



Hong Kong

December 2017

HONG KONG STOCK EXCHANGE CONSULTS ON CHANGES TO DOCUMENTARY REQUIREMENTS FOR LISTED ISSUERS AND MINOR RULE AMENDMENTS

Introduction

On 3 November 2017, the Stock Exchange of Hong Kong (the **Exchange**) published a Consultation Paper¹ on Proposed Changes to Documentary Requirements Related to Listed Issuers and Other Minor Rule Amendments (**Consultation Paper**).

The Consultation Paper proposes changes in relation to:

- The declaration and undertaking by directors and supervisors and related matters;
- Listed issuers' declaration and board resolutions relating to issuance of securities; and
- Rule amendments relating to:
 - New listing applicants;
 - Listed issuers;
 - Issuers of structured products;
 - Debt issuers; and
 - Accounting and audit matters.

The consultation period will end on 8 December 2017.

¹ <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Minor-Rule-Amendments/Consultation-Paper/cp2017112.pdf?la=en>

1. Proposed changes to documentary requirements for listed issuers

1.1 Declaration and undertaking by directors and supervisors and related matters

Currently, the Rules² require new directors of listed issuers to submit a declaration and undertaking in the form set out in Appendix 5B, 5H or 5I (**DU Form**) to the Listing Rules as soon as practicable after their appointment. The Exchange proposes to remove the DU Form, and replace it with a new personal details form for directors and supervisors.

Undertaking by directors and supervisors in Part 2 of the DU Form

The Exchange proposes to remove the requirement for directors and supervisors to provide an undertaking in the form set out in Part 2 of the DU Form and to instead incorporate those obligations into the Listing Rules.

Solicitor's certification in Part 3 of the DU Form with regard to directors

The Exchange proposes to remove the current requirement for a solicitor to certify that all applicable requirements for completing the DU Form and all the possible consequences of making false declarations to the Exchange have been explained to the director.³ The Exchange however reiterates that directors will continue to bear responsibility for ensuring

² Rule 13.51(2)

³ As set out in Part 3 of the DU Forms.

the accuracy and completeness of their information provided to the Exchange under the Listing Rules and the Securities and Futures Ordinance (the **SFO**). The personal details form will retain the warning statement contained in the DU Form as to the liability for making a false or misleading statement under Section 384 of the SFO.

Sponsor's certification in Part 3 of the DU Form with regard to directors (for IPOs only)

The Exchange also proposes to remove the current requirement for the sponsor's certification⁴ on IPOs in Part 3 of the DU Form.

Changes to related disclosure requirements

The Exchange proposes to require disclosure (currently submitted in the DU form) of the director's or supervisor's former name and alias (if any) in the appointment announcement, or in the listing document on an IPO. The Exchange also proposes to impose an obligation on directors and supervisors to submit the following contact information:

- Telephone numbers;
- Mobile phone numbers;
- Facsimile numbers (if available);
- Email addresses (if available); and
- Correspondence addresses (if different from residential addresses);

Directors would also be required to notify the Exchange of any changes in the above information, in addition to the current requirements on providing residential addresses.

Granting the Exchange powers to gather information from supervisors

The Exchange proposes to extend to supervisors the current requirements of Listing Rule 2.12A and/or the DU Form for issuers and their directors to: (i) provide information that the Exchange considers appropriate for investors protection or

for securing the smooth operation of the market; and (ii) to cooperate with the Listing Division/Listing Committee of the Exchange in any investigation.

Aligning the requirements of the Main Board Listing Rules and the GEM Listing Rules

The Exchange proposes to amend the Listing Rules to include in both the Main Board and GEM Rules the provisions that are currently exclusive to either the Main Board DU Form or GEM DU Form - specifically:

- a) The Main Board DU Forms' requirement for directors and supervisors to appoint issuers as their agents for service of notices and documents by the Exchange;
- b) The GEM DU Forms' requirement for every supervisor to inform the Exchange of any change to his/her correspondence address in the 3 years after ceasing to be a supervisor of the issuer.
- c) The GEM DU Forms' provisions relating to directors' obligations to comply with other laws and regulations pursuant to "the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the SFO".

1.2 Listed issuer's declaration and board resolutions relating to issuance of securities

The Consultation Paper proposes to remove the Listing Rules' current obligation for listed issuers to submit certified copies of board resolutions authorising the issue and allotment of equity securities, the making of the listing application, the making of all necessary arrangements enabling such securities to be admitted into CCASS (if applicable), and approving and authorising the issue of the listing document on applying to list the securities. It is also proposed to remove the requirement for the submission of a declaration in the form set out in Appendix 5F that all requirements and pre-conditions for listing and all applicable rules and regulations have been fulfilled which is required to be signed by a director and the secretary of the listed issuer. Listed issuers would instead be required to include a confirmation in the relevant next day disclosure return and/or monthly return for the issue of the securities.

1.3 Other documentary requirements for listed issuers

The Exchange proposes to remove the requirement for listed issuers to submit the following documents:

⁴ Sponsor certification currently needs to state that the sponsor is not aware of any information that would cause enquiries on the truthfulness, completeness or accuracy of the director's personal information submitted in the DU Form and disclosed in the IPO listing document.

Document	Current Rule	Reasons for proposed removal	
Documents relating to listing of additional equity securities			
1.	A copy of the HKSCC written notification stating the new class of securities will be Eligible Securities <i>(to be submitted on or before the date of issue of the listing document)</i>	9.21(2)	<ul style="list-style-type: none"> Information relating to the approval of the securities for admission into CCASS is available on the HKSCC website
2.	A copy of the letter from the Registrar of Companies confirming the registration of the prospectus <i>(to be submitted as soon as after the registration of the prospectus)</i>	9.22(3)	<ul style="list-style-type: none"> Under Rule 2.07C(1)(b)(ii), listed issuers must ensure that their prospectuses are duly registered before publication on the HKEX website. The confirmation letter is currently submitted to the Exchange for record purpose only.
3.	A certified copy of the notice given under Division 4, Part 13 of the Companies Ordinance <i>to be submitted before dealings commence</i>	9.23(3)	<ul style="list-style-type: none"> It is the issuer's responsibility to ensure that other legal requirements are met. The documents are currently filed with the Exchange for record purpose only. We do not vet these documents.
4.	A certified copy of the court order and of any certificate of registration for capital reduction, scheme or arrangement or other similar proposal <i>to be submitted before dealings commence</i>	9.23(4)	
5.	For PRC issuers only, a certified copy of the document from the State Council Securities Policy Committee (or other PRC authority) approving the issue of securities <i>to be submitted on or before the date of issue of the listing document)</i>	19A.22B	
Company Information Sheet (for GEM issuer only)			
6.	Company Information Sheet	GEM Rule 12.27(9)/ GEM Rule 17.52	<ul style="list-style-type: none"> The document is published on HKEX website. A separate submission of the same document to the Exchange is not necessary.

Notification to the Exchange			
7.	Board meeting notice <i>7 clear business days in advance of the date of board meeting)</i>	13.43	<ul style="list-style-type: none"> Listed issuers are required to publish announcements relating to these matters on the HKEX website. A separate notification to the Exchange is not necessary.
8.	Any important change in the holding of an executive office	13.51(2)	
9.	Any change in information required to be disclosed under Rule 13.51(2)(h) to (v) during the term of a director, supervisor or chief executive	13.51B(2)	
10.	Any notifiable transaction	14.34(1)	

2. Proposed Minor Rule Amendments

2.1 Rule Amendments relating to New Listing Applicants

Period of disclosure of pre-acquisition financial information on material businesses/ subsidiaries acquired by a new applicant

The Listing Rules are currently unclear as to the extent of disclosure of pre-acquisition financial information on material businesses/ subsidiaries acquired by a new listing applicant which the Exchange has accepted as having a trading record period shorter than three years (for the Main Board) or two years (for GEM).

The Exchange proposes to add a Note to Main Board Rule 4.05A/ GEM 7.05A clarifying that disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new listing applicant is required for the period from the commencement of the three-year (in the case of the Main Board) or two-year (in the case of GEM) trading record period up to the date of the acquisition.

Time of submission of Application Proof for publication on the Exchange's website

In order to reflect industry practice, the Exchange proposes to require listing applicants to submit an Application Proof for publication on the HKEx website "on the same day" (rather than the current "at the same time") as they file a listing application by amending Practice Note 22 of the Main Board Listing Rules and Practice Note 5 to the GEM Listing Rules.

2.2 Rule Amendments relating to Listed Issuers

Amendments to align the GEM Rules with the Main Board Rules in respect of profit forecasts

The Exchange proposes to remove GEM Rule 17.55 which applies the requirement for profit forecasts to be reviewed by a reporting accountant or auditor (the **Formal Reporting Requirement**) to any announcement, advertisement or other document containing a profit forecast. The Main Board Rules apply the Formal Reporting Requirement only to profit forecasts included in a listing document or an announcement or circular relating to a notifiable or connected transaction or an issue of securities. The Exchange proposes to align the Formal Reporting Requirements for profit forecasts under the GEM Rules with those of the Main Board Rules.

Amendments relating to possible waiver from the minimum profit requirement for remaining businesses under spin-off proposals

To ensure that a listed issuer will satisfy the requirements of Chapter 8 of the Main Board Listing Rules alone, Paragraph 3(c) of Practice Note 15 to the Main Board Listing Rules requires the existing issuer (**Parent**) to retain sufficient assets and operations of its own, excluding its interest in the entity to be spun-off (**Newco**). Paragraph 3(c) of Practice Note 15 however provides that:

"Where the Parent, excluding its interest in Newco, cannot meet the minimum profit requirement of Rule 8.05, the Exchange may grant a *waiver* to the Parent if the Parent is able to demonstrate that it, excluding its interests in Newco, fails to meet the minimum profit requirement of Rule 8.05 due solely to an exceptional factor or a significant market downturn. The Parent must also demonstrate that such factor was temporary in nature and is not likely to continue or recur in the future or that appropriate measures have been taken by the issuer to negate the impact on its profit of the market downturn ..." (the **Waiver**)

The Exchange proposes to clarify in paragraph 3(c) of Practice Note 15 that the Exchange may grant such Waiver if the issuer fails to meet Rule 8.05's minimum profit requirement solely due to a significant market downturn.

Disclosure requirements published on the issuer's website

It is proposed to amend the Main Board Rules to require listed issuers to announce changes in their website addresses in the same way as is already required for GEM listed issuers.

Other changes

Since the Listing Rules currently only require Main Board issuers to inform the Exchange of the matters listed below, the Consultation Paper proposes to amend the Listing Rules to explicitly require issuers to make announcements of:

- a) the appointment of a receiver or a manager; the presentation of a winding up petition; the passing of a resolution for voluntary winding up and other events (Main Board Rule 13.25(1));
- b) the issuer's failure to meet the public float requirement (Main Board Rule 13.32(1)(a)); and

- c) an issuer's securities becoming listed or dealt in on any other stock exchange (Main Board Rule 13.32(1)(b)).

3. Rule amendments relating to issuers of structured products (Main Board Rules only)

Form of submission in hard copy of financial reports and listing documents of structured products

The Exchange notes that the current requirements (Main Board Rules 15A.21(1) and 15A.64(3)) for hard copy submissions of financial reports and supplemental or standalone listing documents in printed form are unnecessary and not environmentally friendly. It therefore proposes to amend the Listing Rules to require submissions of these documents by issuers of structured products to be made in electronic form only.

Liquidity provision of the number of board slots for structured products

The current requirement of issuing liquidity for at least ten board lots of a structured product (Note 4 to Main Board Rule 15A.22) has been re-considered by the Exchange. It now proposes to amend the provision⁵ to require the provision of liquidity for at least 20 board lots of the issuer's structured products to align with market practice.

Entitlement ratio for structured products

The current entitlement ratios of one, ten and 100 structured products for one share are now considered to be too restrictive under certain market conditions. The Exchange thus proposes to increase the entitlement ratio of multiple structured products for one share to ratios of five, 50 and 500 structured products⁶ to allow greater flexibility. The Exchange acknowledges the lack of market need for changes to entitlement ratios of multiple shares for one structured product.

Contents of formal announcement for structured products

It is proposed to amend Main Board Rule 15A.59 to clarify that the relevant information of both the issuer *and* the guarantor should be included in the formal announcement for structured products in the case of guaranteed issues, as opposed to

the current requirement for the announcement to contain the information of the issuer *and/or* the guarantor.

Number of draft listing documents to be submitted to the Exchange

The Exchange recognises that the current Main Board requirement (Main Board Rule 15A.63) for issuers to lodge two drafts or proofs of the supplemental or standalone listing document for review and clearance by the Exchange is unnecessary and proposes to reduce the required number of submitted drafts to one.

Clarification of Main Board Rules 15A.71- 15A.74 and 15A.76

The Exchange notes that these Listing Rules make no reference to a standalone listing document despite the overarching requirement for a listing of the structured products to be supported by a listing document.⁷ The Exchange proposes to clarify that these Listing Rules apply to stand alone listing documents.

4. Rule amendments relating to debt issuers

The Exchange proposes to amend Main Board Rule 37.39 and GEM Rule 30.22 to require an issuer of debt securities to professional investors only to publish a formal notice *before listing*, as opposed to the current requirement of publishing a formal notice *on listing*, to reflect industry practice.

5. Rule amendments relating to accounting and auditing matters

The Exchange proposes to update the auditing terminology in the Listing Rules to align terms with the new and revised Hong Kong Standards on Auditing (HKSA) on auditor reporting (the **Auditor Reporting Standards**), issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) on 31 August 2015 and effective for audits of financial statements for periods ended on or after 15 December 2016. Among the Exchange's proposals is the newly defined term "modified report", which would accommodate the new and revised Auditor Reporting Standards to cover matters that affect the audit opinion and matters that do not affect the audit opinion but are modifications to the audit report. The Exchange also proposes to introduce a term "modified opinion" as defined

⁵ along with amending paragraph 17(15) of Appendix 1D to the Main Board Rules

⁶ in Main Board Rule 15A.40

⁷ May take the form of a stand alone listing document, a base listing document, a supplemental listing document or a supplementary listing document

by the HKSA.⁸ The subsequent changes to individual Listing Rules are proposed to replace “qualified”/“modified” auditors’ reports and “qualification”/“modification” terms with “modified opinion” and “modified report” where appropriate.

6. Proposed Housekeeping Amendments

The Exchange proposes to make various housekeeping amendments to the Listing Rules, including updating the references to the standard on the preparation of accountants’ report. All housekeeping Rule amendments will become effective on a date to be announced, subject to the necessary regulatory approvals.

⁸ A qualified opinion, an adverse opinion or a disclaimer of opinion on the financial statements

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