Director's Undertaking to include detailed provisions for service of disciplinary proceedings (Questions 17.9 and 17.10)

***The proposal***

259. The Exchange proposed amendments to paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules to include detailed provisions for service similar to those of the GEM Rules and for consistency, amending the wording of the GEM Rules.

***Comments received***

260. An overwhelming majority of the respondents supported this proposal, some citing agreement with the rationale given in the CCP.

***Consultation conclusion***

261. ***The Exchange has adopted the relevant Rule amendments proposed in the CCP.***

Requiring existing directors to re-execute Directors' Undertakings (Question 17.11)

***The proposal***

262. The Exchange proposed to amend the Directors' Undertakings to make express the ability to change the terms of the Undertakings without the need for every director to re-execute the document.

***Comments received***

263. A majority of the respondents to this question supported the proposed amendment. There were however views in opposition. One respondent noted that a director may be reluctant to give an undertaking if he believes that such undertaking is potentially open-ended. The respondent further suggested that it may be more appropriate for the Exchange to include specific obligations in the Rules rather than to seek amendments in the Directors' Undertakings from time to time. Some doubted whether it is legitimate for the Exchange to do so as a matter of contract law.

***The Exchange's response***

264. We note the opposition to this proposal and agree with some of the reasons put forward.

265. The Exchange agrees that amending the Rules to address specific issues concerning directors may be more appropriate than seeking amendments to the Undertakings from time to time. The Exchange has therefore removed the proposed amendments permitting the Exchange to unilaterally amend the Undertakings.



### *Consultation conclusion*

266. *The Exchange has withdrawn the proposal to introduce a new Rule permitting the Exchange to make unilateral amendments to the Undertaking.*
267. *In view of the changes made to the Undertaking noted in paragraphs 254 to 261 above, existing directors are required to sign a new Undertaking. To facilitate the process of collecting new Undertakings from existing directors, the Exchange is introducing a transitional Rule: Main Board Rule 3.20A (and its GEM Rule equivalent). The new Rule allows a period of approximately 3 months from the implementation date of the Rule for directors to sign and return the new Undertakings.*

## **Issue 18: Review of the Model Code for Securities Transactions by Directors of Listed Issuers** (Consultation Questions 18.1 to 18.6)

Introducing 3 new exceptions to the definition of “dealing” under paragraph 7(d) of the Model Code (Question 18.1)

### *The proposal*

268. The Exchange proposed to introduce the following new exceptions to the definition of dealing:
- dealing where the beneficial interest or interests in the relevant securities of the listed issuer do not change;
  - a director shareholder who places out his existing shares in a “top-up” placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out; and
  - bona fide gifts to a director by a third party.

### *Comments received*

269. The first two proposed exceptions met with overwhelming support. However, a view has been expressed by the Securities and Futures Commission that there may be ambiguity in the proposed wording as to whether associates of a director may also benefit from the exceptions.
270. As regards the third proposal, a number of respondents expressed concerns including that:

- it may be difficult, from an evidential perspective, to prove whether a particular gift is bona fide;
- the “third party” may not be truly independent; and
- value of these gifts could range from very immaterial to very material.

271. It is nevertheless recognised by some respondents that there are situations where such an exception would be relevant. For example, if the director receives shares under a will. One respondent proposed alternative wording in place of the CCP proposal.

272. Two respondents suggested new exemptions, but these were unrelated to the proposals in the CCP.

***The Exchange’s response***

273. We have revised the wording of the first two exceptions to make it neutral as to who might be dealing. For consistency, we have also amended the wording of the current paragraphs 7(d)(iv) and (v) of Appendix 10 (and their GEM Rule equivalents). The purpose of the changes is to eliminate any doubt as to whether a director’s associates may enjoy the benefit of the exceptions.

274. As to the third exception, we agree with some of the concerns expressed and have revised the wording accordingly.

***Consultation conclusion***

***275. The Exchange has adopted a modified version of the proposed exceptions to take into account the comments received in the consultation process and from the Securities and Futures Commission.***

Clarifying the meaning of “price sensitive information” in the context of the Model Code (Questions 18.2 and 18.3)

***The proposal***

276. The Exchange proposed to introduce a note to Rule A.1 of the Model Code which would clarify and align the meaning of “price sensitive information” in the Model Code with the meaning contained in Main Board Rule 13.09.

***Comments received***

277. An overwhelming majority of the respondents supported the proposal. As well as agreeing with the rationale for the proposal given in the CCP, a number of respondents also said that they are in favour of aligning the meaning of “price

sensitive information” in the Model Code with the meaning contained in Rule 13.09 and its Notes so as to provide clarity to the phrase.

278. One respondent pointed out that Notes 9 and 10 to Rule 13.09(1) should also be referred to in the new Note.

***The Exchange’s response***

279. We agreed with the suggestion made by the respondent with regard to also making references to Notes 9 and 10 of Rule 13.09(1) in the new Note.

***Consultation conclusion***

280. ***The Exchange has adopted the new Note with minor modifications.***

Extending the “black out” period (Question 18.4)

***The proposal***

281. The Exchange proposed that the current “black out” periods should be extended to commence from the listed issuer’s financial period end date to the date on which the listed issuer published the relevant results announcement.

***Comments received***

282. A substantial number of the respondents supported this proposal. One respondent proposed to adopt the UK approach. The UK’s fixed “black out” requirement specifies a maximum “black out” period of 60 days and a minimum “black out” period from the period end to the results announcement/annual report.
283. Those in favour broadly restated the arguments advanced by the Exchange in the CCP. Those against argued, amongst other things, that the SFO and Rule A.1 of the Model Code already prohibit directors from dealing when in possession of price sensitive information.

***The Exchange’s response***

284. The majority of the arguments put forward by respondents had already been identified and considered at length in the preparation of the CCP proposals. No significant new points were added to the debate as a result of the consultation exercise. Therefore the Exchange remains of the view that the arguments for extending the “black out” period are stronger and should prevail. In particular, many agreed with the Exchange that price sensitive information in respect of an issuer continues to accrue after the financial period end. The current one month “black out” period may fail to ensure that insiders do not abuse the market whilst in possession of unpublished price sensitive information, especially in periods leading up to a results’ announcement by the issuer and may also not adequately address concerns about the perception of abuse.

***Consultation conclusion***

285. ***The Exchange has adopted the relevant Rule amendments proposed in the CCP.***

Time limits for director's dealings in the issuer's securities (Questions 18.5 and 18.6)

***The proposal***

286. The Exchange proposed to impose 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.

***Comments received***

287. A majority of the respondents supported this proposal.

288. Those in favour agreed with the rationale stated in the CCP. Those against considered it unnecessary to regulate the time as proposed.

289. The Securities and Futures Commission expressed a view that the drafting of Rule B.8(b) as set out in the CCP may be unclear as to whether a director is obligated to deal once he receives clearance to deal. The Exchange has revised the wording of Rule B.8(b) in this regard.

***Consultation conclusion***

290. ***The Exchange has adopted the relevant Rule amendments as proposed in the CCP with minor revisions.***

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## APPENDIX: LIST OF RESPONDENTS

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### Listed issuers

1. Aluminium Corporation of China Ltd.
  2. Angang Steel Co. Ltd.
  3. AviChina Industry & Technology Co. Ltd.
  4. Bank of Communications, Company Director and Secretary
  5. Bank of Communications, Manager of Directors' Office
  6. Beijing Capital International Airport Co. Ltd.
  7. Beijing Capital Land Ltd.
  8. Beijing North Star Co. Ltd.
  9. Beiren Printing Machinery Holdings Ltd.
  10. BYD Co. Ltd.
  11. Cathay Pacific Airways Ltd.
  12. China Coal Energy Co. Ltd.
  13. China Communications Construction Co. Ltd.
  14. China COSCO Holdings Co. Ltd.
  15. China Life Insurance Co. Ltd.
  16. China Merchants Bank Co., Ltd.
  17. China National Building Material Co. Ltd.
  18. China National Materials Co. Ltd.
  19. China Petroleum & Chemical Corporation
  20. China Railway Group Ltd.
  21. China Shipping Container Lines Co., Ltd.
  22. CLP Holdings Limited
  23. Dalian Port (PDA) Company Limited
  24. Dongfang Electric Corporation Ltd.
  25. First Tractor Co. Ltd.
  26. Great Wall Motor Co. Ltd.
  27. Great Wall Technology Co. Ltd.
  28. Guangshen Railway Co. Ltd.
  29. Harbin Power Equipment Co. Ltd.
  30. Hong Kong Aircraft Engineering Co. Ltd.
  31. HSBC Holdings plc
  32. Hunan Nonferrous Metals Corporation Ltd.
  33. Jiangxi Copper Co. Ltd.
  34. Jingwei Textile Machinery Co. Ltd.
  35. KPI Company Limited
  36. Lianhua Supermarket Holdings Co. Ltd.
  37. Maanshan Iron & Steel Co. Ltd.
  38. Mexan Limited
  39. Minmetals Land Limited
  40. Nanyang Holdings Ltd.
  41. New Focus Auto Tech Holdings Ltd.
  42. Northeast Tiger Pharmaceutical Co. Ltd.
  43. Shandong Luoxin Pharmacy Stock Co. Ltd.
  44. Shandong Molong Petroleum Machinery Co. Ltd.
  45. Shanghai Electric Group Co. Ltd.
  46. Shanghai Forte Land Co. Ltd.
  47. Shanghai Prime Machinery Co. Ltd.
  48. Sichuan Xinhua Winshare Chainstore Co., Ltd.
  49. Swire Pacific Limited
  50. Tong Ren Tang Technologies Co. Ltd.
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51. TravelSky Technology Ltd.
  52. USI Holdings Ltd.
  53. Weiqiao Textile Co. Ltd.
  54. Winsor Properties Holdings Limited
  55. Yanzhou Coal Mining Co. Ltd.
  56. Zhejiang Expressway Co. Ltd.
  57. Zhuzhou CSR Times Electric Co., Ltd.
  58. A market participant (name not disclosed at the respondent's request)

#### Professional and industry associations

1. Canadian Certified General Accountants Association of Hong Kong
2. Hong Kong Custodian Bank Working Group
3. Hong Kong Federation of Women Lawyers
4. Hong Kong Institute of Certified Public Accountants
5. Hong Kong Stockbrokers Association
6. The Association of Chartered Certified Accountants, Hong Kong
7. The Chamber of Hong Kong Listed Companies
8. The Chartered Institute of Management Accountants, Hong Kong Division
9. The Chinese General Chamber of Commerce
10. The Hong Kong Association of Banks
11. The Hong Kong Institute of Chartered Secretaries
12. The Institute of Accountants in Management
13. The Law Society of Hong Kong
14. The Real Estate Developers Association of Hong Kong
15. A respondent (submission not posted on HKEx's website at the respondent's request)

#### Market practitioners

1. BC Investment Management Corporation
2. *Charltons on behalf of:*  
Anglo Chinese Corporate Finance, Limited  
CIMB-GK Securities (HK) Ltd.  
Quam Limited  
Sommerley Limited  
SW Kingsway Capital Holdings Limited  
Taifook Capital Limited
3. Clifford Chance
4. Computershare Hong Kong Investor Services Ltd.
5. Deloitte Touche Tohmatsu
6. Ernst & Young
7. F & C Management Limited
8. *Freshfields on behalf of:*  
ABN AMBRO BANK N. V., Hong Kong Branch  
BOCI Asia Limited  
China International Capital Corporation Limited  
Citigroup Global Markets Asia Limited  
Credit Suisse (Hong Kong) Limited  
Deutsche Bank AG, Hong Kong Branch  
J. P. Morgan Securities (Asia Pacific) Co. Ltd.  
Lehman Brothers Asia Limited  
Merrill Lynch Far East Limited  
Morgan Stanley Asia Limited  
UBS AG
9. *Herbert Smith and Freshfields on behalf of:*  
ABN AMBRO BANK N. V., Hong Kong Branch  
BOCI Asia Limited

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China International Capital Corporation (Hong Kong) Limited  
Citigroup Global Markets Asia Limited  
Credit Suisse (Hong Kong) Limited  
Deutsche Bank AG, Hong Kong Branch  
Goldman Sachs (Asia) L.L.C.  
J. P. Morgan Securities (Asia Pacific) Ltd.  
Merrill Lynch Far East Limited  
Morgan Stanley Asia Limited  
Nomura International (Hong Kong) Limited  
UBS AG

10. Hermes Fund Managers Limited
11. Linklaters
12. Paul, Hastings, Janofsky & Walker
13. Piper Jaffray Asia Limited
14. PricewaterhouseCoopers
15. SBI E2-Capital (HK) Ltd.
16. Sinotec Investment Management
17. Slaughter and May
18. Stephenson Harwood & Lo
19. Sun Hung Kai & Co. Limited
20. Timothy Loh Solicitors
21. Tricor Services Limited
22. A market practitioner (name not disclosed at the respondent's request)

Statutory regulators

1. Companies Registry
2. The Financial Reporting Council

Individuals and retail investor representative

1. Chan Wai Lok, Leo
2. Gregg Li
3. John Maguire/Allen Tze
4. Paul Mok
5. Joseph So
6. JE Strickland
7. Tam Heung Man, Mandy
8. Webb-site.com

Remarks:

1. *One submission is counted as one response.*
  2. *One respondent (Webb-site.com) indicated that the submissions in respect of two of the issues were made on behalf of 475 and 364 respondents respectively in answer to its own on-line surveys.*
  3. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*
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