



SUBMISSIONS BY THE LAW SOCIETY OF HONG KONG ON THE

CONSULTATION PAPER

ON

PROPOSED AMENDMENTS TO THE LISTING RULES

RELATING TO

INITIAL LISTING AND CONTINUING LISTING ELIGIBILITY

AND

CANCELLATION OF LISTING PROCEDURES

**The Securities Law Committee
The Law Society of Hong Kong
31 October 2002**

NOTICE

Dear Sir/Madam,

You are invited to complete and return this questionnaire booklet to us if you wish to comment on our Consultation Paper on Proposed Amendments to the Listing Rules relating to Initial Listing and Continuing Listing Eligibility and Cancellation of Listing Procedures. You are not obliged, however, to supply your personal data such as your name and address if you do not wish to do so.

If you choose to voluntarily supply any personal data to us, you should note the Personal Data Privacy Policy Statement as follows:

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Personal Data Privacy Officer Hong Kong Exchanges and Clearing Limited 11/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong cvw@hkex.com.hk

Hong Kong Exchanges and Clearing Limited

Please complete this questionnaire and return to Hong Kong Exchanges and Clearing Limited by no later than the close of business on 31 August 2002.

Your contact information

Name : The director of practitioners affairs
Company : The Law Society of Hong Kong
Telephone no. : 2846 0531
E-mail address : dpa@hklawsoc.org.hk

Please tick one of the following:

- Listed company - Main Board
- Listed company - GEM
- Professional association
- Market practitioner (accountant, legal adviser, financial adviser and sponsor, etc)
- Institutional investor
- Retail investor
- Other (please specify: _____)

GENERAL

This questionnaire contains specific questions relating to our proposals that are highlighted in our Consultation Paper issued on 26 July 2002. We have designed this questionnaire to facilitate your response to the matters of consultation set out in the Consultation Paper. This would help the Exchange in analysing the result with more accuracy and ensure a better understanding of public opinions for the formulation of listing policy for the Main Board. You are requested to elaborate your views and comments in the space provided after each question. We will analyse responses and comments on our proposals based on the completed questionnaires. **You are recommended to read the Consultation Paper in detail when completing this questionnaire.**

The proposals set out in the Consultation Paper and this questionnaire will be made to the Main Board Rules, unless otherwise stated.

We acknowledge that the use of this questionnaire alone may not be adequate for you to fully communicate your comments on complex issues. You are therefore welcome to supplement your comments and views by attaching additional sheets to this questionnaire booklet.

The consultation period will close on 31 August 2002.

This questionnaire booklet is also available for completion and submission at the website of Hong Kong Exchanges and Clearing Limited: www.hkex.com.hk.

Comments and completed questionnaire booklet should be addressed to Head - Listing, Regulation & Risk Management and sent by post to:

Hong Kong Exchanges and Clearing Limited
11/F, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Alternatively, you should complete and submit the electronic questionnaire available at the website of Hong Kong Exchanges and Clearing Limited: www.hkex.com.hk. You could also download a soft copy of the questionnaire from the website of Hong Kong Exchanges and Clearing Limited and thereafter submit the completed copy to us at cvw@hkex.com.hk.

**PART B OF THE CONSULTATION PAPER
INITIAL LISTING ELIGIBILITY CRITERIA**

TRACK RECORD

Trading Record Period

Paragraph 29 of Part B of the Consultation Paper

We will maintain the current requirement that generally a listing applicant must have a trading record period of not less than three financial years.

Q1. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Exceptions should be allowed for (i) infrastructure projects (ii) developmental (e.g. new technology) and (iii) speculative issues (e.g. mineral exploration) subject to satisfying other relevant listing criteria. Some of these are already covered by Rule 8.05

Paragraph 30 of Part B of the Consultation Paper

We will amend the Main Board Rules such that those listing applicants to be listed under the market capitalisation/revenue test (as discussed in paragraph 52 of Part B of the Consultation Paper) may be granted a waiver from the trading record period requirement. However, the Exchange must be satisfied that such listing applicants are able to meet minimum requirements on management experience (as discussed in paragraph 53 of Part B of the Consultation Paper) and number of shareholders (as discussed in paragraph 82 of Part B of the Consultation Paper).

Q2. Do you agree with our proposal?

Agree (please refer to Q11, Q12, Q13 and Q33)

Disagree. No waiver from the trading record period requirement should be granted. Please state reason(s) for your view:

Comments:

Agree - a waiver would be appropriate in a variety of circumstances including, but not limited to, relatively new businesses and companies being restructured.

Management and Ownership Continuity

Paragraph 34 of Part B of the Consultation Paper

We will codify our interpretation of the current rule to require a listing applicant to demonstrate management continuity during the three financial-year trading record period and ownership continuity and control for at least the most recent financial year of the trading record period.

Q3. *Do you agree with our proposal?*

Agree

Disagree (please tick one of the following)

The listing applicant should demonstrate management continuity and ownership continuity and control during the three-financial year trading record period.

Other views:

Comments:

We agree that continuity of management should be viewed as being more significant than ownership in determining suitability for listing.

Given the prevalence of family-controlled companies in Hong Kong, the current practice on requiring demonstration of continuity of management and ownership is not unreasonable. However, we think that this requirement should not be rigidly applied especially in relation to listing applicants who do not fit into the typical family-controlled profile, otherwise, the dominance of family-controlled and tightly held companies in Hong Kong may become a product of regulation rather than a market phenomenon. Would the Exchange be prepared to grant exemptions in cases where the listing applicant is relatively widely held, corporate decisions are made by the management and the largest shareholder is independent of management? Should there be clarifications on how the rule would apply to state-owned enterprises? It would be helpful if the Exchange could provide some guidelines on these areas.

FINANCIAL STANDARDS

Profit

Paragraph 41 of Part B of the Consultation Paper

We will maintain the current profit requirement as one of the quantitative tests for assessing the track record financial performance of a listing applicant. If our proposals set out in paragraphs 48 and 52 of Part B of the Consultation Paper are adopted, listing applicants may apply to be listed under alternative financial standards to the profit requirement. These alternative financial standards are the market capitalisation/revenue/cash flow test and the market capitalisation/revenue test as discussed in paragraphs 44 to 53 of Part B of the Consultation Paper.

Q4. Do you think that there should be other alternative financial standards?

Yes

No. The current profit requirement is sufficient for assessing the track record financial performance of a listing applicant. There is no need to introduce alternative financial standards.

Comments:

Flexibility will give greater scope for "suitable" companies to raise capital.

In addition, consideration should be given to clarifying the position of applicants whose main asset is a 50% owned "associate".

Paragraph 42 of Part B of the Consultation Paper

We will amend the Main Board Rules so that pre-tax profits will be used by listing applicants for the purpose of satisfying the profit record requirement, rather than post-tax profits as currently required in the Main Board Rules. However, we will maintain our current position that such pre-tax profits should exclude any income generated by activities outside the ordinary and usual course of business, as well as the results of associated companies.

Q5. Do you agree with our proposal to use pre-tax profits for the purpose of the profit record requirement?

Agree

Disagree. The current rule to use post-tax profits for the purpose of the profit record requirement should be retained. Please state reason(s) for your view:

Comments:

The use of pre-tax profits effectively lowers the profitability threshold for listing.

If the proposal is adopted, we believe that the Listing Rules should require the initial listing document to prominently disclose the post-tax profits of an issuer during the trading record period as it should be relevant to shareholders whether the business structure of the listed group is tax efficient or not.

Q6. Do you agree with our proposal to maintain our current position to exclude any income generated by activities outside the ordinary and usual course of business of the listing applicant, as well as the results of associated companies, for the purpose of the profit record requirement?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Income generated by activities outside the ordinary and usual course of business is, generally speaking, less likely to be of a recurring nature or an indication of future earnings potential.

We agree with the reasoning given in the consultation paper for excluding the earnings of associated companies.

Paragraph 43 of Part B of the Consultation Paper

We will maintain the current minimum HK\$50 million aggregated profit requirement. However, we will amend the Main Board Rules to allow for greater flexibility in the spread of the aggregated profit such that no less than HK\$20 million can be attributable to the preceding two years and no less than HK\$20 million can be attributable to the most recent financial year of the track record period.

Q7. Do you agree with our proposal to retain our current minimum HK\$50 million aggregated profit requirement?

Agree

Disagree (please tick one of the following)

The threshold of the aggregated profit should be increased. The threshold should be HK\$_____. Please specify the threshold you think is appropriate and state reason(s) for your view:

The threshold of the aggregated profit should be reduced. The threshold should be HK\$_____. Please specify the threshold you think is appropriate and state reason(s) for your view:

Comments:

As the general market and economic conditions have deteriorated in recent years, it may be difficult for listing applicants to meet a profit requirement higher than HK\$50 million.

However, retaining the current threshold is, if the proposals in paragraphs 42 (use of pre-tax profits) and 43 (greater flexibility on spread) are adopted, effectively a reduction of the threshold.

Q8. Do you agree with our proposal with regard to the spread of aggregated profit throughout the track record period?

Agree

Disagree (please tick one of the following)

The current Main Board Rules with regard to the spread of aggregated profit throughout the track record period should be retained. Please state reason(s) for your view:

Other views:

Comments:

There may well be a case for setting an even more liberal or flexible approach than is currently proposed. The current proposal may still prevent companies which have overall profits of HK\$50 million in the track record period from listing if the nature of the business or business cycle in the relevant industry or the general market or economic conditions during the three-year period do not fit within the profits spread requirements. The spread of profits for a company may be affected by many factors. If an applicant can meet the aggregate profit requirement of HK\$50 million, can demonstrate increased profitability during the track record period, and for a particularly bad year in the relevant industry in which the company operates, did not suffer any significant deterioration of profitability, then it seems that the applicant should not be barred from listing if all the other listing criteria are met.

Market Capitalisation/Revenue/Cash Flow

Paragraph 48 of Part B of the Consultation Paper

We will amend the Main Board Rules to introduce an alternative quantitative test to the profit requirement (as discussed in paragraphs 41 to 43 of Part B of the Consultation Paper) for assessing the financial performance of a listing applicant during the three financial-year track record period. This will apply to listing applicants with market capitalisation of at least HK\$2 billion at the time of listing and revenue of at least HK\$500 million during the most recent financial year comprising 12 months and positive cash flow from operating activities that are to be listed of at least HK\$100 million in aggregate for the three financial-year track record period. For the avoidance of doubt, these listing applicants are still required to comply with the trading record period of not less than three financial years.

For the purpose of calculating revenue under the alternative quantitative tests to the profit requirement under Part B of the Consultation Paper, the Exchange will only recognise revenue that generates actual cash inflow but not revenue that is created merely on books, such as banner barter transactions or writing back of accounting provisions.

Q9. Do you agree with our proposal?

Agree

Agree, but the respective amounts for the market capitalisation, revenue and cash flow for the alternative quantitative test to apply should be (please indicate what levels these should be)

HK\$ _____ for market capitalisation

HK\$ _____ for revenue

HK\$ _____ for cash flow

Please state reason(s) for your view:

Disagree. There is no need to introduce alternative financial standards.

Comments:

Providing alternative listing eligibility criteria will (potentially) encourage a wider range of companies to seek listing on the Exchange.

Market Capitalisation/Revenue

Paragraph 52 of Part B of the Consultation Paper

We will amend the Main Board Rules to introduce another alternative quantitative test to the profit requirement, in addition to the market capitalisation/revenue/cash flow test as discussed in paragraph 48 of Part B of the Consultation Paper. This will apply to listing applicants having a market capitalisation of at least HK\$4 billion at the time of listing and revenue of at least HK\$500 million during the most recent financial year comprising 12 months. There will also be a specific requirement for a higher minimum number of shareholders so as to demonstrate that the listing applicants opting for this alternative test can attract significant investor interest. For details please refer to paragraph 82 of Part B of the Consultation Paper.

Q10. Do you agree with our proposal?

Agree

Agree, but the respective amounts for the market capitalisation and revenue for the alternative quantitative test to apply should be (please indicate what levels these should be)

HK\$_____ for market capitalisation

HK\$_____ for revenue

Please state reason(s) for your view:

Disagree. There is no need to introduce alternative financial standards.

Comments:

Providing alternative listing eligibility criteria will (potentially) encourage a wider range of companies to seek listing on the Exchange.

Paragraph 53 of Part B of the Consultation Paper

We will also amend the Main Board Rules to provide that listing applicants under the market capitalisation/revenue test that wish to apply for a waiver from the three financial-year trading record requirement will be required to demonstrate management continuity and ownership continuity and control for the most recent financial year comprising 12 months. In addition, they must demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants.

Q11. Do you agree with our proposal that a waiver from the trading record requirement should be granted?

Agree (please answer Q12 and Q13)

Disagree. Please state reason(s) for your view:

Comments:

While we agree with the proposal generally, continuity of ownership and management will not be an appropriate bench mark for all listing applicants.

Q12. Do you agree with our proposal to make management experience a pre-condition to a waiver?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Generally, we find it difficult to comment on the proposals as it is not clear what the Exchange expects.

The proposals, when read in light of Rule 3.09 of the Listing Rules, raise the fundamental question of to what extent the Exchange expects directors and senior management to be competent, skilled and experienced in the line of business of the listing applicant:

- (i) Should listing applicants not be expected or required to hire senior officials and appoint directors who know the relevant line of business in the first place?
- (ii) Under the proposals mentioned in Q12, 41 and 45, would directors and senior management be expected to have higher qualifications and experience when compared with the requirements under Rule 3.09? If so, what are the major differences of expectations and the minimum level of experience and competence required? Is it practical to assume that the difference in experience contemplated in the proposals could be demonstrated objectively in any particular case and could the standard be consistently applied?
- (iii) What would constitute “sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants”? It would also be helpful if the Exchange could clarify whether **all**, or simply a majority of, directors and senior management of the listing applicant (presumably those listed in the prospectus as senior management) need to have “sufficient and satisfactory experience of at least three years”.

Q13. Do you think there should be other pre-condition(s) that should be met?

Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view:

If the waiver is given to a relatively recently created businesses which is still in the process of being developed, it would be appropriate to require disclosure of:

- _____
(i) performance to date against budgeted/planned milestones;

(ii) mandatory forward looking disclosure of business objectives and/or profit forecasts.

(Alternatively, it could be made clear that such companies should apply for listing on GEM.)

No

Comments:

WORKING CAPITAL SUFFICIENCY

Paragraph 57 of Part B of the Consultation Paper

We will maintain the current practice not to compulsorily require a listing applicant to include a profit forecast in its initial listing document. However, listing applicants will be encouraged to include a profit forecast when circumstances permit.

Q14. Do you agree with our proposal to maintain the inclusion of a profit forecast in the initial listing document as a voluntary requirement?

Agree (But see comments)

Disagree. Please state reason(s) for your view:

Comments:

While we agree that generally profit forecasts should be voluntary, in some circumstances they should be required. Generally, for example, where the 3 year track record for profitability is waived.

In addition, a negative statement to the effect that the management believes having made reasonable inquiry, that profits in the current/next financial year will not be [materially] less than the previous financial year, would be appropriate.

We understand that currently, the Exchange does not allow underwriting syndicate members to issue pre-deal research with a profit forecast if no forecast is included in the issuer's prospectus. In practice, therefore, there is pressure on issuers to include a profit forecast in the prospectus. For transparency reasons, we think that the Exchange should codify its current practice regarding pre-deal research in the Listing Rules.

Paragraph 58 of Part B of the Consultation Paper

We will amend the Main Board Rules to introduce a new requirement, in addition to the current requirement, on working capital sufficiency such that a listing applicant (except a listing applicant that is subject to prudential supervision by a regulator acceptable to the Exchange) has to show that it has sufficient working capital (including the proceeds raised from listing and its application) for its current needs and for at least the next 12 months from the date of the initial listing document. In this connection, we would also require the sponsor to confirm to the Exchange in writing that it:

- (a) has obtained written confirmation from the listing applicant that the working capital available to the group is sufficient for its present requirements, and for at least the next 12 months from the date of publication of the initial listing document; and
- (b) is satisfied that the confirmation in paragraph 58(a) of Part B of the Consultation Paper has been given after due and careful enquiry by the listing applicant and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.

Q15. Do you agree with our proposal?

Agree

Agree in principle, but the period covered should be _____. Please state reason(s) for your view:

p *Disagree. Please state reason(s) for your view:*

The sponsor's role is to assist an applicant to prepare for and obtain listing. While we agree with the proposal to introduce a confirmation of working capital sufficiency in principle, we do not believe that they should be asked to state in writing that the relevant financing facilities exist. Disclosure of the nature would likely be detailed and cumbersome but would not, in our view, provide meaningful information to investors. A general confirmation made after due enquiry would be more appropriate.

Subject to proper disclosure being made in the Listing Document, it is for investors to form their own view as to the financial position of the applicant for listing - not the sponsor. Investors have remedies under the Companies Ordinance, the Protection of Investors Ordinance (and, in due course the Securities and Futures Ordinance) as well as in contract and tort for misstatements etc. in a prospectus. It is not, and should not, be the sponsor's role to stand behind statements made in a prospectus to any greater extent than is already imposed by law or to opine on a company's solvency.

Comments:

MARKET CAPITALISATION

Paragraph 67 of Part B of the Consultation Paper

We will amend the Main Board Rules to increase the initial minimum expected market capitalisation to HK\$200 million such that:

- (a) in respect of a listing applicant that has only one class of securities and is applying to list such class of securities on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only one class of securities that are to be listed and traded on the Exchange;

Q16. Do you agree with our proposal to require an initial minimum expected market capitalisation of HK\$200 million?

Agree

Disagree. The initial minimum expected market capitalisation should be HK\$_____. Please state reason(s) for your view:

Comments:

We have no views on this issue.

- (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise only the class of securities that are to be listed and traded on the Exchange; and

Q17. Do you agree with our proposal to apply the same minimum threshold of HK\$200 million to the global market capitalisation of listing applicants that have more than one class of securities and all of which are unlisted apart from the class to be listed and traded on the Exchange?

Agree

Disagree. Please specify the threshold you think is appropriate and state reason(s) for your view:

Comments:

If the HK\$200 million capitalisation requirement is set, at least in part, for (as we understand the case) liquidity purposes, then the HK\$200 million capitalisation requirement should be calculated solely on each class of securities to be listed on the Exchange.

If the HK\$200 million capitalisation requirement is used to determine the substantiveness of the underlying business, then the requirement should be determined by reference to all listed and unlisted securities.

(c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, the minimum expected market capitalisation of HK\$200 million at the time of listing will comprise the aggregate of such securities listed and traded on other regulated markets as well as securities that are to be listed and traded on the Exchange.

Q18. Do you agree with our proposal to apply the same minimum threshold of HK\$200 million to the global market capitalisation of listing applicants that have more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets?

Agree

Disagree. Please specify the threshold you think is appropriate and state reason(s) for your view:

Comments:

It seems that an initial distinction should be drawn on whether shares traded in the other listed markets are fungible or non-fungible with those to be traded on the Exchange.

If the shares of all listed markets are fungible, the HK\$200 million minimum market capitalisation seems small but whatever the value is, it would be difficult to ascertain with accuracy the actual value of shares traded in Hong Kong at any given point in time compared to the shares traded in other markets.

If the shares are not fungible (e.g. H-shares and A-shares), it may be appropriate to set a separate minimum market capitalisation for those shares that are to be listed and traded on the Exchange since A-shares have traditionally traded at significantly higher P/Es than H-shares.

Paragraph 68 of Part B of the Consultation Paper

We will maintain the current requirement of the Main Board Rules that options, warrants or similar rights to subscribe or purchase securities for which listing is sought must have a minimum market capitalisation of at least HK\$10 million at the time of listing.

Q19. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

A lower initial minimum market capitalisation requirement is appropriate for such securities.

PUBLIC FLOAT

Paragraph 73 of Part B of the Consultation Paper

We will amend the Main Board Rules to provide for the following:

- (a) in respect of a listing applicant that has only one class of securities and is applying to list such securities on the Exchange, there must be at least 25% of the listing applicants' total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million, in the hands of the public;

Q20. Do you agree with our proposal to require at least 25% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million, in the hands of the public?

Agree

Disagree. Please state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

- (b) in respect of a listing applicant that has more than one class of securities and all of which are unlisted apart from the class to be listed on the Exchange, the total securities held by the public at the time of listing on the Exchange must be at least 25% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$200 million; and

Q21. Do you agree with our proposal to apply the same percentage threshold of public float to listing applicants that have more than one class of securities and all of which are unlisted apart from the class to be listed and traded on the Exchange?

Agree

Disagree. Please specify the percentage threshold you think is appropriate and state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

- (c) in respect of a listing applicant that has more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other regulated markets, the total securities held by the public (on all regulated markets including the Exchange) at the time of listing on the Exchange, must be at least 25% of the listing applicant's total existing issued share capital. However, the securities that are to be listed and traded on the Exchange must not be less than 10% of the listing applicant's total existing issued share capital, having an aggregate market capitalisation of not less than HK\$50 million.

Q22. Do you agree with our proposal to apply the same percentage threshold of public float to listing applicants that have more than one class of securities and all or part(s) of such other class(es) of securities are listed and traded on other exchanges?

Agree

Disagree. Please specify the percentage threshold you think is appropriate and state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

Q23. Do you agree with our proposal to require at least 10% of the listing applicant's total existing issued share capital to be listed and traded on the Exchange?

Agree (please answer Q24)

Disagree (please tick one of the following)

The percentage threshold should be higher. The percentage threshold should be _____. Please specify the threshold you think is appropriate and state reason(s) for your view: (please answer Q25)

The percentage threshold should be lower. The percentage threshold should be _____. Please specify the threshold you think is appropriate and state reason(s) for your view: (please answer Q26)

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

Q24. Do you agree with our proposal that the 10% of the listing applicant's total existing issued share capital to be listed and traded on the Exchange should represent an aggregate market capitalisation of not less than HK\$50 million?

Agree

Disagree. The threshold of the aggregate market capitalisation represented by the 10% of the listing applicant's issued share capital should be HK\$_____. Please state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

Q25. *If you think that the percentage threshold of the listing applicant's issued share capital should be higher than 10%, do you agree that the threshold of the aggregate market capitalisation of securities to be listed and traded on the Exchange represented by such percentage should be maintained at HK\$50 million?*

Agree.

Disagree. The market capitalisation should be HK\$_____. Please state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

Q26. If you think that the percentage threshold of the listing applicant's issued share capital should be lower than 10%, do you agree that the threshold of the aggregate market capitalisation of securities to be listed and traded on the Exchange represented by such percentage should be maintained at HK\$50 million?

Agree.

Disagree. The market capitalisation should be HK\$_____. Please state reason(s) for your view:

Comments:

The bench mark should be set by reference to the percentage level and market value of securities necessary to ensure adequate liquidity.

Paragraph 74 of Part B of the Consultation Paper

We will amend the Main Board Rules to provide that the Exchange may, at its discretion, accept a lower percentage of public float between 15% and 25% if the market capitalisation of securities of a listing applicant that are listed and traded on regulated markets determined as at the time of listing on the Exchange, exceeds HK\$10 billion. However, the listing applicant must demonstrate, to the satisfaction of the Exchange, that it has sufficient safeguard in place to protect the interests of minority shareholders. If this proposal is adopted, the revised lower percentage of public float of between 15% and 25% shall only apply to listing applicants referred to in paragraph 111 of Part B of the Consultation Paper, and will not affect those existing issuers that have already been granted a waiver from the public float requirement.

Q27. Do you agree with our proposal to increase the floor to 15% with regard to the minimum percentage of public float that the Exchange may grant?

- Agree (please answer Q28, Q29 and Q30)
- Agree, but the threshold should be _____% (please indicate what level this should be). Please state reason(s) for your view: (please answer Q28, Q29 and Q30)

p Disagree. The current threshold of 10% should be retained. Please state reason(s) for your view:

We think that the current threshold of 10% should be retained.

As we understand it, the number of cases under which the Exchange had exercised its discretion to allow a minimum public float of between 10% and 15% is very small. Since it is only in rare and exceptional circumstances that the Exchange would exercise such discretion, we do not see the need to limit the scope of the discretion.

We regard the prescribed minimum public float percentage as a yardstick to measure whether there is an open market in the securities concerned (c/o the general principles set out in Rule 6.01 and 8.08). There may be circumstances where a minimum public float percentage of below 15% is justifiable. We think that the Exchange should maintain maximum flexibility in exercising its discretion.

Comments:

Q28. Do you agree with our proposal to increase the threshold of the market capitalisation of securities that are listed and traded on regulated markets to HK\$10 billion for the grant of the lower percentage of public float?

Agree

Agree, but the threshold of the increased market capitalisation should be HK\$_____ (please indicate what level this should be). Please state reason(s) for your view:

Disagree. Please state reason(s) for your view:

Comments:

We understand that, in the cases we know of and which the Exchange had exercised its discretion under Rule 8.08, most companies had an initial market capitalisation of over HK\$10 billion. In practice, it seems that the reference in Rule 8.08 to HK\$4 billion is redundant. Therefore, we would agree with the proposal if the intention is to increase the transparency of application of the Listing Rules. Further, we suggest that the Exchange should consider maintaining an up-to-date list that is publicly accessible indicating the prescribed level of public float that applies to all listed issuers for transparency and investor protection purposes. Main Board issuers who have been granted a waiver under Rule 8.08 should also be required to disclose the lower prescribed percentage applicable to them in the initial listing document.

Q29. Do you agree with our proposal to require listing applicants to demonstrate that they have put in place sufficient safeguard to protect the interests of minority shareholders as a pre-condition for granting a lower percentage?

Agree

p Disagree. Please state reason(s) for your view:

We find it difficult to comment on or agree with the proposal as the Consultation Paper has not given any examples of the types of additional shareholder protection safeguards the Exchange expects, or explained the relevance of additional shareholder protection safeguards in the context of an application for a lower public float level.

Shareholder protection safeguards are mainly enshrined in the law of the place of incorporation of a listed issuer, the Takeovers Code and the Listing Rules. By accepting Hong Kong, the PRC, Bermuda and the Cayman Islands as jurisdictions of incorporation of listed issuers, we have assumed that the shareholder protection safeguards of these jurisdictions are generally acceptable to the Exchange.

Comments:

Q30. Do you think there should be any other pre-condition(s) that should be met?

- Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view:

- No

Comments:

Q31. Do you agree with our proposal that the revised lower percentage of between 15% and 25% should not apply to existing issuers that have already been granted a waiver from the current public float requirement?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Generally speaking all market participants should receive equal treatment.

A suitable transaction period should be allowed for any required sell down and, to minimise the effect on the market price of the shares involved, this period should be quite lengthy (e.g. 2 years).

SPREAD OF SHAREHOLDERS

Paragraph 82 of Part B of the Consultation Paper

We will amend the Main Board Rules to increase the minimum number of shareholders to 300. This will apply to all listing applicants including H share listing applicants, in which case, the number of H share holders must be at least 300. For listing applicants to be listed under the proposed alternative market capitalisation/revenue test as discussed in paragraph 52 of Part B of the Consultation Paper, the minimum number of shareholders will be 1,000.

Q32. Do you agree with our proposal to increase the minimum number of shareholders to 300?

Agree

Disagree (please tick one of the following)

The current Main Board Rules on the minimum number of shareholders of 100 should be retained.

The minimum number of shareholders should be (please tick one of the following)

200

400

500

Other. Please specify: _____

Please state reason(s) for your view:

Comments:

Generally speaking increasing the minimum number of shareholders should improve liquidity.

We are of the view that it may not be meaningful to change the 100-shareholder requirement to a 300-shareholder requirement simply for the sake of following other markets. The more appropriate question is whether the existing requirement of 100 shareholders is too low in ensuring an open market in the shares of an issuer, having regard to local market conditions. Input from the investment bank community on this may be more helpful.

Q33. Do you agree with our proposal to require at least 1,000 shareholders for listing applicants to be listed under the alternative market capitalisation/revenue test?

Agree

Disagree (please tick one of the following)

It is not necessary given that there should not be other alternative financial standards.

The minimum number of shareholders for listing applicants to be listed under the alternative market capitalisation/revenue test should be (please tick one of the following)

800

1,200

1,500

Other. Please specify: _____

Please state reason(s) for your view:

Comments:

Generally speaking increasing the minimum number of shareholders should improve liquidity.

Paragraph 83 of Part B of the Consultation Paper

Of the minimum 300 or, as the case may be, 1,000 shareholders, we will amend the Main Board Rules to require the top 5 shareholders that are regarded as "public" shareholders not to hold in aggregate more than 50% of the public float at the time of listing.

Q34. Do you agree with our proposal?

- Agree
- Agree, but the maximum number of top "public" shareholders holding in aggregate not more than 50% of the public float at the time of listing should be (please tick one of the following)
 - 3
 - 8
 - 10
 - Other. Please specify: _____

Please state reason(s) for your view:

- Agree, but the maximum percentage of the public float held by the top 5 public shareholders should be _____. Please specify the percentage and state reason(s) for your view:

- p** Disagree. Please state reason(s) for your view:
In practice this may be difficult to monitor and enforce.

Also, if the "top 5" public shareholders do exceed the threshold, how should this be remedied?

It would be unreasonable to expect:
(i) the "top 5" public shareholders to sell down; or
(ii) a non-public shareholder to sell down,
because, in each case, they will be required to act to their disadvantage due, in whole or in part, to the actions of other shareholders.

Comments:

It would be helpful if the Exchange could clarify whether a strategic or corporate investor holding less than 10% of the issued share capital and is subject to a lock-up period post-listing would be regarded as part of the “public” shareholders for this purpose.

Q35. Do you agree that the term "shareholders" should refer to beneficial, and not registered, owners of an issuer's securities?

Agree

Disagree. Please state reason(s) for your view:

Comments:

This question cannot be given a simple answer. For some purposes (e.g. connected transactions) shareholders should be beneficial owners. For other purposes (e.g. serving notices of meetings) shareholders should be the legal owners.

We recommend that the Exchange consult with members of the investment banking industry to ascertain if this proposal would create any logistical problem in the placing process, especially in relation to large international share offerings - compliance with the proposal would require the confirmation of placees of their intention to hold the shares as beneficial owners.

Paragraph 84 of Part B of the Consultation Paper

We will amend the Main Board Rules so that substantial shareholders and their associates, irrespective of whether their shares are being locked up, will be excluded from the calculation of the minimum number of shareholders at the time of listing.

Q36. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Including substantial shareholders and their associates in the minimum number of shareholders would allow the requirement to be circumvented relatively easily.

Paragraph 85 of Part B of the Consultation Paper

We will also amend the Main Board Rules to delete the guideline of 3 holders each holding HK\$1 million.

Q37. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

With requirements for minimum public float and minimum total shareholders, this requirement is unnecessary.

MINIMUM ISSUE PRICE

Paragraph 93 of Part B of the Consultation Paper

We will amend the Main Board Rules to introduce a minimum issue price of HK\$2 for shares applying to be listed on the Exchange.

Q38. Do you agree with our proposal?

- Agree*

- Agree in principle, but the minimum issue price should be (please tick one of the following)*
 - HK\$3*
 - HK\$5*
 - HK\$8*
 - HK\$10*
 - Other. Please specify: _____*

Please state reason(s) for your view:

p *Disagree. Please state reason(s) for your view:*

The price of shares is largely irrelevant in determining value: for smaller companies in particular, a lower share price may be appropriate as it will facilitate liquidity.

Also, setting a minimum share price may result in companies whose share prices drop below this level being stigmatised or shunned by investors.

Comments:

It would be helpful if the Exchange could explain in more detail the policy rationale behind (i) the proposed introduction of an issue price; and (ii) the proposed issue price of HK\$2.00. It seems that the reason for introducing the HK\$2.00 issue price is linked with proposals to delist “penny stocks” set out in Part C of the Consultation Paper. If so, we would find it useful if the forthcoming consultation paper on continuing listing eligibility criteria would also shed light on the reasoning for the HK\$2.00 issue price proposal.

Q39. If you agree that the minimum issue price should be higher than HK\$2, how long do you think it should be allowed for the minimum issue price to be increased?

- 6 months*
- 12 months*
- 18 months*
- Other. Please specify: _____*

Please state reason(s) for your view:

Comments:

Not applicable - please refer to Q38.

MINERAL COMPANIES

Paragraph 98 of Part B of the Consultation Paper

We will amend the Main Board Rules to clarify that the initial listing eligibility criteria as proposed under Part B of the Consultation Paper will apply equally to listing applicants that are mineral companies.

Q40. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

If the proposed changes to the initial listing criteria are adopted, we believe the new criteria should apply to all listing applicants including mineral and infrastructure companies, so long as the Exchange’s original discretion to grant waivers to mineral and infrastructure companies is retained.

Paragraph 99 of Part B of the Consultation Paper

Listing applicants that wish to apply for a waiver from the trading record requirement and/or financial standards requirement will be required to demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least three years in mining and/or exploration activities.

Q41. Do you agree with our proposal to make management experience a pre-condition to a waiver?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Adequate management experience (which need not necessarily be with the same company) should be a pre-requisite for listing.

Generally, we find it difficult to comment on the proposals as it is not clear what the Exchange expects.

The proposals, when read in light of Rule 3.09 of the Listing Rules, raise the fundamental question of to what extent the Exchange expects directors and senior management to be competent, skilled and experienced in the line of business of the listing applicant:

- (i) Should listing applicants not be expected or required to hire senior officials and appoint directors who know the relevant line of business in the first place?
- (ii) Under the proposals mentioned in Q12, 41 and 45, would directors and senior management be expected to have higher qualifications and experience when compared with the requirements under Rule 3.09? If so, what are the major differences of expectations and the minimum level of experience and competence required? Is it practical to assume that the difference in experience contemplated in the proposals could be demonstrated objectively in any particular case and could the standard be consistently applied?
- (iii) What would constitute “sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants”? It would also be helpful if the Exchange could clarify whether **all**, or simply a majority of, directors and senior management of the listing applicant (presumably those listed in the prospectus as senior management) need to have “sufficient and satisfactory experience of at least three years”.

Q42. Do you think there should be other pre-condition(s) that should be met?

Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view:

No

Comments:

INFRASTRUCTURE COMPANIES

Paragraph 103 of Part B of the Consultation Paper

We will amend the Main Board Rules to incorporate the requirements of the Announcement regarding Infrastructure Project Companies into the Main Board Rules and to provide that the initial listing eligibility criteria as proposed under Part B of the Consultation Paper will apply equally to listing applicants that are infrastructure companies.

Q43. Do you agree with our proposal to incorporate the requirements of the Announcement regarding Infrastructure Project Companies into the Main Board Rules?

Agree

b *Disagree. Please state reason(s) for your view:*

Infrastructure companies are potentially suitable for listing even before their infrastructure project has been developed to the point of generating revenue. The Listing Rules should facilitate, subject to suitable other safeguards, the raising of capital to fund the development of new infrastructure projects.

Comments:

Q44. Do you agree with our proposal to apply the proposal initial listing eligibility criteria to listing applicants that are infrastructure companies?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Infrastructure companies are potentially suitable for listing even before their infrastructure project has been developed to the point of generating revenue. The Listing Rules should facilitate, subject to suitable other safeguards, the raising of capital to fund the development of new infrastructure projects.

Paragraph 104 of Part B of the Consultation Paper

Listing applicants that wish to apply for a waiver from the trading record requirement and/or financial standards requirement, will be required to demonstrate, to the satisfaction of the Exchange, that they comply with all the specific requirements, including the additional disclosure requirements, set out in the Announcement regarding Infrastructure Project Companies. In addition, they must demonstrate, to the satisfaction of the Exchange, that their management has sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants.

Q45. Do you agree with our proposal to make the specific requirements, including the additional disclosure requirements, as set out in the Exchange's Announcement regarding Infrastructure Project Companies and management experience pre-conditions to a waiver?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Generally, we find it difficult to comment on the proposals as it is not clear what the Exchange expects.

The proposals, when read in light of Rule 3.09 of the Listing Rules, raise the fundamental question of to what extent the Exchange expects directors and senior management to be competent, skilled and experienced in the line of business of the listing applicant:

- (i) Should listing applicants not be expected or required to hire senior officials and appoint directors who know the relevant line of business in the first place?
- (ii) Under the proposals mentioned in Q12, 41 and 45, would directors and senior management be expected to have higher qualifications and experience when compared with the requirements under Rule 3.09? If so, what are the major differences of expectations and the minimum level of experience and competence required? Is it practical to assume that the difference in experience contemplated in the proposals could be demonstrated objectively in any particular case and could the standard be consistently applied?
- (iii) What would constitute “sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants”? It would also be helpful if the Exchange could clarify whether **all**, or simply a majority of, directors and senior management of the listing applicant (presumably those listed in the prospectus as senior management) need to have “sufficient and satisfactory experience of at least three years”.

Q46. Do you think there should be other pre-condition(s) that should be met?

Yes. Please specify the other pre-condition(s) you think is/are appropriate and state reason(s) for your view:

No

Comments:

DEEMED NEW LISTING

Paragraph 109 of Part B of the Consultation Paper

We will amend the Main Board Rules to provide for the following:

- (a) subject to the proposal in paragraph 109(b) of Part B of the Consultation Paper, an issuer that is treated as a new listing applicant under the current Main Board Rules, and if our proposal on "reverse takeover" in the Corporate Governance Consultation Paper is adopted, an issuer that is treated as a new listing applicant by engaging in transactions leading to a "reverse takeover", will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement. Where a NewCo is to be set up to hold assets of the issuer and to be listed instead of the issuer, the NewCo will be required to comply with all the proposed initial listing eligibility criteria, except for the spread of shareholders requirement;

Q47. *Do you agree with our proposal?*

Agree

Disagree. Please state reason(s) for your view:

Comments:

In general we agree that all listing applicants should be treated equally, regardless of the means of achieving listing.

However, exemption should be made for restructuring of insolvent companies where the criteria should be relaxed. Experience has shown that if the full new listing criteria are applied to such cases, the transaction is unlikely to proceed resulting in a total loss of investment being incurred by the shareholders of the listed company.

- (b) where assets are injected with a view to bringing an issuer that is in financial difficulties back to long-term compliance with the Main Board Rules and such assets to be injected are expected to make a contribution to the revenue of the enlarged group, the issuer, or the enlarged group of the issuer, or the NewCo, will be required to comply with the proposed initial listing eligibility criteria as follows:

- (i) the asset to be injected must meet:
- the track record requirement inclusive of trading record period and management and ownership continuity requirements; and
 - the financial standards requirement.

Q48. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

In general we agree, but based on previous experience, the Exchange should retain and be willing to exercise considerable discretion for companies which are in financial difficulty to avoid the Listing Rules being an impediment to the preservation of at least some shareholder value in such cases.

- (ii) the enlarged group of the existing issuer, or NewCo, must meet:
- the working capital sufficiency requirement;
 - the market capitalisation requirement;
 - the public float requirement; and
 - the minimum issue price requirement, as represented by the value of the consideration shares.

Q49. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

In general we agree, but based on previous experience, the Exchange should retain and be willing to exercise considerable discretion for companies which are in financial difficulty to avoid the Listing Rules being an impediment to the preservation of at least some shareholder value.

In both cases, the issuer, or the enlarged group of the issuer, or NewCo has to comply with the spread of shareholders requirement on a continuing basis.

For the avoidance of doubt, no relaxation to the proposed initial listing eligibility criteria, except for the spread of shareholders requirement, will be considered in case of deemed new listing applicants.

Q50. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

In general we agree, but based on previous experience, the Exchange should retain and be willing to exercise considerable discretion for companies which are in financial difficulty to avoid the Listing Rules being an impediment to the preservation of at least some shareholder value.

MARKET'S VIEW

Paragraph 110 of Part B of the Consultation Paper

After considering the detailed discussion regarding our proposals on the initial listing eligibility criteria as set out in paragraphs 25 to 93 of Part B of the Consultation Paper, we would like to invite comments from the market as to whether the overall standard in respect of the initial listing eligibility criteria should be strengthened or relaxed.

Q51. Do you think that the overall standard of our proposals on the initial listing eligibility criteria is appropriate?

- Yes*

- No. Please specify which part(s) of our proposals on the initial listing eligibility criteria should be strengthened or relaxed. Please state reason(s) for your view:*

Comments:

We have no views on strengthening or relaxing listing criteria generally other than as indicated in answers to other questions (in particular those dealing with infrastructure companies, mineral companies and companies in financial difficulties). However, we are of the view that flexibility to grant waivers should be retained.

EFFECTIVE DATE

Paragraph 111 of Part B of the Consultation Paper

We propose that if our proposals regarding the eligibility criteria for initial listing set out in Part B of the Consultation Paper are adopted, such criteria will become effective immediately when amendments of the Main Board Rules are made. Details will be included in an announcement to be made by the Exchange as and when appropriate. Listing applicants that submit their listing application (Form A1) after amendment of the Main Board Rules, and listing applicants that have submitted their Form A1 before such amendments but remain unlisted three months after amendment of the Main Board Rules, must comply with these initial listing eligibility criteria.

Q52. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Allowance should be made for applications which, although the Form A1 has not been submitted are already at an advanced stage.

In our view a three month deadline for the submission of a Form A1 should be given and three months (extendable in the case of companies in financial difficulties) allowed in which to complete a listing after the submission of a Form A1.

Comments:

**PART C OF THE CONSULTATION PAPER
CONTINUING LISTING ELIGIBILITY CRITERIA**

GENERAL

Paragraph 118 of Part C of the Consultation Paper

We will amend the Main Board Rules to introduce a set of quantitative and qualitative continuing listing eligibility criteria. We will consider these criteria to determine whether there is strong indication of failure by issuers. Failure by issuers may be in the form of unsatisfactory achievement and low level of investor acceptance and interest. Failure by issuers to meet one or more of these criteria will, subject to the process of natural justice, result in cancellation of the listing of the issuers' securities.

Q53. Do you agree with our proposal?

- Agree*

- Disagree*

Comments:

QUANTITATIVE CRITERIA

FINANCIAL STANDARDS

Financial Achievement

Paragraph 128 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will be considered as failing to meet the continuing listing eligibility criteria if it has been, after tax,

- (a) loss making for three consecutive years and has negative equity; or

Q54. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view:*

Comments:

- (b) loss making for three consecutive years and its average market capitalisation is less than HK\$50 million over 30 consecutive trading days.

For the purpose of calculating the average market capitalisation of an issuer in Part C of the Consultation Paper, the term "average market capitalisation" shall mean the average of the daily volume weighted market capitalisation of securities listed and traded on the Exchange over a period of 30 consecutive trading days. Where the securities of an issuer are also listed and traded on other regulated markets, the term "average market capitalisation" shall mean the average of the global market capitalisation over a period of 30 consecutive trading days. Global market capitalisation in turn shall mean the sum of the daily volume weighted market capitalisation of securities listed and traded on the Exchange and the market capitalisation of securities listed and traded on other regulated markets. For this purpose, reference will be made to the daily closing price of such securities of the issuer listed and traded on other regulated markets as announced by these markets.

Q55. Do you agree with our proposal?

- Agree*
- Agree, but the threshold for the average market capitalisation should be (please tick one of the following)*
 - 70 million*
 - 80 million*
 - 100 million*
 - Other. Please specify: HK\$ _____*

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:*

Comments:

Paragraph 129 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if:

- (a) its average market capitalisation is less than HK\$50 million over 30 consecutive trading days; and
- (b) its shareholders' equity is less than HK\$50 million. The issuer's latest published audited financial information and any subsequent published financial information will be used for the purpose of ascertaining its shareholders' equity.

Q56. Do you agree with our proposal?

- Agree (please answer Q57 and Q58)*
- Disagree. Please state reason(s) for your view:*

Comments:

Q57. Do you agree with the proposed threshold of the average market capitalisation of HK\$50 million over 30 consecutive trading days?

Agree

Disagree. The threshold should be HK\$_____ over _____ consecutive trading days. Please state reason(s) for your view:

Comments:

Q58. Do you agree with the proposed threshold of the shareholders' equity of HK\$50 million?

Agree

Disagree. The threshold should be HK\$_____. Please state reason(s) for your view:

Comments:

ABSOLUTE MINIMUM MARKET CAPITALISATION

Paragraph 131 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer (irrespective of whether it has more than one class of securities and whether these securities are listed and traded on other regulated markets) will fail to meet the continuing listing eligibility criteria if its average market capitalisation of the securities listed and traded on the Exchange is less than HK\$30 million for 30 consecutive trading days regardless of the level of shareholders' equity.

Q59. Do you agree with our proposal?

Agree

Agree, but the threshold should be HK\$_____ over _____ consecutive trading days. Please state reason(s) for your view:

Disagree. Please state reason(s) for your view:

Comments:

INSOLVENCY

Paragraph 136 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if:

- (a) the court has served a winding up order (or equivalent action in the issuer's country of incorporation) on it, or it goes into receivership or provisional liquidation; or
- (b) its Principal Subsidiaries have been served with a winding up order (or equivalent action in the country of incorporation of the Principal Subsidiaries), or go into receivership or provisional liquidation, and the remaining business of the issuer is unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis.

"Provisional liquidation" refers to the period after the presentation of a winding-up petition and before the making of a winding-up order (or equivalent period in the country of incorporation of the issuer or its Principal Subsidiaries).

Q60. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Q61. Do you agree that an issuer should not be considered as failing to meet the continuing listing eligibility criteria where its Principal Subsidiaries have been served with a winding up order, or go into receivership or provisional liquidation, and yet its remaining business is still able to meet the initial listing eligibility criteria?

Agree

Disagree. Please state reason(s) for your view:

Comments:

TOTAL DISCLAIMER OF AUDIT OPINION OR ADVERSE AUDIT OPINION

Paragraph 138 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer will be considered as failing to meet the continuing listing eligibility criteria if its most recent auditor's report contains a total disclaimer opinion or an adverse opinion.

Q62. Do you agree with our proposal?

- Agree*

- Disagree. Please state reason(s) for your view:*

Comments:

MINIMUM SHARE PRICE

Paragraph 148 of Part C of the Consultation Paper

We will amend the Main Board Rules to introduce a minimum share price of HK\$0.50 as a continuing listing eligibility criterion. Where the moving average of the daily volume weighted share price over 30 consecutive trading days of an issuer is less than HK\$0.50, the issuer will fail to meet the continuing listing eligibility criteria.

Q63. Do you agree with our proposal?

- Agree
- Agree, but the minimum share price should be (please tick one of the following)
 - HK\$5
 - HK\$2
 - HK\$1
 - Other. Please specify: _____

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:

Comments:

Paragraph 149 of Part C of the Consultation Paper

A transitional period of 12 months will be afforded to those issuers with prices trading below HK\$0.50 to attain the minimum share price of HK\$0.50. After the transitional period and if the issuer still fails to meet the minimum share price requirement, it will be considered as failing to meet the continuing listing eligibility criteria.

Q64. If you agree with our proposal in Q63, do you agree with our proposal to afford a transitional period of 12 months for those issuers whose shares presently trade below HK\$0.50 to comply with the proposed minimum share price requirement?

- Agree*
- Agree, but the transitional period should be (please tick one of the following)*
 - 18 months*
 - 24 months*
 - Other. Please specify: _____*

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:*

Comments:

Paragraph 150 of Part C of the Consultation Paper

If our proposal as set out in paragraph 148 of Part C of the Consultation Paper is adopted, we will not, during and after the transitional period, grant listing approvals for the securities to be issued by an issuer in relation to any of its corporate actions that will result in the theoretical value of its share falling below HK\$0.50. "Corporate actions" include bonus issues, share splits, open offers, rights issues, placings and other issues of securities that will generally result in lower theoretical share prices. However, corporate actions such as a rights issue that would otherwise result in a share price below HK\$0.50 will be considered if it is carried out together with other proposals, such as consolidation, that will result in the share price remaining above HK\$0.50.

Q65. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Paragraph 151 of Part C of the Consultation Paper

We will amend the Main Board Rules to require that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that will result in the theoretical share price of the issuer falling below HK\$0.50. Accordingly, an issuer, prior to undertaking any such corporate action, will be required, to:

- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and

- the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
- (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q66. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Paragraph 152 of Part C of the Consultation Paper

We will also amend the Main Board Rules to require issuers to confirm to shareholders when the general mandate is being granted or renewed that shares will not be issued under the general mandate that will result in the theoretical share price falling below HK\$0.50.

Q67. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

MINIMUM TRADING ACTIVITY LEVEL

Paragraph 157 of Part C of the Consultation Paper

We do not propose to introduce a continuing listing eligibility criterion based solely on trading volume.

Q68. Do you agree with our proposal?

- Agree*

- Disagree. Trading volume should be introduced as a continuing listing criterion. Please state reason(s) for your view:*

Comments:

REDUCTION IN OPERATING ASSETS AND/OR LEVEL OF OPERATIONS

Paragraph 163 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if after a corporate action taken by the issuer, there is a decrease in its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, and its remaining business will be unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement which the issuer will have to comply with on a continuing basis.

Q69. Do you agree with our proposal?

- Agree
- Agree, but the percentage threshold should be (please tick one of the following)
 - 50%
 - 65%
 - 80%
 - Other. Please specify: _____

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:

Comments:

Q70. If the remaining business of an issuer, after a corporate action that has the effect of reducing its total assets or operations or turnover or after tax profits by 75% or more of those of the immediately preceding financial year, does not meet the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement, do you agree that the issuer should be subject to the New Delisting Procedures set out in Part E of the Consultation Paper?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Paragraph 164 of Part C of the Consultation Paper

We will also amend the Main Board Rules to require that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that has the effect of substantially reducing or depleting its total assets or operations or turnover or after tax profits and resulting in its remaining business being unable to meet all the initial listing eligibility criteria, except for the market capitalisation requirement and the spread of shareholders requirement. Accordingly, an issuer, prior to undertaking any such corporate action, will be required to:

- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and

- (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q71. Do you agree with our proposal?

- Agree*
- Disagree. Please state reason(s) for your view:*

Comments:

CASH COMPANIES

Paragraph 167 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if it becomes a cash company. An issuer (other than investment companies, banks, insurance and other similar financial services companies) having 90% of its net assets in cash or short dated securities or portfolio shares investment or other marketable securities will for the purpose of this requirement be considered as a cash company.

Q72. Do you agree with our proposal?

Agree

Agree, but the percentage should be (please tick one of the following)

75%

80%

Other. Please specify: _____

Please state reason(s) for your view:

Disagree. Please state reason(s) for your view:

Comments:

Paragraph 168 of Part C of the Consultation Paper

We will maintain the current Main Board Rules governing cash companies but will clarify that the situation must have resulted from any corporate action by the issuer. We will, however, amend the Main Board Rules that shareholders of an issuer will be made fully aware of the circumstances and be given an opportunity to express their views with regard to any corporate action that has the effect of rendering an issuer as a cash company. Accordingly, an issuer, prior to undertaking any such corporate action, will be required to:

- (a) obtain independent shareholder's approval, which under the current Main Board Rules is a majority in number representing three-fourths in value of the shareholders present and voting either in person or by proxy at general meeting, and if our proposal for shareholders' approval for privatisation in the Corporate Governance Consultation Paper is adopted:
 - at least 75% of the votes attaching to the shares held by independent shareholders cast either in person or by proxy in a general meeting of independent shareholders; and
 - the number of votes cast against the resolution must not be more than 10% of the votes attaching to all the shares held by independent shareholders; and
- (b) offer to its shareholders and holders of any other class of listed securities, if applicable, other than the directors, chief executive and controlling shareholders, a reasonable cash alternative or other reasonable alternative.

Q73. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

QUALITATIVE CRITERIA

PROLONGED SUSPENSION

Paragraph 171 of Part C of the Consultation Paper

We will amend the Main Board Rules to provide that an issuer will fail to meet the continuing listing eligibility criteria if for whatever reasons, its securities have been suspended from trading for a continuous period of 12 months. Issuers that have been suspended for more than 12 months because of a delay in publishing their results will not, prima facie, be treated as failing to meet the continuing listing eligibility criteria. However, where there is an indication that an issuer is on the verge of failing to meet the continuing listing eligibility criteria and there are no acceptable or justifiable reasons for the issuer's prolonged delay in the publication of its results, the Exchange may subject such issuer to the New Delisting Procedures set out in Part E of the Consultation Paper.

Q74. Do you agree with our proposal to treat issuers whose securities have been suspended from trading for a prolonged period as failing to meet the continuing listing eligibility criteria?

- Agree
- Agree, but the period of suspension should be (please tick one of the following)
 - 3 months
 - 6 months
 - 9 months
 - Other. Please specify: _____

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:

Comments:

Q75. Do you agree with our proposal not to, prima facie, treat issuers whose securities have been suspended from trading for a prolonged period because of a delay in publishing their results as failing to meet the continuing listing eligibility criteria?

Agree

Disagree. Please state reason(s) for your view:

Comments:

PARAGRAPH 38 OF LISTING AGREEMENT

Paragraph 173 of Part C of the Consultation Paper

We will retain paragraph 38 of the Listing Agreement as a general continuing listing eligibility criterion to supplement the proposed quantitative criterion on reduction in operating assets and/or level of operations as discussed in paragraph 162 of Part C of the Consultation Paper. The Exchange may subject the issuer to the New Delisting Procedures set out in Part E of the Consultation Paper upon the issuer's failure to comply with paragraph 38 of the Listing Agreement.

Q76. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

PERSISTENT BREACHES OF THE MAIN BOARD RULES

Paragraph 175 of Part C of the Consultation Paper

We will amend the Main Board Rules so that the Exchange may, after having taken into account the frequency and nature of the breaches, subject those issuers that have persistently failed to comply with the Main Board Rules to the New Delisting Procedures set out in Part E of the Consultation Paper.

Q77. Do you agree with our proposal?

- Agree
- Disagree. Please state reason(s) for your view:

Comments:

ILLEGAL OPERATION

Paragraph 178 of Part C of the Consultation Paper

We will amend the Main Board Rules so that the Exchange may subject an issuer to the New Delisting Procedures set out in Part E of the Consultation Paper if there exists or occurs any event, condition or circumstances that makes further dealings or listing of the issuer's securities, in the opinion of the Exchange, contrary to the Exchange's general principles.

Q78. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

EXCHANGE'S DISCRETION

Paragraph 179 of Part C of the Consultation Paper

Where circumstances indicate that the controlling shareholder(s) of an issuer take(s) advantage of the continuing listing eligibility criteria with a view to ultimately achieving privatisation without complying with the requirements for privatisation set out in the Main Board Rules, the Exchange may at its discretion deviate from the New Delisting Procedures set out in Part E of this Consultation Paper.

Q79. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

EFFECTIVE DATE

Paragraph 180 of Part C of the Consultation Paper

We consider that if our proposals regarding the continuing listing eligibility criteria set out in Part C of the Consultation Paper are adopted, such criteria will become effective immediately when amendments of the Main Board Rules are made. However, we are also mindful that the immediate enforcement of certain of the new rules upon them becoming effective may be too harsh on existing issuers and the grant of transitional periods may be justifiable to enable issuers to take action to comply. Accordingly, we propose for existing issuers that:

- (a) there will be a transitional period of 12 months for issuers to bring themselves to compliance with the following proposed continuing listing eligibility criteria, namely,
 - (i) minimum share price; and
 - (ii) financial standards, namely, financial achievement, and absolute minimum market capitalisation;
- (b) there will be no transitional period for all of the remaining proposed continuing listing eligibility criteria, namely,
 - (i) insolvency;
 - (ii) total disclaimer of audit opinion or adverse audit opinion;

- (iii) reduction in operating assets and/or level of operations;
- (iv) cash companies;
- (v) prolonged suspension;
- (vi) paragraph 38 of the Listing Agreement;
- (vii) persistent breaches of the Main Board Rules; and
- (viii) illegal operation.

Q80. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

All listing applications that are approved after the amendment of the Main Board Rules will be subject to the new continuing listing eligibility criteria immediately upon listing of their securities on the Exchange. There will be no transitional period.

Q81. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

**PART D OF THE CONSULTATION PAPER
CONTINUING OBLIGATIONS**

GENERAL

Paragraph 185 of Part D of the Consultation Paper

We will amend the Main Board Rules to make the continuing obligations requirements contained in the Listing Agreement part of the Main Board Rules. In addition to the continuing listing eligibility criteria as proposed in Part C of the Consultation Paper, on-going suitability for listing would also be assessed with reference to compliance with the continuing obligations set out in the Main Board Rules.

Q82. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

While we agree with the proposals, in our view further consideration should be given to the means by which enforcement of the Listing Rules can be achieved. Given that suspension of dealings and delisting are very poor remedies (generally making minority shareholders worse off) alternatives need to be identified.

PUBLIC FLOAT

Paragraph 193 of Part D of the Consultation Paper

We will maintain the current continuing obligation with regard to the public float such that an issuer is generally required to maintain, at all times after listing, not lower than the prescribed percentage of securities in public hands at the time of initial listing. We will retain our current discretion not to require a suspension of the issuer's securities where the shortfall in the prescribed percentage arose purely from an increased or newly acquired holding of the issuer's securities by a person or entity (which the Exchange would expect to be institutional investors with a wide spread of investments other than in the issuer's securities). Such shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer.

Q83. Do you agree with our proposal to maintain the current continuing obligation on minimum public float?

Agree

Disagree (please tick one of the following)

The minimum public float requirement should be treated as a continuing listing eligibility criterion.

Other views:

Please state reason(s) for your view:

Comments:

The public float should be maintained for liquidity purposes.

Q84. Do you agree with our proposal to require an issuer to maintain, at all times after listing, not lower than the prescribed percentage of public float at the time of initial listing?

Agree

Disagree. The percentage threshold of public float that an issuer is required to maintain after listing should be _____. Please state reason(s) for your view:

Comments:

The public float should be maintained for liquidity purposes.

Q85. Do you agree with our proposal to retain our current discretion not to require a suspension of an issuer's securities in situations where the shortfall in the prescribed percentage arose purely from an increased or newly acquired holding of the issuer's securities by a person or entity (which the Exchange would expect to be institutional investors with a wide spread of investments other than in the issuer's securities), and such shareholder is, or after such acquisition becomes, a connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries and is otherwise independent of the issuer?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Suspension of dealings should only be exercised (i) in extreme circumstances; or (ii) as a temporary measure to ensure an informed market.

Paragraph 194 of Part D of the Consultation Paper

We will also amend the Main Board Rules to provide that the Exchange will normally require suspension of an issuer's securities where its public float is 15% or less. However, the Exchange may consider granting a waiver to an issuer in a general offer situation from complying with the minimum public float requirement until such time when the general offer is completed. The issuer must comply with the continuing obligation with regard to the public float immediately after the general offer is completed.

Q86. Do you agree with our proposal to require suspension of an issuer's securities where its public float is 15% or less?

Agree

Disagree. The percentage threshold should be _____. Please state reason(s) for your view:

In our view the offeror should be required to sell down to maintain the public float without a suspension being imposed. A suspension will make the task of selling down more difficult.

The sell down should not be required to be immediate - a reasonable time (say 12 months) should be allowed to minimise the effect on the share price.

Comments:

Q87. Do you agree with our proposal that a temporary waiver from the minimum public float requirement may be granted in a general offer situation until the general offer is completed?

Agree

Disagree. Please state reason(s) for your view:

Comments:

In our view the waiver should be granted for a period of 6-12 months to allow an orderly sell down (if required).

Q88. Do you agree that a waiver from the minimum public float requirement should be granted in general offer situations to privatise an issuer where the offeror of the issuer is not able to acquire sufficient shares as to compulsorily buy out the shares of the other shareholders?

Agree. Please answer Q90.

Disagree. No waiver should be granted. There should be immediate compliance with the minimum public float requirement after completion of the general offer. Please state reason(s) for your view:

b Disagree. There is a need to comply with the minimum public float requirement in these situation. Please state reason(s) for your view:

The minimum public float should be maintained to ensure that there are reasonable prospects of there being a market for the shares after the offer and to avoid a situation where minority/dissenting shareholders feel economically coerced into selling in an illiquid market or accepting an offer which they view as inadequate.

Comments:

Q89. Do you agree that a waiver from the minimum public float requirement should be granted in share repurchase situations where an issuer effects repurchases under the Share Repurchases Code resulting in its public float falling below 25%, provided that the issuer can still maintain at least 15% of public float having an aggregate market capitalisation of not less than HK\$500 million?

Agree. Please answer Q90.

Agree, but the market capitalization should be HK\$. _____. Please specify the level and state reason(s) for your view. Please answer Q90:

Disagree. No waiver should be granted. There should be immediate compliance with the minimum public float requirement after completion of the repurchases under the Share Repurchases Code. Please state reason(s) for your view:

Disagree. There is no need to comply with the minimum public float requirement in these situations. Please state reason(s) for your view:

Comments:

If an issuer has grown to a size where a new applicant would be eligible for a reduced public float percentage requirement then the issuer should also be eligible for the lower threshold (subject to adequate disclosure being made) in order to provide equality of treatment..

Q90. How long do you think the waiver period should be? Please specify the time limit you think is appropriate and state reason(s) for your view:

The waiver should be permanent. If the public float remaining after the repurchase is sufficient to satisfy initial listing criteria, there is no reason to require the public float to be increased. Put differently, if the repurchase reduces the public float below an acceptable level, it should not have been permitted in the first place.

Comments:

Paragraph 195 of Part D of the Consultation Paper

We will also amend the Main Board Rules to clarify that:

- (a) if our proposal with regard to the lower percentage of public float (as discussed in paragraph 74 of Part B of the Consultation Paper) is adopted, the lower percentage of between 15% and 25% that the Exchange may at its discretion accept for issuers with market capitalisation of over HK\$10 billion, will only be applicable at the time listing and will not be considered post listing. The percentage of the public float will be fixed at the time of listing and issuers may not apply for a lower percentage after listing; and

Q91. Do you agree with our proposal?

Agree

p Disagree. Please state reason(s) for your view:

If an issuer grows to the point where a smaller percentage public float would have been permitted, then it would be both logic and fair to allow the issuer to reduce its public float. If an issuer is not permitted to do so then it is being treated less favourably than a new applicant of similar size.

Comments:

- (b) the lower percentage of public float, once granted, will apply to issuers throughout their listing on the Exchange, subject to such conditions that the Exchange may impose at the time the lower percentage is granted.

Q92. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

We agree with the general principle that once granted, the lower percentage of public float should form the basis of continuing compliance by an issuer. However, we do not agree with the implication that the Exchange cannot impose a higher or a lower percentage, or impose new, alternative or additional conditions post-listing or after the percentage and the conditions were originally prescribed.

We regard the prescribed minimum public float percentage as a yardstick to measure whether there is an open market in the securities concerned (see reference to the general principles set out in Rule 6.01 and 8.08). It is possible that over the listing life of a company, circumstances may arise which make it justifiable to introduce changes to the minimum public float percentage itself or to any conditions attached to the application of a percentage. It is not clear to us why the Exchange considers it necessary to limit its scope of discretion in the Listing Rules as proposed.

Comments:

Paragraph 196 of Part D of the Consultation Paper

We will also amend the Main Board Rules to require issuers to include a confirmation of sufficiency of public float in their annual reports, based on information such as filing under the SDI Ordinance, that is available to them.

Q93. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

As it is an issuer's obligation to maintain the prescribed public float at all times after listing, we do not object to the proposal that annual reports should include a confirmation on the sufficiency of public float in principle. However, issuers should only be required to do so provided that:

- (i) The exact scope and nature of the confirmation to be given is clearly spelt out. For example, does the Exchange require a positive confirmation of public float sufficiency (which we do not support), or a negative statement that the issuer is not aware of any breach of the public float requirement during the relevant period?
- (ii) Issuers should only be required to give the confirmation based on what they know at the relevant time.
- (iii) The Listing Rules should clarify what listed companies are expected to do to satisfy them before a confirmation is to be given. For example, we do not consider it necessary to require a listed issuer to conduct a section 18 investigation under the Securities (Disclosure of Interests) Ordinance for the purpose of providing the confirmation. This would unnecessarily increase the compliance cost and burden.

In summary, we agree with the proposal subject to the term "public float" being defined (i) with sufficient precision and (ii) in such way that the listed issuer will be able to rely on public information (e.g. disclosure of interest filings) to determine which shareholdings are not part of the public float.

SPREAD OF SHAREHOLDERS

Paragraph 201 of Part D of the Consultation Paper

We will amend the Main Board Rules to introduce a new continuing obligation in respect of the spread of shareholders. An issuer will be required at all times subsequent to listing, to maintain at least the minimum number of shareholders applicable to the issuer at the time of its initial listing. The Exchange may consider granting a waiver to an issuer in a general offer situation from complying with the minimum number of shareholders requirement until such time when the general offer closes. The issuer must comply with the continuing obligation in respect of the spread of shareholders immediately after the general offer closes.

Q94. Do you agree with our proposal to introduce a new continuing obligation in respect of the spread of shareholders?

Agree

p Disagree (please tick one of the following)

The spread of shareholders requirement should be treated as a continuing listing eligibility criterion and not a new continuing obligation.

p Other views:

We do not believe that it should be the listed issuer's responsibility to maintain a minimum spread of shareholders after listing. The situation before or at the time of listing is different from the situation after listing. As part of the listing process, an issuer can, through the initial public offering or placing, make sure that the requirement on minimum spread of public shareholders is met. The process is still within the issuer's and the offering syndicate's control. After listing, the degree of control issuers have over the spread of shareholders is limited. As a practical matter, a listed issuer will only be able to look to its register of members to determine its spread of shareholders. With many shares being held through CCASS and/or by nominees it is, in practice, difficult for the issuer to determine its spread of "real" shareholders.

In addition, once listed, an issuer has relatively little control over its spread of shareholders and, generally speaking, can only influence the spread of shareholders by issuing new shares on a non-pro rata basis. This is seldom in the interests of minority shareholders (whose interests will be diluted as a result).

Please state reason(s) for your view:

Comments:

Q95. Do you agree with our proposal to require an issuer to maintain, at all times subsequent to listing, at least the minimum number of shareholders applicable to the issuer at the time of initial listing?

Agree

Disagree. The minimum number of shareholders that an issuer must maintain subsequent to listing should be _____. Please state reason(s) for your view:

Comments:

As a practical matter, a listed issuer will only be able to look to its register of members to determine its spread of shareholders. With many shares being held through CCASS and/or by nominees it is, in practice, difficult for the issuer to determine its spread of "real" shareholders.

In addition, once listed, an issuer has relatively little control over its spread of shareholders and, generally speaking, can only influence the spread of shareholders by issuing new shares on a non-pro rata basis. This is seldom in the interests of minority shareholders (whose interests will be diluted as a result).

Q96. Do you agree with our proposal that a temporary waiver from the minimum number of shareholders requirement may be granted in general offer situations until the general offer closes?

Agree

Disagree. Please state reason(s) for your view:

Comments:

In practice, the issuer has relatively little control over the number of shareholders it has and will have difficulty in determining how many "real" shareholders it has.

Paragraph 202 of Part D of the Consultation Paper

We will amend the Main Board Rules to provide that where there is an indication that the securities of an issuer may not be held by an adequate spread of shareholders, such as when the average monthly turnover of an issuer is below certain reasonable level, say less than 2,000,000 shares, for the last 12 months, the Exchange may require the issuer to demonstrate to the satisfaction of the Exchange that it meets the continuing obligation in respect of the spread of shareholders.

Q97. Do you agree with our proposal?

Agree

Agree, but the threshold of the average monthly turnover for the last 12 months should be _____ shares. Please state reason(s) for your view:

p *Disagree. Please state reason(s) for your view:*

A listed issuer has little, if any, control over any of (i) the number of shares traded (ii) the price at which its shares trade or (iii) the number of shareholders following listing. It will also have practical difficulties in determining the number of "real" shareholders.

Comments:

If a turnover test is to be imposed an issuer should be permitted to satisfy either (i) a volume test or (ii) a value test (to allow for issuers whose shares trade at either very high or very low prices).

Paragraph 203 of Part D of the Consultation Paper

If our proposals on the initial listing eligibility criteria as well as our proposal in paragraph 201 are adopted, a transitional period of 18 months will be granted to all existing issuers that are listed before the effective date of the initial listing eligibility criteria to comply with the new obligation. All such existing issuers will be required to maintain a minimum of 300 shareholders after the transitional period.

Q98. Do you agree with our proposal to require all existing issuers to maintain a minimum of 300 shareholders after the transitional period?

Agree

Disagree. Please state reason(s) for your view:

Comments:

While we do not consider a continuing requirement in this respect to be appropriate, if such a requirement is to be adopted, it should apply to all issuers. A grace period of at least 18 months is reasonable.

Q99. Do you agree with our proposal to grant a transitional period of 18 months to all existing issuers to comply with the new continuing obligation in respect of the minimum number of shareholders?

- Agree
- Agree, but the transitional period should be (please tick one of the following)
 - 12 months
 - 24 months
 - Other. Please specify: _____

Please state reason(s) for your view:

- Disagree. Please state reason(s) for your view:

Comments:

While we do not consider a continuing requirement in this respect to be appropriate, if such a request is to be adopted, it should apply to all issuers. A grace period of at least 18 months is reasonable.

TIMELINESS OF ACCOUNTS

Paragraph 206 of Part D of the Consultation Paper

We will amend the Main Board Rules to subject those issuers that fail to publish their financial results on the due date to an immediate suspension of trading of their securities. Trading may only resume after the issuer publishes the requisite financial results.

Q100. Do you agree with our proposal?

Agree

p *Disagree. Please state reason(s) for your view:*

Comments:

Usually, the failure of an issuer to publish its financial statements when they are due is because the auditors have problems coming to a view on the accounts, the issuer has problems in providing the relevant books, records or information to the auditors, or the issuer has experienced some financial or other difficulties. If the shares are suspended from trading immediately on the due date of publication of the financial results, it would deprive investors of the chance to exit or respond to such news in the open market. It seems more important to ensure that the market is kept informed of the latest position regarding the issuer and why it fails to produce the accounts; and to ensure that directors and senior management are held responsible for any wrongdoings in relation to the keeping and production of books and accounts. We do not think that the failure to issue financial statements on the due date per se should necessarily result in an automatic suspension of trading.

Q101. If you think that a grace period should be given before suspension of the issuer's securities for failing to publish timely financial results, how long do you think the grace period should be (please tick one of the following)

- 2 months
- 1 month
- 2 weeks
- Other. Please specify: _____

Please state reason(s) for your view:

Comments:

While we do not consider that mandatory suspension is appropriate, if suspension is to be imposed we do not consider that any stipulated grace period should be provided if it may result in issuers treating such grace period as an automatic extension of the filing time deadline.

PROVISION OF INFORMATION TO THE EXCHANGE

Paragraph 208 of Part D of the Consultation Paper

We will amend the Main Board Rules to introduce a new continuing obligation with regard to the provision of information by the issuer to the Exchange. An issuer will be considered as failing to meet the continuing obligation if it makes a misrepresentation to the Exchange, omits necessary material information in the course of communicating with the Exchange, or otherwise fails to provide requested information.

Q102. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

We agree with the proposal in principle but note that the existing wording of paragraph 39 of the Listing Agreement is sufficiently wide to enable the Exchange to make enquiries regarding any matter, with a positive obligation on issuers to provide such relevant information as is available to them. Therefore, we believe that the only areas where changes are needed are as follows:

- (i) provisions to make clear that submissions made to the Exchange in relation to listing matters should be true, accurate and complete. A requirement to provide a statement certifying the truthfulness, accuracy and completeness of submissions made and worded in similar language as paragraph 8.3 of the Introduction section of the Takeovers Code would probably suffice;
- (ii) directors' responsibility statements similar to those included in circulars should be included in all announcements made by issuers (currently, no such requirement).

As to misleading and false statements made to regulators, it seems that the position is now sufficiently dealt with under section 384 of the Securities and Futures Ordinance and the proposed Securities and Futures (Stock Market Listing) Rules.

Further, we submit that suspending trading in an issuer's securities (or delisting them) should only be considered where there is a serious risk of a false market developing or in other extreme circumstances. Other remedies, such as public censure of directors, would be a more appropriate course of action in other circumstances.

CORPORATE GOVERNANCE

Paragraph 209 of Part D of the Consultation Paper

The Exchange has made various proposals on corporate governance matters under the Corporate Governance Consultation Paper. With a view to further enhancing the standards of corporate governance amongst issuers listed on the Exchange and protecting the interests of minority shareholders, the Exchange invites comments from the market as to whether there are any other areas that should be taken into account in formulating further continuing obligations.

Q103. Please state what other areas should be taken into account and reason(s) for your view:

Comments:

None.

EFFECTIVE DATE

Paragraph 210 of Part D of the Consultation Paper

We propose that if our proposals regarding the continuing obligations set out in Part D of the Consultation Paper are adopted, such new continuing obligations will become effective immediately when amendments of the Main Board Rules are made. However, there will be a transitional period of 18 months for existing issuers that are listed before the effective date of the initial listing eligibility criteria and listing applicants that have submitted their Form A1 before the effective date and listed within three months after the effective date, to comply with the minimum spread of shareholders requirement.

Q104. Do you agree with our proposal?

Agree

Agree, but the transitional period (other than that for the spread of shareholders requirement as discussed in Q99) should be _____. Please state reason(s) for your view:

Disagree. Please state reason(s) for your view:

Comments:

An 18 months transitional period is reasonable as it allows at least one AGM to be held should an issuer need a shareholders' resolution in order to achieve compliance. A reasonable transitional period will also reduce the risks of short term share price fluctuations in response to the introduction of the proposals.

**PART E OF THE CONSULTATION PAPER
CANCELLATION OF LISTING PROCEDURES**

CANCELLATION OF LISTING PROCEDURES

Paragraph 219 of Part E of the Consultation Paper

We will amend the Main Board Rules to introduce new cancellation of listing procedures to apply where an issuer fails to comply with any one or more of the continuing listing eligibility criteria set out in Part C of the Consultation Paper.

Q105. Do you agree with our proposal to introduce new cancellation of listing procedures?

Agree. Please answer Q106.

p *Disagree. Please state reason(s) for your view:*

1. As this proposal is heavily reliant on Part C and can only be properly considered in conjunction with Part C, we reserve our comments in this Part in view of the Exchange's intention to issue further proposals on continuing listing eligibility criteria. Subject to this point, we set out below our comments on this proposal.

2. We do not agree that with the proposed introduction of the continuing listing eligibility criteria (“CLEC”), it therefore follows that a new set of cancellation of listing procedures is required (para. 213 of the Consultation Paper). The two should be examined separately rather than casually linked, to ensure that whilst appropriate additional criteria are introduced to determine whether an issuer should be required to justify its continued presence on the Main Board, at the same time the procedures for delisting are fair and reasonable, not just in theory, but also in their practical application. If part of this process is to give non-compliant issuers the opportunity to present to the Listing Division a plan as to how they will restore themselves to compliance, then that opportunity should be a real one. It should take account of the issuer’s circumstances and the likely steps it will need to complete to achieve compliance, a key factor being the usual timeframe required to get into a position where a plan can be presented, and the likely timeframe for the implementation of the plan. We submit that this principle should underlie the delisting process, without which there could be a perception that delisting will be an automatic consequence of non-compliance, and that the procedures for allowing a plan to be submitted by the issuer in which the issuer will demonstrate its route back to compliance, lack any real substance. We do not believe that this type of perception will help to create the perception of quality for the Hong Kong stock market, stressed in the Consultation Paper as being one of its objectives.

3. The proposed definition of "provisional liquidation" (paragraph 136 of the Consultation Paper) is not an appropriate one - the presentation of a winding up petition (or similar) (i) is often used in disputes and (ii) may not be accepted by the courts and (iii) even if it is accepted by the courts, can be subject to an appeal.

4. We consider that it is inappropriate for the appointment of a liquidator, provisional liquidator or receiver in itself to trigger the commencement of the

delisting procedures. Where possible, businesses should be saved for the benefit of the stakeholders, and this is frequently impossible to achieve without the imposition of a moratorium on creditors' actions because otherwise those seeking the rescue will be held by ransom by those with short term interests. Under the laws of Hong Kong, moratoriums are only available through the appointment of an external, independent person such as a liquidator, provisional liquidator or receiver. To deny a re-listing in these circumstances is to defy both the current worldwide movement on the rescue of businesses in trouble and the Hong Kong courts, who have long recognised that, for example provisional liquidators have, and should have the power to effect rescues.

5. It would be helpful if the Exchange could clarify whether delisting procedures apply on a mere presentation of a winding-up petition. As the presentation of winding-up petition is widely recognised as a means of enforcing debts, we submit that delisting procedures, if introduced in this context, could conceivably lead to significant abuses.

6. The Consultation Paper does not provide reasons for shortening the delisting process. The impression we have is that there could be a perception that in some cases the commencement of the delisting process might be over precipitous, which could lead to suggestions of a denial of natural justice in the case of any one particular issuer. This could open the way for court based challenges to the process which might undermine the very processes the Exchange is seeking to introduce.

7. We submit that it is not unreasonable to require 12 to 18 months to restructure listed companies in Hong Kong, especially since many of them have been trading for decades before encountering financial difficulties.

It is the case that some issuers in the delisting process have taken longer than 18 months to achieve a resumption of trading in their shares. The current Practice Note 17 does anticipate that proposals may be submitted prior to the end of the 18 month delisting period. There have of course been some issuers that have submitted proposals in the third stage of delisting and that have then gone on to successfully complete a resumption proposal outside of the 18 month period. We take this as evidence that in some cases additional time is needed to locate the investor and to formulate and agree upon the terms of a resumption proposal. The careful selection of the appropriate investor, rather than an arbitrary and quick selection (as is likely to be the outcome of the proposed delisting procedures) could well have a significant bearing on the success or failure of the issuer once a resumption has been achieved. Often this process of the selection of the right investor may take as long if not longer than the actual process of implementing the resumption proposal itself. It does not follow that the delisting process is deliberately drawn out. It is however accepted that the current delisting procedures could be improved by specifically provide for the setting of an absolute deadline for implementation of a resumption proposal once the delisting process has commenced, as is in fact proposed in para. 221.

8. We consider that the arguments for allowing much longer periods for a company in financial difficulties to restructure are valid. While restructuring proposals often involve a very substantial dilution of existing shareholders'

equity interests, shareholders are invariably better off with a much diluted shareholding in a restructured issuer than an undiluted shareholding in an insolvent company. A small return of their investment is always to be preferred to a total loss.

9. To say that the interests of minority shareholders can be adequately protected by the transparency of the delisting criteria is a seriously flawed argument given that suspension and delisting deprive shareholders of any opportunity to dispose of their shares. It is submitted that any proposals which would have the effect of limiting the scope for restructuring insolvent companies can only penalise shareholders (who will already be facing significant losses) and are inappropriate both as to matters of procedural fairness and in terms of the way in which the Exchange is viewed as owing duties to both a listed issuer and its shareholders.
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10. One of the reasons for listing is to obtain greater access in the longer term to commercial lending from banks. Given their considerably strengthened balance sheet and submission to a stringent set of corporate governance rules, banks are much more willing to lend to listed issuers than they would be to many private companies. The ability to obtain additional loan finance gives listed issuers the opportunity to further expand their businesses. However, with the introduction of the CLEC and the shortened delisting procedures, we believe that this will compel lending banks in Hong Kong to seriously consider reviewing their internal credit policies and to keep a close watch as to an issuer's compliance with the CLEC.

Also, where a lender with security over the issuer's assets obtained some early warnings that the issuer appears to be approaching non-compliance of the CLEC, he may wish to appoint a receiver over assets of the principal subsidiary or of the listed issuer, but this step by itself would trigger non-compliance with the CLEC, and may (though the proposal in para. 223 is not entirely clear on the point - see point 4 of Q.107) trigger the delisting procedures. The effect of which could have the potential to cause some otherwise seemingly healthy issuers to collapse financially. Whilst lending banks who have moved rapidly to preserve their position may have recovered sums owed to them, or ensured that those sums will be repaid, the ultimate loser from this scenario would be the investing public.

In summary on this issue, we submit that the proposed delisting procedures (and the CLEC) instead of safeguarding the interests of the issuer and the public investors, are more likely to serve to hasten the deterioration of an issuer's financial condition (which might otherwise have been salvageable) and to hasten the application of the delisting procedures.

11. We disagree with the statement in the proposal which says that "very often the rescue of an issuer in financial difficulty involves the issue of a large number of new shares at a deep discount". The pricing of the issuer's shares usually reflects the inevitably low underlying asset value that characterises issuers that are in financial difficulties. It is likely that were the shares of the issuer to be trading (and usually they will be suspended), the traded price would be, or would be close to, the minimum traded price. It should also be noted that, under both Hong Kong law and Bermuda law there exist significant legal hurdles that
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effectively preclude the issue of shares at a discount to their nominal value. Once the issuer has achieved a resumption of trading in its shares, in the absence of a low nominal share value, the ability of the issuer to raise new capital through share issues would be impeded where the traded price had fallen below the nominal value.

12. A theme stressed throughout the Consultation Paper is the quality of the market. The implication from the Paper is that issuers that fail to comply with the CLEC, reduce the quality of the market and similarly reduce investor confidence. We submit that there are a whole host of other factors that affect investor sentiment, and we do not believe that the forced and speedy removal of some stocks from the Main Board which are perceived to reduce the quality of the market, will have the desired effect of altering the external perception of the market's quality. On the contrary, we believe that whilst it may be appropriate to refine the current set of delisting procedures, the introduction of a much shorter procedure which does not appear to allow reasonable time for issuers to formulate proposals of definitive action, could be viewed externally as lacking in basic fairness. It is also highly likely to make it even harder for smaller companies to raise new capital or to attract shareholders on the secondary market.

13. We do not consider that the Exchange's international reputation will be necessarily enhanced by the new delisting procedures. Our impression is that the proposed procedures have been taken largely from the Rules of the New York Stock Exchange and from those of Nasdaq. However, the underlying form of the equivalent rules of the NYSE and Nasdaq have been in place for a good number of years. The NYSE Corporate Accountability and Listing Standards Committee has published a paper in June, 2002 in which it has said, in the context of the NYSE's ability to issue reprimand letters, that "[s]uspending trading or delisting a company can be harmful to the very shareholders that the NYSE listing standards seek to protect; the NYSE must therefore use these measures sparingly and judiciously." Certainly there has been a trend in Hong Kong to adopt legislation from overseas (principally the UK) on a wholesale basis, but they are not necessarily always successfully. We believe that there are risks inherent in adopting rules in use in other jurisdictions (especially where the system of law in those other jurisdictions is culturally different from that of Hong Kong) without a full analysis as to whether those new rules are entirely appropriate in Hong Kong and consistent with Hong Kong's corporate culture. We are not convinced that the adoption of the proposed new delisting procedures is compatible with that culture.

14. Given that Hong Kong is now in the throws of a severe economic downturn with no upturn yet in sight, it is inevitable that more and more companies will get into financial difficulties, meaning that more issuers are likely to become subject to the proposed delisting procedures. We submit that in times of severe economic downturn (such as Hong Kong is now experiencing) the regulatory regime should be cautious not to set overly high standards. We believe that the introduction of the delisting proposals as now formulated could lead to some harsh and unintended consequences in the next two to three years as the effects of the economic downturn on some listed issuers start to become more evident.

Comments:

NEW DELISTING PROCEDURES

Paragraph 221 of Part E of the Consultation Paper

The principles of the New Delisting Procedures will be as follows:

- (a) the Exchange will notify the issuer in writing of the fact that the issuer has failed to meet any one or more of the relevant continuing listing eligibility criteria. The Exchange will also issue an announcement notifying the public of such fact;
- (b) the securities of the issuer will continue trading until the Exchange issues an announcement notifying the date of when the securities of the issuer will cease trading and the listing status of the securities will be cancelled. However, in case of prolonged suspension where the Exchange does not see the justification for the continued suspension, the Exchange may, where circumstances require, exercise its power under the Main Board Rules to direct resumption;
- (c) the issuer will be required to submit to the Exchange, within 1 month from the date of the Exchange's notification (the "One-Month Period"), a proposal (and not multiple proposals) with definitive action that the issuer has taken, or is in the course of taking, which if implemented, would restore the issuer to long-term, sustained compliance with the continuing listing eligibility criteria (the "Proposal"). The Proposal must demonstrate how the issuer will achieve long-term, sustained compliance with the continuing listing eligibility criteria. Examples of matters that the Exchange will consider in determining whether a proposal is acceptable include whether there is a legally binding agreement that is in compliance with the Main Board Rules and the implementation of which is likely to result in long-term, sustained compliance. If the issuer fails to submit the Proposal within the One-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement. The Exchange will only consider the Proposal. No other proposals will be considered. The Exchange will also not allow any amendment to the Proposal;
- (d) the issuer may appeal against the decision of the Exchange to cancel the listing of its securities upon its failure to submit the Proposal within the One-Month Period in accordance with such procedures and within such time as prescribed by the Exchange from time to time;
- (e) the Exchange will review the Proposal and determine as to whether the Proposal has demonstrated a reasonable case of being able to bring the issuer back to conformity with the relevant continuing listing eligibility criteria. The Exchange will notify the issuer in writing and will require the issuer to issue an announcement notifying the public of its determination relating to the Proposal;

- (f) if the Exchange accepts the Proposal, the issuer has 6 months from the date of the Exchange's notification of determination (the "Six-Month Period") to implement the Proposal. The issuer is required to provide monthly updates of its progress in implementing the Proposal during the Six-Month Period. If the issuer fails to implement the Proposal at the end of the Six-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;
- (g) the Exchange may at its absolute discretion, require immediate suspension of the issuer's securities at any time during the Six-Month Period should circumstances necessitate it;
- (h) if the Exchange does not accept the Proposal, the Exchange will notify the issuer in writing of the determination to cancel the listing of the securities of the issuer and setting out the basis for such decision (the "Decision Letter");
- (i) the issuer will have the right to appeal to the relevant Committee that has the authority to consider the appeal matters ("Relevant Committee") against the decision of the Exchange to cancel the listing of the issuer's securities. The appeal must be lodged by the issuer within such time as prescribed by the Exchange from time to time and set out in the Decision Letter;
- (j) if the issuer does not lodge the appeal within the stipulated period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;
- (k) if the Relevant Committee decides in favour of the Exchange's decision to cancel the listing of the securities of the issuer, the Exchange shall proceed immediately to cancel the listing of the issuer's securities in accordance with the decision of the Relevant Committee and inform the public of the status by way of an announcement; and
- (l) if the Relevant Committee decides that the Proposal is acceptable, the issuer has 6 months from the date of the decision of the Relevant Committee to implement the Proposal. The issuer must inform the public of the status by way of an announcement on the next business day following receipt of the Exchange's notification letter regarding the decision of the Relevant Committee.

Q106. Do you agree with the principles of the New Delisting Procedures that non-compliant issuers will be given an opportunity to submit one proposal (and not multiple proposals) within the specified period to bring themselves back to long-term, sustained compliance with the continuing listing eligibility criteria failing which they would, subject to the process of natural justice, face cancellation of listing?

Agree

Disagree. Please state the reason(s) for your view:

1. Please refer to point 1 of our answer to Q.105.

2. We submit that before the Exchange issues any announcement that a company has failed to meet the continuing listing eligibility criteria, there should be a private consultation process with the issuer. Otherwise the process may be perceived as being procedurally unfair and become self fulfilling.

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3. A deadline of one month to submit a proposal is clearly inadequate in view of the experience with a number of recent restructuring - often it can take 12-18 months (or longer) to identify and to finalise potential rescue proposal. Imposing an arbitrary shorter time limit is impractical, unreasonable and procedurally unfair.

The one month deadline is especially inadequate where liquidators, provisional liquidators or receivers are involved, as they are independent and will know little if anything about the company. They have to undertake a lot of work in assessing the company's affairs and structure before being able to proceed with a restructuring exercise, including conducting negotiations to obtain the best deal. Sufficient time should be given to the liquidators, provisional liquidators or receivers to negotiate a proposal which has good prospects of success. Given the above, it is clear that the proposed timeframe is unreasonable in the circumstances.

4. Not allowing any amendments to a proposal is also unreasonable and arbitrary - particularly if combined with a short time deadline within which to submit a single definitive proposal. It is submitted that a company should be entitled to submit as many proposals as it sees fit within a certain time period, say 6 months.
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5. Although the appeal process set out in paragraph 221(d) is a positive step, it is submitted that in light of the unreasonableness in various other aspects of Part E, it can be envisaged that the appeal process will be used frequently as to form a standard part of the restructuring proposal process. This will have negative ramifications on companies to meet deadlines and as a result, increase the resources which the Exchange will have to devote to this area. We submit that some of the recommendations made in this questionnaire should be adopted with the effect of making the appeal process more meaningful.
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6. We consider that a six month period for the implementation of the proposal from the date of its acceptance by the Exchange is inadequate particularly in a complex transaction or restructuring. The timetables in restructuring situations are often outside the control of the parties involved (for example the length of time required to obtain court approval and meet regulatory obligations etc.) and therefore require flexibility.
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Comments:

Paragraph 222 of Part E of the Consultation Paper

For the avoidance of doubt, the appointment of a receiver or provisional liquidator to an issuer that has already been subject to the New Delisting Procedures for failing to meet other continuing listing eligibility criteria will not alter the delisting timetable. An issuer will be immediately delisted if it has been served with a winding up order (or equivalent action in the issuer's country of incorporation).

Q107. Do you agree with our proposal?

Agree

p *Disagree. Please state reason(s) for your view:*

1. Please refer to point 1 of our answer to Q.105.

2. It is submitted that any action to be taken by the Exchange as a result of a winding-up order should only be undertaken where there are no prospects of a successful re-organisation.

Delisting should (i) only apply to an involuntary winding up and not a winding up done as a part of a reorganisation proposal and (ii) not apply where any available appeal period has not yet expired.

3. We submit that an issuer which has been the subject of a winding-up order should not be immediately delisted. There are recent cases where substantial value has been generated for stakeholders of the company in liquidation through providing assistance to the listing by way of introduction of another applicant.

4. It will be helpful for the Exchange to clarify whether a "Receiver" for the purposes of this Questionnaire only refers to one that is appointed over all the assets of an issuer or whether it also includes a receiver appointed by a secured lender over individual assets of the company. It is submitted that it is unfair and unreasonable to subject a company to delisting procedures from the appointment of a receiver over discrete assets. The Consultation Paper should also address the role of a court appointed receiver. A clear distinction of the roles between the different types of receivers should be made.

5. The proposal does not appear to address the effect of the appointment of creditor voluntary liquidators or members voluntary liquidators. It will be helpful if the Exchange could consider the effect of these appointments.

6. We consider that alteration of the delisting timetable where liquidators, provisional liquidators or receivers are appointed to an issuer should be allowed. It is submitted that the timetable should run from the date of their appointment because the management preceding the appointment of the liquidators, provisional liquidators or receivers do not possess the necessary expertise in implementing rescue proposals.

Indeed, it is often the case that liquidators, provisional liquidators or receivers are appointed by creditors due to a lack of trust in the current management in

the company. Hence the proposal put together by the management may not be in the best interest of the stakeholders and thus the time spent by them should not count against the time in which the liquidators, provisional liquidators or receivers have in which to produce a proposal in the best interest of all the stakeholders.

Comments:

NEW IMMEDIATE-DELISTING PROCEDURES FOR ISSUERS IN LIQUIDATION

Paragraphs 223 and 224 of Part E of the Consultation Paper

When a company fails, the listing status of its securities should be terminated. Accordingly, where an issuer has been served with a winding up order (or equivalent action in the issuer's country of incorporation), the Exchange will immediately proceed to cancel the listing of the issuer's securities. No resumption proposal will be considered.

The Exchange will issue an announcement notifying the public of the status and that the issuer's securities will be cancelled with immediate effect from the date of the Exchange's announcement.

Q108. Do you agree with our proposal?

Agree

p *Disagree. Please state reason(s) for your view:*

Please refer to point 2 of our answer to Q.107.

Further, as set out in point 3 of our answer to Q.107, such a proposal will penalise stakeholders for the action of the directors which, in all likelihood, resulted in the appointment of the insolvency practitioner.

Comments:

Q109. Are there any other circumstances for the New Immediate-Delisting Procedures to apply?

Yes. Please give details:

Where compulsory acquisition of minority shareholders takes place.

No

Comments:

SPECIAL CIRCUMSTANCES

Market Capitalisation

Paragraph 226 of Part E of the Consultation Paper

If the issuer fails to meet the continuing listing eligibility criteria only because of the market capitalisation, and where the issuer re-establishes its market capitalisation to the specified level, and remains above such level for at least the following 60 consecutive trading days, the market capitalisation deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Q110. Do you agree with the proposed auto-cure provision with regard to the market capitalisation?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Please note that we do not agree that a decline in market capitalisation should be grounds for either suspension or delisting of an issuer's securities.

Minimum Share Price

Paragraph 227 of Part E of the Consultation Paper

If the issuer fails to meet the continuing listing eligibility criteria only because of the minimum share price, and where the issuer's average of daily volume weighted share price exceeds HK\$0.50 and remains above HK\$0.50 for at least the following 60 consecutive trading days, the price deficiency will be deemed cured. This will be the case even if the New Delisting Procedures have commenced, and the procedures will be terminated. The Exchange will closely monitor the trading pattern during the auto-cure period.

Q111. Do you agree with the proposed auto-cure provision with regard to minimum share price?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Please note that we do not agree that a decline in an issuer's share price should be grounds for either suspension or delisting of an issuer's securities.

EFFECTIVE DATE

Paragraph 228 of Part E of the Consultation Paper

We propose that if our proposals regarding the new cancellation of listing procedures set out in Part E of the Consultation Paper are adopted, such new procedures will become effective immediately when amendments of the Main Board Rules are made. Issuers that have already been subject to the current delisting procedures under the Main Board Rules before the effective date will be delisted in accordance with the existing Main Board Rules.

Q112. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

We do not agree with the new delisting proposals.

However, if such proposals are to be adopted then an appropriate grace period should be provided to reflect the potentially drastic consequences which the new proposals will have for, in particular, shareholders of companies in financial difficulties. In our view, a reasonable transitional period of 18 months should be provided.

**PART F OF THE CONSULTATION PAPER
DISCLOSURE REQUIREMENTS
AT THE TIME OF INITIAL LISTING**

GENERAL

Paragraph 232 of Part F of the Consultation Paper

We will amend the Main Board Rules to introduce additional qualitative disclosure requirements to enhance disclosure in the areas of corporate matters, including the pre-listing corporate governance related practices, of a listing applicant so as to enable investors to evaluate and price their investment accordingly.

Q113. Do you agree with our proposal?

Agree.

Disagree. Please state reason(s) for your view.

Comments:

No comments.

PROTECTION OF SHAREHOLDERS' RIGHTS

Over-allotment Option and Price Stabilising Activities

Paragraph 234 of Part F of the Consultation Paper

We will codify our current practice to require disclosure in the initial listing documents where a listing applicant or its selling shareholder has granted over-allotment options or it is proposed to enter into price stabilising activities in connection with an offering. The information to be disclosed will include:

- (a) confirmation that the price stabilising activities will be entered into in accordance with the laws, rules and regulations in place in Hong Kong on stabilisation;
- (b) the reason for entering into the price stabilising activities;
- (c) the number of shares subject to the over-allotment option, the option price, whether the shares issued or sold under an over-allotment option are to be issued or sold on the same terms and conditions as the shares that are subject to the main offering;
- (d) whether there are any other terms, such as the duration, of the option; and
- (e) the purpose for which the option has been granted.

Q114. Do you agree with our proposal?

Agree.

Please state other information which you consider should also be disclosed:

Disagree. Please state reason(s) for your view:

Comments:

This information is price sensitive and should be subject to mandatory disclosure obligations.

The information to be disclosed should be consistent with the Stabilisation Rules to be made effective under the Securities and Futures Ordinance.

DIRECTORS AND BOARD PRACTICES

Information about the Listing Applicant's Past Corporate Governance Practices

Paragraph 237 of Part F of the Consultation Paper

We will amend the Main Board Rules to require a listing applicant to disclose in the initial listing document its corporate governance practices during the three-financial-year track record period. Disclosure should include:

- (a) the corporate governance practices, particularly in relation to directors, board practices and shareholders' rights, adopted by the listing applicant;

- (b) whether the listing applicant was able to meet the minimum standard in the Code of Best Practice and its own code (if any). If not, details of any deviations or non-existence of the minimum standard should be disclosed;
- (c) whether the listing applicant had an audit committee or other specialised committees, and details on their role and function, composition and work performed by such committee; and
- (d) internal controls over the listing applicant's financial, operational and compliance matters and risk management.

Q115. Do you agree with our proposal?

Agree

b *Disagree. Please state reason(s) for your view:*

Such disclosure should be forward looking only. Disclosure of such arrangements is not only unduly burdensome but also irrelevant as unlisted companies often do not have corporate governance structures in place which are comparable to those of listed issuers.

Comments:

CORPORATE REPORTING AND DISCLOSURE OF INFORMATION

Information about the Persons in Control of the Listing Applicant

Paragraph 239 of Part F of the Consultation Paper

We will amend the Main Board Rules to require description of the matters that the listing applicant relied on in satisfying itself that it is capable of carrying on its business independently of the persons who are directly or indirectly, jointly or severally, in control of the listing applicant after listing.

Q116. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

We do not believe that the proposed changes would be effective in addressing the concerns on whether listing applicants can function or make corporate decisions independently of their controlling shareholders who also have significant influence on the management of the listed company or its group members.

There are existing safeguards in the Listing Rules and under current law that are designed to provide minority shareholder protection and prevent the oppression of minorities. If the Exchange takes the view that existing regulations are not adequate in addressing the concerns on the independence of listing applicants, we believe that the more appropriate approach is to seek legislative changes and changes to the Listing Rules to introduce enhanced minority protection measures and to step up prosecutions against breach of fiduciary duties by directors and corporate misconduct.

We note that in practice, the Exchange often requires listing applicants to be financially independent of its controlling shareholder, thus requiring controlling shareholder guarantees to be released and controlling shareholder loans to be repaid prior to listing. Further, if an issuer is dependent on its controlling shareholder in the operation of its business, the Exchange would usually require the prospectus to highlight the high degree of dependence as a risk factor. As a further suggestion, therefore, we believe that the Exchange should codify these and other related requirements in the Listing Rules.

Accounts and Financial Information

Paragraph 243 of Part F of the Consultation Paper

We will maintain the current requirement that the latest financial period reported on by reporting accountants must not be more than 6 months before the date of the initial listing document.

Q117. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

No comment.

Paragraph 244 of Part F of the Consultation Paper

We will introduce an additional requirement to include management accounts from the latest financial period of the accountants report to a period that is not more than 3 months before the date of the initial listing document. The information to be disclosed should be the net profit for the period and the unaudited balance sheet as at the date of the management accounts so disclosed. The management accounts should be reviewed by the reporting accountants to a standard comparable to that required by the Hong Kong Society of Accountants or the International Auditing Practice Committee of the International Federation of Accountants.

Q118. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

We believe that the Exchange should consult with the accountants and the investment banking community to ascertain whether this requirement would create substantive or logistical problems. In addition, the Exchange may wish to consider the extent to which disclosure is required in the prospectus in relation to the management accounts. As the period of the management accounts may not coincide with a financial quarter, the listing applicant may have difficulties obtaining prior-year comparables for the management account numbers. On the other hand, given the short time frame covered by the management accounts, cyclical or seasonal factors might be accentuated and disclosure of management account figures without any qualitative discussion may be misleading.

The Management

Paragraph 247 of Part F of the Consultation Paper

We will amend the Main Board Rules to require disclosure of the details of the expertise, experience and qualification of the management of a listing applicant to be listed under Chapter 8 of the Main Board Rules.

Q119. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Generally, we find it difficult to comment on the proposals as it is not clear what the Exchange expects.

The proposals, when read in light of Rule 3.09 of the Listing Rules, raise the fundamental question of to what extent the Exchange expects directors and senior management to be competent, skilled and experienced in the line of business of the listing applicant:

- (i) Should listing applicants not be expected or required to hire senior officials and appoint directors who know the relevant line of business in the first place?
- (ii) Under the proposals mentioned in Q12, 41 and 45, would directors and senior management be expected to have higher qualifications and experience when compared with the requirements under Rule 3.09? If so, what are the major differences of expectations and the minimum level of experience and competence required? Is it practical to assume that the difference in experience contemplated in the proposals could be demonstrated objectively in any particular case and could the standard be consistently applied?
- (iii) What would constitute “sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants”? It would also be helpful if the Exchange could clarify whether **all**, or simply a majority of, directors and senior management of the listing applicant (presumably those listed in the prospectus as senior management) need to have “sufficient and satisfactory experience of at least three years”.

Paragraph 248 of Part F of the Consultation Paper

We will amend the Main Board Rules to require disclosure of the details of the management expertise and experience for the management of a listing applicant to be listed under the market capitalisation/revenue test and a listing applicant that is a mineral company or infrastructure company that wishes to apply for a waiver from the trading record requirement or financial standards requirement, where appropriate.

Q120. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

Disclosure of such information is, arguably, even more important where the company does not have a track record. Generally, we find it difficult to comment on the proposals as it is not clear what the Exchange expects.

The proposals, when read in light of Rule 3.09 of the Listing Rules, raise the fundamental question of to what extent the Exchange expects directors and senior management to be competent, skilled and experienced in the line of business of the listing applicant:

- (i) Should listing applicants not be expected or required to hire senior officials and appoint directors who know the relevant line of business in the first place?
- (ii) Under the proposals mentioned in Q12, 41 and 45, would directors and senior management be expected to have higher qualifications and experience when compared with the requirements under Rule 3.09? If so, what are the major differences of expectations and the minimum level of experience and competence required? Is it practical to assume that the difference in experience contemplated in the proposals could be demonstrated objectively in any particular case and could the standard be consistently applied?
- (iii) What would constitute “sufficient and satisfactory experience of at least three years in the line of the business and industry of the listing applicants”? It would also be helpful if the Exchange could clarify whether **all**, or simply a majority of, directors and senior management of the listing applicant (presumably those listed in the prospectus as senior management) need to have “sufficient and satisfactory experience of at least three years”.

Prospects of the Group

Paragraph 250 of Part F of the Consultation Paper

We will codify our current practice to require that where a profit forecast or estimate is prepared, such profit forecast or estimate must be prepared on a basis consistent with the accounting policies normally adopted by the listing applicant.

Q121. Do you agree with our proposal?

Agree

Disagree. Please state reason(s) for your view:

Comments:

No comment.

EFFECTIVE DATE

Paragraph 251 of Part F of the Consultation Paper

We propose that if our proposals regarding the new disclosure requirements set out in Part F of the Consultation Paper are adopted, such new disclosure requirements will become effective immediately when amendments of the Main Board Rules are made. Listing applicants that have submitted their listing application before such amendments will be encouraged to make similar disclosure in their initial listing document.

Q122. Do you agree with our proposal?

Agree

p Disagree. Please state reason(s) for your view:

These proposals should only apply to applications for listing submitted after they take effect. In addition, to avoid disruption to future applicants which are at an advanced stage in their preparation for listing but have not yet filed their Form A1s, at least 3 months notice of the introduction of the new proposals should be given.

Comments:
