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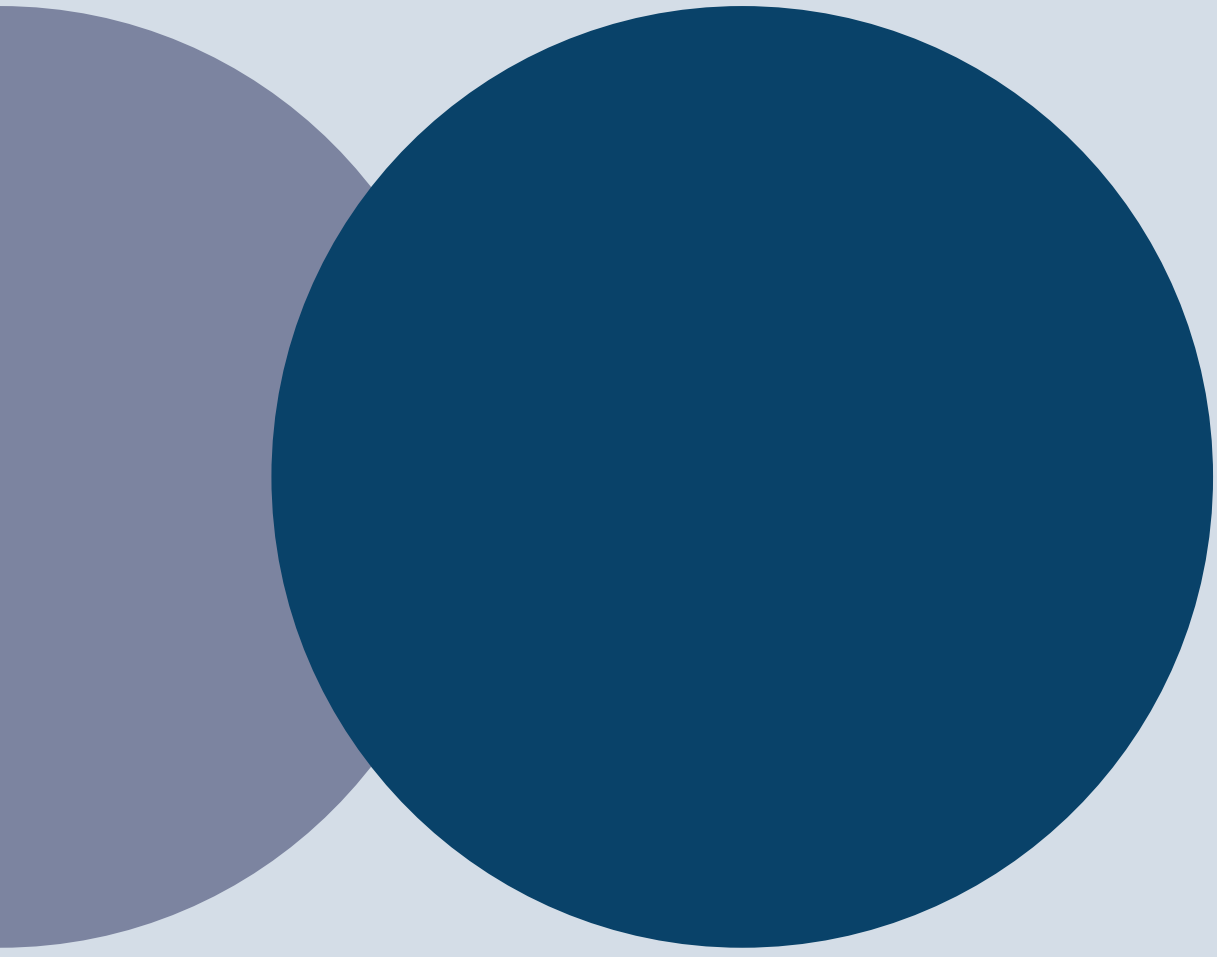
HKEX
香港交易所

CONSULTATION CONCLUSIONS

CAPITAL RAISINGS BY LISTED ISSUERS



CONTENTS

EXECUTIVE SUMMARY

1. This paper presents the results of the consultation conducted by the Exchange on proposals to introduce targeted measures to address potential abuses related to large scale deeply discounted capital raising activities, and address specific issues concerning other capital raising and share issuance transactions. The proposals sought to address market practices that may jeopardise an orderly, fair and informed market for the trading and marketing of securities and to ensure fair and equal treatment of all shareholders.

2. We received a total of 46 responses[1] from professional bodies, market practitioners, listed issuers, industry associations, other entities and individuals.

3. All our proposals received support from a majority of the respondents (about 60% or above). We will implement all the proposals outlined in the Consultation Paper, with minor modifications to the draft Rules in response to market comments as discussed in Chapter 2.

4. The amended Main Board Rules and GEM Rules are set out in Appendix II. They will take effect from 3 July 2018.

[1] We received submissions from 107 respondents, of which 61 were entirely identical, in contents, to other responses. Submissions with entirely identical content were counted as one response.

CHAPTER 1: INTRODUCTION

Background

5. On 22 September 2017, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), published a Consultation Paper on Capital Raisings by Listed Issuers (the **Consultation Paper**).

6. The purpose of the consultation was to consider specific changes in the Rules to prohibit market practices that may jeopardize an orderly, fair and informed market for the trading and marketing of securities, taking note of market concerns about patterns of problematic behaviours related to certain share issuance transactions, including deeply discounted fundraisings and share consolidations and subdivisions. The proposed Rule amendments would introduce targeted measures to address these activities as well as specific issues concerning other capital raising and share issuance transactions.

7. Our proposals included the following major Rule amendments:

- **Highly dilutive capital raisings:**

  disallow rights issues, open offers and specific mandate placings, individually or when aggregated within a rolling 12-month period, that would result in a cumulative material value dilution (proposed to be 25% or more), unless there are exceptional circumstances e.g., the issuer is in financial difficulties;

- **Rights issues and open offers:**

  - require minority shareholders' approval for all open offers, unless the new shares are to be issued under the authority of an existing general mandate;

  - remove the mandatory underwriting requirement for rights issues and open offers;

  - require underwriters (if any) for rights issues and open offers to be persons licensed under the Securities and Futures Ordinance (**SFO**) and independent from the issuers and their connected persons, with the exception that controlling shareholders or substantial shareholders may act as underwriters if compensatory arrangements are made available for the unsubscribed offer shares and the connected transaction Rules are complied with;

- remove the connected transaction exemption currently available to connected persons acting as underwriters of rights issues or open offers;

- require issuers to adopt either excess application arrangements or compensatory arrangements for the disposal of unsubscribed shares in rights issues or open offers (currently, these arrangements are optional);

- require issuers to disregard any excess applications made by the controlling shareholders and their associates in excess of the offer size minus their pro-rata entitlements;

- **Placing of warrants or convertible securities under general mandate:**

  - disallow the use of general mandate for placing of warrants;

  - restrict the use of general mandate for placing of convertible securities with an initial conversion price that is not less than the market price of the shares at the time of placing; and

- There are also other proposed Rule amendments to enhance disclosure of the use of proceeds from equity fundraisings, and to impose an additional requirement for subdivisions and bonus issues of shares to ensure an orderly market.

8. The consultation period ended on 24 November 2017.

Number of responses and nature of respondents

9. We received 107 responses from a broad range of respondents. 46 responses contained original content, whilst 61 responses were entirely identical, in content, to other responses[2]. All responses are available on the HKEX website, and a list of respondents (other than those who requested anonymity) is set out in Appendix III.

[2] Submissions with entirely identical content were counted as one response.

Table 1: Number and percentage of responses by category

RESPONDENT CATEGORY	NUMBER OF RESPONSES	PERCENTAGE OF RESPONSES
INSTITUTIONS		
Professional Bodies	**12**	**26%**
Listed Companies	**10**	**22%**
Market Practitioners	**8**	**17%**
Law Firms	5	11%
Investment Management Firms	2	4%
Accountancy Firms	1	2%
None of the above	**2**	**4%**
INDIVIDUALS		
Listed Company Staff	**3**	**7%**
Corporate Finance Staff	**2**	**4%**
Lawyers	**2**	**4%**
Individual Investors	**2**	**4%**
Accountant	**1**	**2%**
HKEX Participant Staff	**1**	**2%**
None of the above	**3**	**7%**
TOTAL	**46**	**100%**

10. All the proposals in the Consultation Paper received support from a majority of the respondents, with some further suggestions and comments. Chapter 2 summarises the major comments and our responses and conclusions. Certain valuable comments included in the respondents' submissions were considered to be outside the scope of this consultation. Where appropriate, these comments will be considered in separate policy exercises.

11. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website at:

    http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017092.pdf

12. The amended Listing Rules are available on HKEX website at:

    http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=2
    (Update No.120)

    http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=49
    (Update No.55)

    They have been approved by the Board of the Exchange and the Board of the Securities and Futures Commission (**SFC**). They will become effective on 3 July 2018.

13. We would like to express gratitude to all respondents for their time and effort in reviewing the Consultation Paper and sharing with us their views.

CHAPTER 2: PROPOSALS ADOPTED AND DISCUSSION ON SPECIFIC RESPONSES

14. In this Chapter, we set out our proposals and analyse the responses to each of them including some specific comments received which may be of interest to the market, and our views in respect of them. We then set out our decision whether to adopt (with or without modifications) each of the proposals.

A. HIGHLY DILUTIVE CAPITAL RAISINGS

15. In the Consultation Paper, we proposed to disallow rights issues, open offers and specific mandate placings (individually or when aggregated within a rolling 12-month period) that would result in cumulative value dilution of 25% or more, unless there are exceptional circumstances, e.g. the issuer is in financial difficulties.

Highly dilutive rights issues and open offers (collectively pre-emptive offers)

Question 1: Do you agree with the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances?

Comments received

16. 74% of the respondents supported the proposal and 19% opposed. The remaining 7% did not indicate a view.

17. Some respondents supporting the proposal agreed that highly dilutive pre-emptive offers should be regulated. Introducing a prescribed threshold would give issuers greater transparency and certainty on how they should structure their proposed capital raisings. Some respondents emphasized that it is important to ensure legitimate capital raising activities not to be restricted.

18. The comments given by respondents who opposed the proposal mainly included:

    (a) Abusive practices relating to highly dilutive pre-emptive offers were undertaken by a small number of issuers. Introducing a prescribed threshold to restrict all pre-emptive offers may have an adverse impact on the overall flexibility of capital raising capability by issuers and lead to an unintended impression that the secondary capital raisings market in Hong Kong is too restrictive and difficult. This may, in turn, undermine the attractiveness of Hong Kong as a listing venue.

(b) Some respondents questioned the need for Rule changes to disallow highly dilutive offers notwithstanding the issuers having obtained shareholders' approval. As a matter of principle, shareholders should be allowed to decide what is in their best interest. While the Exchange has the duty to discharge its regulatory functions, market intervention by the Exchange or other regulators should be kept to a minimum.

(c) It was not necessary to introduce the proposal as the existing Rules have provided sufficient safeguards. These include the shareholders' approval requirement for larger size pre-emptive offers[3], and the Exchange's right to withhold listing approvals for new issues or apply the cash company Rule against certain large scale fundraising activities[4]. Some respondents also pointed out that with the implementation of other proposals relating to pre-emptive offers in the Consultation Paper such as mandatory excess application or compensatory arrangements, there will be in place a range of measures for protecting minority shareholders' interests in the offers.

19. Some respondents supporting the proposal suggested that the Exchange should exercise the discretion to dis-apply the restriction in circumstances that the Exchange considers "justifiable", instead of limiting to "exceptional circumstances" only. Issuers should be allowed to undertake highly dilutive capital raisings if they have legitimate reasons to justify their cases. The proposed exemption should not be limited to circumstances where the issuers have financial difficulties. The Exchange should assess the merits of each case.

20. Some respondents considered that certain abuses associated with highly dilutive capital raisings as discussed in the Consultation Paper may be addressed in other ways. As regards issuing shares for transactions that are devoid of commercial rationale, this kind of abusive corporate actions may call into question whether the directors have properly discharged their fiduciary duties to protect the interest of the issuer and shareholders as a whole. If there is a serious breach of directors' duties, it should be dealt with through enforcement actions. Other abuses such as vote rigging through warehousing of shares should be subject to regulatory investigation and law enforcement.

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[3] The Rules (Rules 7.19(6) and 7.24(5)) require minority shareholders' approvals for any pre-emptive offer that would increase the issuer's number of issued shares or market capitalization by more than 50% (on its own or when aggregated with any other rights issues and open offers in the previous 12 months).

[4] See Guidance Letter GL84-15

21. Some respondents noted that the shareholders' approval requirement may not be effective in guarding against abusive transactions given the low shareholder turnout rate at general meetings. To address this issue and promote voting by shareholders, the respondents suggested that SFC licensed intermediaries should actively disseminate issuers' information to shareholders and seek voting instructions to cast votes at shareholders' meetings. Some suggested enhancing investor education to encourage shareholders' engagement, including attending shareholders' meetings and reviewing issuers' public disclosure to monitor their conduct of affairs.

22. A respondent supporting the proposal suggested that the Exchange should also consider imposing a limit on the cash to net assets ratio of issuers. This means that an issuer would not be permitted to conduct equity fundraisings or transactions that would result in the issuer breaching the limit. This would help preventing highly dilutive capital raising activities.

Our responses and conclusion

23. As explained in the Consultation Paper, we consider that there is a need for Rule changes to restrict highly dilutive capital raisings that may jeopardize an orderly, fair and informed market for trading of securities. In response to the comments given by respondents, we clarify the following:

    (a) Whilst abusive practices relating to highly dilutive capital raisings involved a small number of issuers, they undermine investors' confidence in our market. Our proposals which are intended to address those capital raising activities would help maintaining the reputation of our market while maintaining the ease of access to capital for Hong Kong listed issuers generally.

    (b) The Exchange has a statutory obligation under the SFO to ensure, so far as reasonably practicable, an orderly, informed and fair market in the trading of securities, and has a duty to act in the best interest of the market as a whole and in the public interest. Accordingly, where the Exchange has concerns that the terms of a highly dilutive offer are detrimental to public shareholders and undermine investors' confidence in the market, it may not grant listing approval for the offer notwithstanding the approval by the shareholders. The proposed Rule amendments would provide greater transparency and certainty on how the Exchange will deal with highly dilutive offers.

(c) The proposed Rule amendments relating to highly dilutive capital raisings are targeted to address abusive transactions that might not afford a fair treatment of shareholders or an orderly market for securities trading. As noted in the Consultation Paper, whilst the existing Rules already require minority shareholders' approval for large scale offers, there is a concern whether this is sufficient to guard against abusive cases due to the low shareholders' turnout rates at general meetings and other problems such as vote rigging through warehousing of shares. The guidance letter on the application of the cash company Rules[5] is aimed at preventing circumvention of new listing requirements through large scale share subscriptions and does not address abusive fundraisings that might not afford a fair treatment of minority shareholders.

(d) The proposal would restrict pre-emptive offers with a value dilution that is material to non-subscribing shareholders and poses a higher risk of abuse. The proposed exemption for offers in "exceptional circumstances" is intended to allow legitimate capital raisings where the highly dilutive terms are justified by the particular circumstances. "Financial difficulties" is cited in the proposed Rules as an example only.

(e) We note the respondents' comments that certain problems associated with highly dilutive offers should be addressed through enforcement actions. As noted in the Consultation Paper, abusive practices relating to highly dilutive offers need to be regulated through an integrated approach: the SFC administers the SFO and the Securities and Futures (Stock Market Listing) Rules and regulates intermediaries and other market conduct; and the Listing Rules support this by making specific provisions for the conduct of share issuance in a fair and orderly manner and the fair and equal treatment of all shareholders.

24. With the support from the majority of respondents, we will adopt the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances.

25. As discussed above, the purpose of our proposal is to prevent abuses of highly dilutive capital raisings. We do not propose to adopt a respondent's suggestion to introduce a limit on the cash to net assets ratio of issuers as it would impose a more restrictive requirement on issuers' capital raising activities generally and reduce their flexibility in capital management for business needs. Some respondents have also made other suggestions relating to the infrastructure and practice of the voting system which are not within the scope of this consultation. Where appropriate, these matters will be considered in a separate policy exercise.

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[5] See Guidance Letter GL84-15

Proposal to apply a 25% threshold for material value dilution

Question 2: Do you agree with the proposed 25% threshold on value dilution? If not, what is the appropriate percentage threshold and the reasons for this threshold?

Comments received

26. 50% of the respondents supported adopting 25% as the threshold of material value dilution. 22% of the respondents had other views, of which 11% favoured a lower threshold (e.g. 10%, 20%), 9% favoured a higher threshold (e.g. 30%, 40%) and 2% suggested a flexible threshold depending on the issuers' circumstances. 15% of the respondents did not support setting a threshold. The remaining 13% did not indicate a view.

27. Respondents who preferred a lower threshold (less than 25%) were of the view that the proposed 25% threshold is too high and would still allow pre-emptive offers that are materially dilutive (e.g. offer ratio of 100% and price discount of 50%) to proceed. Respondents who preferred a higher threshold (more than 25%) considered it necessary for issuers to have sufficient flexibility in fundraisings for commercial reasons.

28. Several respondents sought to clarify the basis of setting the threshold at 25%.

29. A respondent, which opposed the proposal, suggested other measures to deter the "downward market manipulation" [6] (which usually involves an insider selling his/her/its shares in the issuer on the market at a gain before the issuer proposes a highly dilutive offer together with a share consolidation, and then replenishing his/her/its shares by subscribing for new shares at a very low price under the offer). The respondent proposed to prohibit any pre-emptive offer within 12 months from a share consolidation, or impose a price discount limit with reference to the average market price, or a cap on the amount of funds raised with reference to the issuer's market capitalization, prior to the proposed pre-emptive offer.

[6] See also paragraph 5 and footnote 1 of the Consultation Paper.

Our responses and conclusion

30. As explained in the Consultation Paper, we consider value dilution of non-subscribing shareholders' interest by 25% (or more) to be material. This threshold would restrict offers with a large offer ratio and price discount, e.g. an offer ratio of 50% and a discount to market price of 75%, or an offer ratio of 100% and a discount to marker price of 50%. In our review of capital raising activities undertaken by issuers, pre-emptive offers with a value dilution of 25% or more usually lacked demonstrable commercial rationale to justify the high level of dilution, raising concerns about unfair dilution to non-subscribing shareholders. In response to the Exchange's robust approach to the vetting of pre-emptive offer in recent periods, the number of pre-emptive offers with a value dilution of 25% (or more) decreased from 24 in the first half of 2016 to 4 in the second half of 2016.

31. We have considered, and decided not to adopt, the other suggestions described in paragraph 29.

    (a) As explained in the Consultation Paper, we do not propose to apply limits on the price discount and/or the offer ratio (i.e. the offer size) as we consider that value dilution (that takes into account both the price discount and offer ratio) would be the appropriate measure of the potential loss of value to non-subscribing shareholders. Applying a value dilution restriction would also allow issuers more flexibility to determine the appropriate balance of offer prices and offer ratios.

    (b) As noted in the Consultation Paper, share consolidation itself will not change shareholders' proportionate interests in the issuer, and may serve to facilitate trading activities. In practice, some issuers conducted share consolidations at the time of, or before, discounted offers in order to increase their theoretical adjusted price per share to meet the minimum par value per share and/or to comply with Rule 13.64[7]. By restricting the dilution limit, the price discount would be limited and accordingly, there would be a lesser need to consolidate shares when these issuers conduct pre-emptive offers. Further, it would be onerous to prohibit a fundraising simply because it is made at the same time of, or within 12 months after, a share consolidation. To protect minority shareholders, our proposal would restrict highly dilutive offers rather than share consolidations.

[7] Under Rule 13.64, the Exchange has the right to require an issuer to change the trading method or to proceed with a consolidation of its securities when the market price of the securities approaches the extremity of HK$0.01. As described in the "*Guide on Trading Arrangements for Selected Types of Corporate Actions*", the Exchange considers trading price below HK$0.1 as approaching the trading extremity and would generally require the issuer to consolidate its shares.

32. In light of the above and having considered the responses, we will adopt the proposed 25% threshold which is most supported.

Highly dilutive specific mandate placings

Question 3: Do you agree that the proposed requirements should also apply to share issuance under a specific mandate?

Comments received

33. 67% of the respondents supported the proposal and 26% opposed. The remaining 7% did not indicate a view.

34. When combined with the responses to Question 1, we noted that a majority of respondents (60%) supported applying the restriction to both pre-emptive offers and specific mandate placings. 13% of the respondents agreed to restrict highly dilutive pre-emptive offers only, while 7% agreed to restrict specific mandate placings only. 13% of the respondents were against both proposals. The remaining 7% did not indicate a view.

35. Some respondents supporting the proposal agreed that highly dilutive specific mandate placings should be restricted as minority shareholders are not given the opportunity to subscribe for the new shares. They should be afforded with better protection against material value dilution.

36. Some respondents opposing the proposal were of the view that the proposal would adversely affect issuers' ability to raise funds in the market. In addition, shareholders are provided with detailed information relating to the specific mandate placings, including the reasons for fundraising, to make an informed decision on how to vote. Their interests in the issuers would be safeguarded.

37. A respondent suggested that, instead of the proposed restriction on highly dilutive specific mandate placings, the Exchange may protect shareholders by tightening the voting requirements, including imposing a minimum quorum required for shareholders' meetings, or increasing the minimum percentage of votes cast in favour of the proposed issue, with a limit on the percentage of votes cast against the proposed issue.

38. Another respondent who supported the proposal was of the view that placings (whether under a general or specific mandate) are widely abused and are less fair than pre-emptive offers. Therefore, there should be more stringent requirements such as imposing independent shareholder approval for specific mandate placings and lowering the limits of issue size and price discount under the general mandate Rules.

Our responses and conclusion

39. We consider it necessary to apply the proposed restriction to address abuse of highly dilutive specific mandate placings, and prevent potential regulatory arbitrage as a result of tighter requirements on pre-emptive offers. As explained in the Consultation Paper, some highly dilutive specific mandate placings involved transactions that did not have clear commercial rationale for the issuers, but resulted in the introduction of new controlling or substantial shareholders. This raised questions on whether they were for the purposes of facilitating other activities, rather than to meet the issuers' capital requirements. In many of these cases, there was no pressing funding need to justify such a high level of value dilution and the directors could not clearly explain how the high value dilution was in the interest of the shareholders.

40. We have considered, and decided not to adopt, the other suggestions to introduce a minimum quorum requirement for general meeting or increasing the voting threshold for approving highly dilutive placings. A minimum quorum requirement may be unduly onerous as issuers may have practical difficulties in ensuring a high turnout rate at general meetings to approve legitimate fundraising activities. A higher voting threshold may not prohibit abusive practices given concerns about warehousing of shares for ulterior purposes. In our review of past cases, a vast majority of highly dilutive specific mandate placings were approved by over 75% of shareholders attending the general meetings during the review period.

41. In light of market support, we will adopt the proposal.

Aggregation of rights issues, open offers and specific mandate placings over a rolling 12-month period

Question 4: Do you agree with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period?

Comments received

42. 63% of the respondents supported the proposal and 24% opposed. The remaining 13% did not indicate a view.

43. A respondent opposing the proposal considered that the merits of each offer, if independent and not forming part of a series of related offers, should be considered on its own.

Our responses and conclusion

44. As explained in the Consultation Paper, the proposal is to discourage issuers from circumventing the 25% value dilution restriction by breaking up a highly dilutive fundraising into a number of smaller transactions. Accordingly, we consider that the proposed aggregation requirement should apply to all pre-emptive offers and specific mandate placings of an issuer within the 12-month period, whether or not they are related.

45. In light of market support, we will adopt the proposal.

Question 5: Do you agree with the proposed method of calculating cumulative value dilution? If not, what is the appropriate method?

Comments received

46. 70% of the respondents supported the proposal and 11% opposed. The remaining 19% did not indicate a view.

47. A respondent sought clarification on how to determine the benchmarked price in the proposed aggregation Rule. Some respondents also suggested the Exchange to publish further guidance to assist issuers and their advisers to calculate the cumulative value dilution.

Our responses and conclusion

48. In light of market support, we will adopt the proposal with modifications to the proposed Rule 7.27B to reflect the drafting comments. We will also publish guidance materials on the calculation of cumulative value dilution.

B. OPEN OFFERS

49. In the Consultation Paper, we proposed to require minority shareholders' approval for all open offers except for those made under the authority of a general mandate. The issuer's controlling shareholder (or where there is no controlling shareholder, directors and chief executive) and his/her/its associates cannot vote in favour of the resolution.

Question 6: Do you agree with the proposal to extend the minority shareholder approval requirement to all open offers (unless the new securities are issued under a general mandate)?

Comments received

50. 74% of the respondents supported the proposal, and 15% opposed. The remaining 11% did not indicate a view.

51. The comments given by respondents who opposed the proposal included:

    (a) There is no pressing need to change the existing practice relating to open offers if they are not highly dilutive.

    (b) Requiring minority shareholders' approval for open offers would increase the time and costs to complete the offers, which would, in turn, adversely affect the overall fundraising ability and flexibility of issuers, particularly small issuers. If the issuers revert to rights issues, it is unclear whether the additional costs for making nil-paid rights trading arrangements would outweigh the benefits of better safeguards in the Rules.

    (c) Other proposals relating to open offers, such as the requirement for issuers to adopt either an excess application arrangement or a compensatory arrangement, would provide additional protection to minority shareholders.

52. Respondents supporting the proposal agreed that it serves to protect minority shareholders against dilutive open offers. In response to the issue concerning low shareholders' turnouts at general meetings, some respondents suggested the Exchange to consider introducing a minimum quorum requirement for approving open offers, and other proposals to facilitate voting by shareholders such as the adoption of electronic voting and the removal of the nominee system.

Our responses and conclusion

53. As explained in the Consultation Paper, open offers provide less protection to shareholders compared to rights issues, and they are more conducive to arrangements that would facilitate the transfer of ownership in the issuers. Our proposal is aimed at protecting minority shareholders by enabling them to vote on dilutive open offers. Alternatively, the issuers may conduct renounceable offers (i.e. rights issues) which allow non-subscribing shareholders to sell their subscriptions rights on the market to reduce the dilution loss.

54. We consider that the proposal would not adversely affect issuers' ability to raise funds generally as issuers may conduct rights issues instead of open offers. In practice, the additional costs for nil-paid rights trading arrangements are unlikely to be material in the context of the fundraising exercise.

55. In light of market support, we will adopt the proposal.

56. Some respondents have made other suggestions relating to the infrastructure and practice of the voting system, which are not within the scope of this consultation. Where appropriate, these matters will be considered in a separate policy exercise.

C. UNDERWRITING OF RIGHTS ISSUES AND OPEN OFFERS

Proposal to remove compulsory underwriting requirement for pre-emptive offers

57. In the Consultation Paper, we proposed to remove Rules 7.19(1) and 7.24(1) which require underwriting of all rights issues and open offers for Main Board issuers.

Question 7: Do you agree with the proposal to remove the underwriting requirement for pre-emptive offers?

Comments received

58. 80% of the respondents supported the proposal, and 11% opposed. The remaining 9% did not indicate a view.

59. Respondents supported the proposal as it would reduce the costs for issuers in pre-emptive offers. It may also encourage the use of pre-emptive offers in preference to placings.

60. Some respondents supporting the proposal stated that investors must be properly informed if an offer is not underwritten.

61. Some respondents suggested retaining the underwriting requirement as it can provide certainty of funds and reduce the risks of the investing public when dealing in the issuer's shares or nil paid rights in the event the offer is subsequently terminated due to a low level of subscription.

Our responses and conclusion

62. As noted in the Consultation Paper, we consider that the decision to engage an underwriter is a commercial matter for the directors. Where an issuer's board decides not to arrange underwriting for its offer, it is required to make prominent disclosure of that fact and other relevant information set out in Rule 7.19(3), including the minimum amount (if any) that must be raised in order for the offer to proceed and the proposed allocation of funds in the event the offer is undersubscribed.

63. In light of market support, we will adopt the proposal.

Proposals relating to underwriters of pre-emptive offers

64. In the Consultation Paper, we proposed to require underwriters (if any) for pre-emptive offers to be independent licensed persons, with the exception that controlling shareholders may act as underwriters if compensatory arrangements are made available for the unsubscribed offer shares and the connected transaction Rules are complied with. We also sought market views on whether substantial (but not controlling) shareholders should be allowed to act as underwriters. Under the proposals, underwriting by non-licensed third parties would be disallowed.

Question 8: Do you agree with our proposal to require underwriters (if they are engaged) to be licensed persons independent from the issuers and their connected persons? **Question 9a:** Do you agree that controlling shareholders should be allowed to act as underwriters? **Question 9b:** Do you think that substantial (but not controlling) shareholders should be allowed to act as underwriters?

Comments received

65. Our proposals received support from the majority of respondents.

66. (Question 8) 63% of the respondents supported the proposal to require underwriters to be independent licensed persons, and 20% opposed. The remaining 17% did not indicate a view.

(a) Respondents opposing the proposal stated that issuers should have the flexibility to engage their controlling or substantial shareholders to act as underwriters for legitimate reasons. There are circumstances where issuers prefer the certainty of underwriting, but are unable to find independent licensed persons to underwrite their offers, or may find it undesirable to pay a high underwriting fee to commercial underwriters. Controlling or substantial shareholders should be allowed to support issuers' fundraising activities.

(b) Some respondents who supported the proposal expressed concern that it may be difficult to ascertain whether the underwriter engaged by an issuer is truly an independent third party.

(c) A few respondents commented that it is not entirely clear whether the concern about abuses of pre-emptive offers would be addressed by requiring licensed persons to act as underwriters.

67. (Question 9(a)) 67% of the respondents supported allowing controlling shareholders to act as underwriters, and 22% opposed. The remaining 11% did not indicate a view.

(a) Respondents supported the proposal for similar reasons set out in paragraph 66(a) above. Some respondents stated that the participation of a controlling or substantial shareholder in a pre-emptive offer can be seen as a signal of confidence in the issuer.

(b) With the implementation of other proposals (including the mandatory compensatory arrangements and the removal of the connected transaction exemption for connected underwriters), there will be adequate safeguards to protect minority shareholders when controlling or substantial shareholders act as underwriters.

(c) Respondents opposing the proposal did not give any substantive comments.

68. (Question 9(b)) 63% of the respondents supported allowing substantial shareholders to act as underwriters, and 24% opposed. The remaining 13% did not indicate a view.

(a) All respondents who supported allowing substantial shareholders to act as underwriters also supported allowing controlling shareholders to act as underwriters. Some respondents pointed out that many issuers do not have controlling shareholders, and they should have the flexibility to engage their substantial shareholders to act as underwriters for similar reasons set out in paragraph 66(a).

(b) As regards the concern about the use of pre-emptive offers by substantial shareholders to acquire the control of issuers, some respondents stated that it should be a matter governed by the Takeovers Code. They considered that if the SFC has concern that the arrangement is oppressive to minority shareholders or against the public interest, it should not grant a whitewash waiver[8]. This should serve as a check against the potential abuse.

(c) A respondent (who supported allowing controlling shareholders to act as underwriters) disagreed with the proposal to allow substantial shareholders to act as underwriters because it would go against the underlying theme of avoiding third parties gaining control through underwriting dilutive offers. The respondent considered that if substantial shareholders are to be allowed to act as underwriters, it should be subject to minority shareholders' approval.

Our responses and conclusion

69. As explained in the Consultation Paper, there are concerns that controlling/substantial shareholders or third party investors (who are not licensed persons) may potentially abuse pre-emptive offers to consolidate or gain control in the issuers through underwriting arrangements. These persons may be driven (in whole or in part) by motives or interests different from those of commercial underwriters, raising questions whether the terms of the offers are in the interest of the issuers and their shareholders as a whole.

[8] The SFC issued a consultation paper on 19 January 2018 on proposed amendments to the Takeovers Code. The paper sets out that highly dilutive capital raisings may be oppressive where they result in a substantial or controlling shareholder of the listed issuer acquiring or consolidating control (as the case may be) of the listed issuer at a steep discount. These transactions give rise to potential issues under general principles 7 (no oppression of minority shareholders) and 8 (directors' fiduciary duties) of the Takeovers Code. Although the SFC Executive may withhold the issue of a whitewash waiver thus requiring a general offer to be made to all shareholders, it considered that this may not adequately address the concern of abuse. In cases where new shares are issued at a deep discount, if the whitewash waiver applicant fails to obtain a whitewash waiver, it can still proceed with the underlying transaction coupled with an unattractively priced general offer which would be unlikely to attract acceptances. To enhance investor protection, the SFC proposed to raise the voting approval threshold for whitewash waivers and to introduce an explicit requirement to require separate resolution to be put to independent shareholders for the underlying transaction(s) and the whitewash waiver.

70. Listed issuers are expected to treat all holders of listed securities fairly and equally, and the directors of a listed issuer are expected to act in the interests of its shareholders as a whole – particularly where the public represents only a minority of the shareholders. Listed issuers and their directors should take particular care to ensure that these general principles are adhered to in cases where a controlling shareholder or substantial shareholder is appointed as an underwriter due to the potential conflict of interests as described in paragraph 69 above. Failure to adhere to these principles may lead to disciplinary action by the Exchange and may also constitute a breach of the SFO and/or the Securities and Futures (Stock Market Listing) Rules that leads to separate regulatory action by the SFC.

71. Our proposal to require the underwriter to be an independent licensed person would ensure that the terms of the offer are negotiated at arm's length and the offering process is managed by a professional underwriter. Non-licensed independent persons would be prohibited from acting as underwriters, thus preventing the use of pre-emptive offers by third party investors to acquire the control of issuers. We will adopt the proposal in light of the support of the majority of respondents.

72. As a licensed person, the underwriter is under the supervision of the SFC and is required under the SFC Code of Conduct to act fairly, honestly, with due skill and care and in compliance with the relevant regulatory requirements. In response to some respondents' question about the underwriters' independence, we have modified the proposed Rule 7.19(1) to require the issuer's announcement and listing document to include a confirmation that the underwriter is not a connected person of the issuer.

73. We have also received support from the majority of respondents to allow controlling shareholders and substantial shareholders to act as underwriters of pre-emptive offers, provided that compensatory arrangements are made available for the unsubscribed offer shares and the connected transaction Rules (including the minority shareholders' approval requirement) are complied with (see also the analysis of responses to these proposed safeguards set out in paragraphs 75 to 87 below). We believe that the proposal would strike a balance in providing additional protection to minority shareholders without creating a significant impact on issuers' ability to raise funds through pre-emptive offers.

74. In light of market support, we will adopt the proposal.

Proposal to require mandatory compensatory arrangements in pre-emptive offers underwritten by controlling or substantial shareholders

75. In the Consultation Paper, we proposed that where a controlling or substantial shareholder is allowed to act as the underwriter of a pre-emptive offer, a compensatory arrangement must be adopted.

Question 10: Do you agree that compensatory arrangements should be mandatory when pre-emptive offers are underwritten by connected persons?

Comments received

76. 72% of the respondents supported the proposal, and 9% opposed. The remaining 20% did not indicate a view.

(a) Respondents supporting the proposal considered that it would address the concern about controlling or substantial shareholders deliberately pricing the pre-emptive offers at a low price so as to increase their interests in the issuers at a low cost.

(b) A respondent supported this proposal only if the proposal to remove the connected transaction exemption for connected underwriters (see question 11) would not be implemented. The respondent considered it too burdensome for issuers to comply with both requirements.

(c) The arguments from respondents against the proposal mainly include:

(i) Compensatory arrangements involve costs and impose additional burden on issuers. For shares with a low liquidity, the issuers are unlikely to be able to sell the unsubscribed shares at a premium for the benefit of non-subscribing shareholders.

(ii) The compensatory arrangement requires unsubscribed shares to be first offered to independent investors on market, such offer of shares may create downward pressure on the share price. This arrangement to compensate non-subscribing shareholders would be at the expense of shareholders that subscribed shares in the offer, which is not desirable.

77. A respondent sought to clarify whether the mandatory compensatory arrangement applies to sub-underwriting by connected persons.

Reponses and conclusion

78. As discussed in paragraph 66(a), there are legitimate reasons for controlling or substantial shareholders to underwrite pre-emptive offers. However, to protect the interests of minority shareholders in these offers, we consider it necessary to require mandatory compensatory arrangements in these offers as an additional safeguard to address the concern about fairness of the offer price. This is supported by the majority of respondents.

79. In response to a respondent's enquiry mentioned in paragraph 77, we clarify that the mandatory compensatory arrangement would apply to pre-emptive offers that are underwritten by independent licensed persons, and the controlling or substantial shareholders are sub-underwriters only. We have modified proposed Rules 7.21(2) and 7.26A(2) to clarify this position.

80. In light of market support, we will adopt the proposal.

Proposal to remove the connected transaction exemption for underwriting

81. In the Consultation Paper, we proposed to remove the exemption under the current connected transaction Rules for underwriting (including sub-underwriting) of pre-emptive offers by connected persons.

Question 11: Do you agree with the proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons?

Comments received

82. 67% of the respondents supported the proposal, and 15% opposed. The remaining 17% did not indicate a view.

83. Some respondents who disagreed with the proposal stated that there are legitimate reasons for issuers to engage connected persons to act as underwriters of pre-emptive offers. The proposed independent shareholders' approval requirement would increase the time and costs to complete the offers and lead to greater uncertainty.

84. A respondent commented that underwriting by connected persons should be distinguished from other types of connected transactions because the connected persons are only taking up shares which the other shareholders decide not to take up. Another respondent stated that the proposed mandatory compensatory arrangement, if implemented, would provide sufficient safeguard against potential abuse of pre-emptive offers by connected persons through underwriting arrangements, and it would be burdensome for the issuers to comply with both requirements.

85. A respondent who supported the proposal suggested applying the proposal to highly dilutive pre-emptive offers only. The respondent considered that there is less concern for connected persons taking advantage through value transfer in non-highly dilutive pre-emptive offers.

Our responses and conclusion

86. When pre-emptive offers are underwritten (including sub-underwriting) by controlling or substantial shareholders, these connected persons are in a position to exercise significant influence over the terms of the offers and the underwriting arrangements and transfer benefits to themselves. The connected transaction Rules would provide safeguards against the connected persons taking advantage of their positions to the detriment of minority shareholders by subjecting the underwriting arrangements to independent shareholders' approval. The issuers would be required to appoint independent financial advisers to opine on the terms of the arrangements.

87. In light of market support, we will adopt the proposal. We will also revise Rule 14A.24(6) to make it clear that connected transactions include underwriting or sub-underwriting of issues of new securities by connected persons.

D. ARRANGEMENTS FOR THE DISPOSAL OF UNSUBSCRIBED SHARES IN PRE-EMPTIVE OFFERS

88. In the Consultation Paper, we proposed to require that issuers must adopt either the excess application arrangement or the compensatory arrangement in pre-emptive offers. We also require that an issuer should disregard the excess applications made by controlling shareholder and his/her/its associates in excess of the offer size minus their pro rata entitlement.

Question 12: Do you agree with the proposal to make it mandatory for issuers to adopt either the excess application arrangement or the compensatory arrangement in rights issues and open offers?

Comments received

89. 76% of the respondents supported the proposal to require issuers to adopt either the excess application or the compensatory arrangement in pre-emptive offers, and 9% opposed. The remaining 15% did not indicate a view.

(a) A respondent opposing the proposal considered that these arrangements are commercial matters to be decided by the issuers. Another respondent commented that these arrangements are costly, but may not be very effective when the issuer's shares have a low liquidity or the offer price is close to the market price. The respondent suggested that issuers should be allowed to seek minority shareholders' approval for not making these arrangements.

(b) A respondent who opposed the proposal considered that the compensatory arrangement should be mandatory in all pre-emptive offers. The excess application arrangement would facilitate certain shareholders to take up unsubscribed shares at the subscription price, not the market price. It is not in the interest of non-subscribing shareholders.

(c) A respondent supporting the proposal suggested that issuers should be allowed to adopt excess application arrangement (instead of compensatory arrangement) only if they can demonstrate that their underlying shares have insufficient liquidity relative to the unsubscribed shares.

Our responses and conclusion

90. As explained in the Consultation Paper, the excess application arrangement and the compensatory arrangement are in the interests of existing shareholders. We consider that issuers should adopt one of these arrangements in their pre-emptive offers (currently this is not mandatory).

91. We do not propose to require mandatory compensatory arrangements in all or certain pre-emptive offers as mentioned in paragraph 89(b) and (c). As discussed in paragraph 86, we consider that mandatory compensatory arrangements should apply when pre-emptive offers are underwritten by controlling or substantial shareholders. This is to address potential abuses of pre-emptive offers by connected persons. In other circumstances where the offers are underwritten by independent licensed persons, issuers should be given the option to decide whether to provide excess application arrangement or compensatory arrangement.

92. In light of market support, we will adopt the proposal. We have also made drafting changes to Rules 7.21(1)(b) and 7.26A(1)(b).

Question 13: Do you agree with the proposal to limit the excess applications by a controlling shareholder and his/her/its associates to a maximum number equivalent to the offer shares minus their pro rata entitlements?

Comments received

93. 61% of the respondents supported the proposed restriction on the size of excess applications made by controlling shareholders and their associates, and 13% opposed. The remaining 26% did not indicate a view.

(a) Respondents opposing the proposal considered that it would be unfair to impose a limit on the excess applications made by controlling shareholders and their associates, but not other shareholders.

(b) Some respondents suggested applying the same restriction to all shareholders so that they are treated equally.

(c) A respondent supporting the proposal suggested removing the connected transaction exemption for connected persons receiving shares through excess applications if the value dilution is excessive and the connected persons may be benefiting at the expense of minority shareholders.

Our responses and conclusion

94. As noted in the Consultation Paper, there are some market comments that controlling shareholders are in a position to take advantage of the excess application arrangement. Through their knowledge of the level of subscription, they can make very large excess applications to squeeze out other shareholders' excess applications in the event the offers are undersubscribed, thereby increasing the portion of excess shares allocated to them.

95. Our proposal is aimed at removing the perceived advantage available to controlling shareholders when making the excess applications. We do not consider the proposal to be unduly onerous as the controlling shareholders would still be allowed to apply for all the offer shares not taken by other shareholders.

96. We have considered, and decided not to adopt the suggestions described in paragraphs 93(b) and (c). We do not propose to extend the same restriction to all shareholders as it would be unduly burdensome, if not impracticable, for the issuer to ascertain the number of excess shares applied for by each beneficial shareholder through their nominees. Also we do not consider it necessary to remove the connected transaction exemption where connected persons make excess applications in their capacity as shareholders in pre-emptive offers. Under Rule 7.21(1), the excess shares, if any, must be available for subscription by all shareholders and allocated on a fair basis.

E. PLACING OF WARRANTS OR CONVERTIBLE SECURITIES UNDER THE AUTHHORITY OF A GENERAL MANDATE

97. In the Consultation Paper, we proposed to (a) disallow the use of general mandate for placing of warrants; and (b) restrict the use of general mandate to placing of convertible securities with an initial conversion price that is not less than the market price of the shares at the time of placing.

Question 14: Do you agree with our proposal to disallow the use of general mandate for placing of warrants and options for cash consideration?

Comments received

98. 65% of the respondents supported the proposal, and 17% opposed. The remaining 17% did not indicate a view.

99. Some respondents disagreed with the proposal as it would restrict issuers' flexibility to raise capital. Issuers should be allowed to choose what instruments to use that best suit their financial situations and needs. A respondent suggested that instead of a strict prohibition, issuers may be allowed to conduct placing of warrants up to a certain portion of the general mandate available.

100. Some respondents stated that the calculation of fair value of warrants should not be a problem as there are widely accepted option pricing models in the market. Some suggested that the Exchange may provide standard formulation or guidance on how to determine the "fair value" of warrants so as to allow the use of general mandate for placing of warrants at fair value.

Our responses and conclusion

101. As explained in the Consultation Paper, the proposal is to prevent abuses of general mandates for placings of warrants. Issuers would be required to obtain a specific mandate for any placings of warrants, thus affording shareholders with better protection against material dilution arising from this type of capital raising activities. The proposal is a codification of our existing practice which has been adopted since 2015[9]. It would not adversely affect ordinary capital raising activities.

102. We do not consider it appropriate to adopt common option pricing models for valuing warrants as suggested by some respondents. As noted in the Consultation Paper, these models do not properly "price" the warrants as they are based on certain assumptions which are not suitable for valuing such warrants and may result in an over-estimation of the value of warrants.

103. In light of market support, we will adopt the proposal. We have also modified proposed Rule 13.36(7) in response to a drafting comment received.

Question 15: Do you agree with the proposal to disallow any price discount of the initial conversion price of convertible securities to be placed under general mandate?

Comments received

104. 76% of the respondents supported the proposal, and 15% opposed. The remaining 9% did not indicate a view.

105. Some respondents opposing the proposal considered that there is no pressing need for the Rule amendments. Issuers should be given the flexibility to determine the initial conversion price with the relevant parties on an arm's length basis, after taking account of various factors such as the prevailing capital market condition and interest trend. A respondent stated that a 20% price discount limit should apply to the initial conversion price of convertible securities at the time of placing.

106. A respondent asked whether the proposal would apply to both convertible debt securities and convertible equity securities. It also asked whether the effective conversion price should be used to calculate the price discount if the convertible securities are issued at premium or discount to its face value.

[9] See Listing Decision LD90-2015 issued in May 2015

Our responses and conclusions

107. As explained in the Consultation Paper, we consider that there should be a restriction on the discount of the conversion price under the general mandate Rules to improve shareholders' protection against material dilution in placings of convertible securities. To account for the value of conversion option, the proposal would disallow any discount of the initial conversion price of the convertible securities to be placed under a general mandate. This received the support from the majority of respondents.

108. In response to the respondent's comments described in paragraph 106, we clarify that the proposal would apply to placings of convertible equity securities and convertible debt securities. Under the proposal, the initial conversion price set out in the terms of the convertible securities would be used to calculate the premium or discount to the benchmarked price of the shares at the time of placing.

109. In light of market support, we will adopt the proposal.

F. DISCLOSURE OF THE USE OF PROCEEDS FROM EQUITY FUNDRAISINGS

110. In the Consultation Paper, we proposed to require disclosure on the details of the use of proceeds from all equity fundraisings in interim and annual reports, including (i) a detailed breakdown and description of the use of proceeds for different purposes during the financial year or period; and (ii) if there is unutilized amount, a detailed breakdown and description of the intended use of the proceeds and the expected timeline; and (iii) whether the proceeds were used, or are proposed to be used, according to the intention previously disclosed by the issuer, and the reason for any material change or delay in the use of proceeds.

Question 16: Do you agree with the proposal to require disclosure of the use of proceeds from all equity fundraisings in interim and annual reports?

Comments received

111. 85% of the respondents supported the proposal and 7% opposed. The remaining 9% did not indicate a view.

112. Some respondents opposed the proposal on the basis that there is no distinction between funds that are raised from equity issues or borrowings or received from business operations. The proposal may have the unintended consequence of compelling issuers to ring-fence proceeds that are yet to be used in segregated accounts while at the same time raising funds for other purposes. Instead, it would be better to require issuers to disclose their expected capital expenditure (whether they have conducted equity fundraisings or not) at least annually and provide progress update or change in plans in subsequent reports.

113. A respondent supporting the proposal commented that it is legitimate for issuers to conduct equity fundraisings to take advantage of market conditions or for general corporate purposes, and the Rules should not be applied in such a manner to require the issuers to artificially divide the funds up and attribute a specific purpose to each amount. Another respondent considered that issuers should disclose detailed information relating to the intended use of proceeds when they announce their proposed fundraising activities, and provide reasonable explanation on any subsequent change in the use of such proceeds.

114. Some respondents suggested other proposals, including extending the proposed disclosure requirement to quarterly reports, and requiring shareholders' approval for change in the intended use of proceeds.

Our responses and conclusions

115. As noted in the Consultation Paper, issuers should be accountable to their shareholders about their use of funds raised from equity issues. When issuers announce their proposed equity fundraisings, they must also disclose the intended use of proceeds in the relevant announcements.[10] Our proposal is aimed at improving transparency by requiring issuers to disclose reasonably detailed information and periodic updates on the use of proceeds, including any material change or delay in their intended use, in the interim and annual reports. In addition to the proposed requirement, the current Rules[11] also require issuers to discuss in their annual reports details of their future plans for material investments or capital assets and their expected source of funding in the coming year.

[10] Rule 13.28

[11] Paragraph 32(9) of Appendix 16 to the Main Board Rules

116. Under the proposal, issuers would be required to provide updates on their use of proceeds in interim and annual reports. We do not propose to require quarterly updates to avoid imposing excessive burden on issuers. Also we do not propose to adopt a respondent's suggestion to require shareholders' approval for any change in the use of proceeds. The decision whether shareholders' approval is necessary having regard to the circumstances of each case should vest with the directors.

117. In light of market support, we will adopt the proposal. We have also made drafting changes to Paragraph 11(8) to Appendix 16.

G. SUBDIVISION OR BONUS ISSUE OF SHARES

118. In the Consultation Paper, we proposed to disallow any subdivision or bonus issue of shares if the theoretical share price after the adjustment for the subdivision or bonus issue is less than HK$1 or HK$0.5 based on the share price during the six-month period before the relevant announcement.

> **Question 17:** Do you agree with the proposal to impose a minimum price requirement on subdivision or bonus issue of shares?
>
> **Question 18:** Do you agree with the proposed minimum adjusted price of HK$1? If not, what is the threshold you consider appropriate: (a) HK$0.5; or (b) other?
>
> **Question 19:** Do you support a demonstration period of six months? If not, please specify the period you consider appropriate.

Comments received

119. (Question 17) 74% of the respondents supported the proposal to impose a minimum price requirement, and 2% opposed. The remaining 24% did not indicate a view.

120. (Question 18) 33% of the respondents supported the proposed minimum adjusted price of HK$1 and 15% supported HK$0.5. 17% of the respondents preferred other thresholds, of which 11% suggested HK$0.1 and 6% did not propose any specific threshold. The remaining 35% did not indicate a view.

121. (Question 19) 52% of the respondents supported a demonstration period of six months, and 17% suggested a shorter demonstration period ranging from one to three months. The remaining 30% did not indicate a view.

122. A few respondents suggested prohibiting all share subdivisions and bonus issues as these corporate actions involve costs but do not create real value to shareholders.

123. A respondent sought to clarify whether the theoretical adjusted price is calculated based on the lowest daily closing price, or the average closing price, of the shares during the demonstration period.

Our responses and conclusions

124. As noted in the Consultation Paper, issuers may conduct share subdivisions or bonus issues to change the number of issued shares and the market price per share for the purpose of facilitating trading activities in their shares and improving market efficiency. We do not consider it appropriate to prohibit all share subdivisions and bonus issues.

125. The purpose of our proposal is to prevent the creation of low priced securities through share subdivisions or bonus issues, thus ensuring an orderly market for trading securities. This received the support from a majority of the respondents.

126. Having considered the responses, we will adopt a minimum adjusted price of HK$1 and a demonstration period of six months as proposed in the Consultation Paper. They are most supported by respondents.

127. In response to the respondent's question set out in paragraph 123, we will modify the proposed Rule 13.64A to make it clear that the theoretical adjusted price is calculated based on the lowest daily closing price of the shares during the demonstration period.

APPENDIX I: SUMMARY RESULT OF QUANTITATIVE ANALYSIS

Proposals in the Consultation Paper		Feedback			Proposed Rules Reference (*Note 1*)	
		Support	Against	No view	MB	GEM
1	Disallow highly dilutive pre-emptive offers	74%	19%	7%	7.27B	10.44A
2	Apply 25% threshold on value dilution	*Note 2*		13%	7.27B	10.44A
3	Disallow highly dilutive special mandate placings	67%	26%	7%	7.27B	10.44A
4	Aggregate pre-emptive offers and specific mandate placings within a 12-month period	63%	24%	13%	7.27B	10.44A
5	Adopt the method of calculating cumulative value dilution	70%	11%	19%	7.27B	10.44A
6	Require minority shareholders' approval for open offers	74%	15%	11%	7.24A	10.39
7	Remove compulsory underwriting requirement for pre-emptive offers	80%	11%	9%	7.19(1), 7.24	*Note 5*
8	Require underwriters of pre-emptive offers to be independent licensed persons	63%	20%	17%	7.19(1)(a), 7.24	10.24A(1), 10.36
9(a)	Allow controlling shareholders to act as underwriters in pre-emptive offers	67%	22%	11%	7.19(1)(b), 7.24	10.24A(2), 10.36
9(b)	Allow substantial shareholders to act as underwriters in pre-emptive offers	63%	24%	13%	7.19(1)(b), 7.24	10.24A(2), 10.36
10	Require compensatory arrangements for pre-emptive offers underwritten by connected persons	72%	9%	20%	7.21(2), 7.26A(2)	10.31(2), 10.42(2)
11	Remove the exemption for underwriting of pre-emptive offers by connected persons	67%	15%	17%	14A.24(6), 14A.92(2)(b)	20.22(6), 20.90(2)(b)
12	Require excess application or compensatory arrangements in pre-emptive offers	76%	9%	15%	7.21(1), 7.26A(1)	10.31(1), 10.42(1)
13	Introduce a limit on excess applications by controlling shareholders in pre-emptive offers	61%	13%	26%	7.21(3)(b), 7.26A(3)(b)	10.31(3)(b), 10.42(3)(b)
14	Disallow the use of general mandate for placing of warrants for cash consideration	65%	17%	17%	13.36(7)	17.42D
15	Disallow the use of general mandate for placing of convertible securities with an initial conversion price set at a discount to market price	76%	15%	9%	13.36(6)	17.42C
16	Require disclosure of the use of proceeds from equity fundraisings in interim and annual reports	85%	7%	9%	Paragraph 11(8) to Appendix 16	18.32(8)
17	Introduce a minimum price requirement for subdivision or bonus issue of shares	74%	2%	24%	13.64A	17.76A
18	Apply a minimum adjusted price of HK$1 or HK$0.5 for subdivision or bonus issue of shares	*Note 3*		35%	13.64A	17.76A
19	Require a demonstration period of 6 months for subdivision or bonus issue of shares	*Note 4*		30%	13.64A	17.76A

Note 1: See Appendix II.

Note 2: 50% of respondents supported the proposed 25% threshold. 11% of respondents favoured a tighter threshold (10% to 20%) and 9% of respondents favoured a more lenient threshold (30% to 40%). 2% of respondents suggested a flexible threshold which can be adjusted depending on issuers' circumstances. The remaining 15% objected to setting a threshold.

Note 3: 33% of respondents favoured HK$1, 15% favoured HK$0.5 and 17% favoured other thresholds.
Note 4: 52% of respondents favoured 6 months, and 17% favoured a shorter period.
Note 5: Under the current GEM Rules, there is no mandatory underwriting requirement for rights issues and open offers.

APPENDIX II: AMENDMENTS TO THE LISTING RULES

A. Amendments to Main Board Rules

Chapter 7

EQUITY SECURITIES

METHODS OF LISTING

…

Placing

7.09 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.

…

7.12A Placings of securities by a listed issuer will be allowed only in the following circumstances:—

(1) where the placing falls within any general mandate given to the directors of the listed issuer by the shareholders in accordance with rule 13.36(2); or

(2) where the placing is specifically authorised by the shareholders of the listed issuer in general meeting ("specific mandate placing").

Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.

…

Rights Issue

7.18 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings.

7.19 (1) Rights issues need not be underwritten. Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:

(a) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or

(b) the underwriters are the controlling or substantial shareholders of the issuers.

The rights issue announcement, listing document and circular (if any) must contain a statement confirming whether the underwriter(s) comply with rule 7.19(1)(a) or (b).

~~In normal circumstances, all rights issues must be fully underwritten.~~

~~*Note: (1) Underwriting provides a degree of certainty to an issuer through the commitment of sound financial institutions. It also enables an issuer to plan on the basis of assured funds. Where an independent professional underwriter is used it also means that the issue is managed and reviewed by an independent professional party. However, there may be circumstances in which it is appropriate for an issuer to proceed without underwriting. This may occur where (by way of example and without limitation):*~~

~~*(a) underwriting can only be obtained subject to a force majeure clause (or other similar terms and conditions) which is unacceptable to the directors; or*~~

~~*(b) the issuer has specific intended uses for the proceeds and can show that the additional costs of underwriting the issue are not justified in the particular circumstances; or*~~

~~*(c) an underwriting commitments has been terminated by the underwriter upon the occurrence of an event of force majeure (other than an event which also constitutes a breach of warrant by the issuer), after the offer has opened. In such circumstances, the issuer must have ensured that the conditions of the issue are structured in a manner which permits the issue to proceed on a non-underwritten basis, with the consent of the Exchange.*~~

~~*In appropriate circumstances, the Exchange will be prepared to permit an issue which is not fully underwritten to proceed, subject to the additional disclosure requirements set out in rule 7.19(3) below. In all such cases the issuer should contact the Exchange to seek informal and confidential guidance as to the requirements which will apply to an issue at the earliest opportunity.*~~

~~*(2) In order to facilitate fund raising by very substantial companies the Exchange will normally allow such companies to proceed with a rights issue on a non-underwritten basis, subject to prior notification of the Exchange. Even with very substantial companies the Exchange may still insist that a rights issue is fully underwritten in exceptional circumstances (e.g. if the issue is to raise funds for "general corporate purposes"). Companies will be considered as very substantial if they have:*~~

~~*(a) a public shareholding with a market capitalisation at the time of the proposed issue of more than HK$500 million; and*~~

~~*(b) made profits in each of the last two financial years.*~~

(2) If a rights issue is underwritten and the underwriter is entitled to terminate that underwriting upon the occurrence of any event of force majeure after dealings in the rights in nil-paid form have commenced, then the rights issue listing document must contain full disclosure of that fact. Such disclosure must:—

(a) appear on the front cover of the listing document and in a prominent position at the front of the document;

(b) include a summary of the force majeure clause(s) and explain when its provisions cease to be exercisable;

(c) state that there are consequential risks in dealing in such rights; and

(d) be in a form approved by the Exchange.

(3) If a rights issue is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:—

(a) appear on the front cover of the listing document and in a prominent position at the front of the document; and

(b) be in a form approved by the Exchange.

In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.

(4) If a rights issue is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.

(5) If a rights issue is not fully underwritten:—

(a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and

(b) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

Note: In the circumstances set out in rule 7.19(5)(b), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.

7.19A (~~1~~6) A proposed rights issue must be made conditional on minority shareholders' approval in the manner set out in rule 7.27A if ~~I~~f the proposed rights issue would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers).~~:~~

~~(a) the rights issue must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders;~~

~~(b) the issuer shall set out in the circular to shareholders the purpose of the proposed rights issue, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.; and~~

~~(c) the Exchange reserves the right to require the rights issue to be fully underwritten.~~

(2~~7~~) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any rights issue, unless it is made conditional on minority shareholders' approval in the manner set out in rule 7.27A ~~the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders~~.

~~(8) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:~~

~~(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board and their associates; or~~

~~(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their respective associates.~~

~~The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

~~(9) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.~~

Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.

7.20 Offers of securities by way of rights are normally required to be conveyed by renounceable provisional letters of allotment or other negotiable instrument, … .

7.21 (1) In every rights issue the issuer must ~~may~~ make arrangements to:—

(a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renouncees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or

(b) dispose of securities not subscribed by allottees under provisional letters of allotment or their renouncees by offering the securities to independent placees ~~in the market, if possible,~~ for the benefit of the persons to whom they were offered by way of rights.

The arrangements described in rule 7.21(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the rights issue, the issuer must make the arrangements described in rule 7.21(1)(b).

(3) Where arrangements described in rule 7.21(1)(a) are made:

(a) ~~The offer of such securities and~~ the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular; and~~.~~

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.

~~(2) If no arrangements or arrangements other than those described in rule 7.21(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renouncees and the rights issue is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

7.22 A rights issue must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Open Offer

7.23 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings.

7.24 ~~(1)~~ In relation to underwriting of open offers, the requirements under rules 7.19(1), (3), (4) and (5) apply in their entirety to open offers with the term “rights issue” replaced by “open offer”.

~~In normal circumstances, all open offers must be fully underwritten.~~

~~*Note: See Notes (1) and (2) to rule 7.19(1) which shall apply in their entirety to open offers with the following amendments:*~~

~~*(a) the term "rights issue" shall be replaced by the term "open offer"; and*~~

~~*(b) the reference to rule " 7.19(3)" shall be replaced by " 7.24(2)"*~~

~~(2) If an open offer is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:~~

~~(a) appear on the front cover of the listing document and in a prominent position at the front of the document; and~~

~~(b) be in a form approved by the Exchange.~~

~~In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.~~

~~(3) If an open offer is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.~~

~~(4) If an open offer is not fully underwritten:—~~

~~(a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and~~

~~(b) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeover Code, unless a waiver from the Executive (as defined in the Takeover Code) has been obtained.~~

~~*Note: In the circumstances set out in sub-paragraph 7.24(4)(b), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.*~~

7.24A (1) A proposed open offer must be made conditional on minority shareholders' approval as set out in rule 7.27A unless the securities will be issued by the listed issuer under the authority of a general mandate granted to them by shareholders in accordance with rules 13.36(2)(b) and 13.36(5).

~~(5) If the proposed open offer would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—~~

~~(a) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders;~~

~~(b) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and~~

~~(c) the Exchange reserves the rights to require the open offer to be fully underwritten.~~

(2~~6~~) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any open offer, unless it is made conditional on minority shareholders' approval as set out in rule 7.27A ~~the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders~~.

~~(7) Where shareholders' approval is required under rules 7.24(5) or 7.24(6), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:~~

~~(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or~~

~~(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.~~

~~The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

~~(8) Where shareholders' approval is required under rules 7.24(5) or 7.24(6), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.~~

Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.

7.25 Offers of securities by way of an open offer must remain open for acceptance for a minimum period of 10 business days. …

7.26 [Repealed [●]]~~If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities will be issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 13.36(2), an open offer requires the prior approval of the shareholders in general meeting.~~

7.26A (1) In every open offer the issuer must ~~may~~ make arrangements to:-

(a) dispose of securities not validly applied for by shareholders under ~~in excess of~~ their assured allotments by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis~~.~~; or

(b) dispose of securities not validly applied for by shareholders under their assured allotments by offering the securities to independent placees for the benefit of those shareholders.

The arrangements described in rule 7.26A(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.

(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the open offer, the issuer must make the arrangements described in rule 7.26A(1)(b).

(3) Where arrangements described in rule 7.26A(1)(a) are made:

(a) ~~The offer of such securities and~~ the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular; and~~.~~

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements~~.~~.

~~(2) If no arrangements or arrangements other than those described in rule 7.26A(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.~~

7.27 An open offer must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

7.27A Where minority shareholders' approval is required for a rights issue or open offer under rule 7.19A or 7.24A:

(1) the rights issue or open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour;

(2) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

(a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue or open offer was made or approved by the board, and their associates; or

(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue or open offer was made or approved by the board, and their respective associates;

(3) the issuer must set out in the circular to shareholders:

(a) the purpose of the proposed rights issue or open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue or open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and

(b) the information required under rule 2.17 in the circular to shareholders; and

(4) the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.

Restrictions on rights issues, open offers and specific mandate placings

7.27B A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues, open offers and/or specific mandate placings), unless the issuer can satisfy the Exchange that there are exceptional circumstances (for example, the issuer is in financial difficulties and the proposed issue forms part of the rescue proposal).

Notes: 1. Theoretical dilution effect of an issue refers to the discount of the "theoretical diluted price" to the "benchmarked price" of shares.

(a) The "theoretical diluted price" means the sum of (i) the issuer's total market capitalization (by reference to the "benchmarked price" and the number of issued shares immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.

(b) The "benchmarked price" means the higher of:

(i) the closing price on the date of the agreement involving the issue; and

(ii) the average closing price in the 5 trading days immediately prior to the earlier of:

(1) the date of announcement of the issue;

(2) the date of the agreement involving the issue; and

(3) the date on which the issue price is fixed.

(c) Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the relevant rights issues, open offers and/or specific mandate placings were all made at the same time as the first issue of the series.

For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).

2. Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 7.27B.

7.27C The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 7.27B if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.03, having regard to its terms (for example, a very large issue size or price discount).

…

Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

…

Pre-emptive rights

13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—

(i) shares;

(ii) securities convertible into shares; or

(iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

…

(2) No such consent as is referred to in rule 13.36(1)(a) shall be required:-

(a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer … pro rata (apart from fractional entitlements) to their existing holdings; or

Notes: 1. …

2. …

3. The exemption for the shareholders' approval requirement under rule 13.36(2)(a) does not apply to the allotment, issue or grant of securities under an open offer.

(b) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

…

…

(5) In the case of a placing or open offer of securities for cash consideration, the issuer may not issue any securities pursuant to a general mandate given under rule 13.36(2)(b) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

(a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(b) the average closing price in the 5 trading days immediately prior to the earlier of:

(i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;

(ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(iii) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

(6) The issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate given under rule 13.36(2)(b), unless the initial conversion price is not lower than the benchmarked price (as defined in rule 13.36(5)) of the shares at the time of the placing.

(7) The issuer may not issue warrants, options or similar rights to subscribe for (i) any new shares of the issuer or (ii) any securities convertible into new shares of the issuer, for cash consideration pursuant to a general mandate given under rule 13.36(2)(b).

…

Trading limits

13.64 Where the market price of the securities of the issuer approaches the extremities of HK$0.01 or HK$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

13.64A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK$1 based on the lowest daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

…

Chapter 14A

EQUITY SECURITIES

CONNECTED TRANSACTIONS

…

What are connected transactions

…

14A.24 "Transactions" include both capital and revenue nature transactions, whether or not conducted in the ordinary and usual course of business of the listed issuer's group. This includes the following types of transactions:

…

(6) issuing new securities of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities;

…

Issues of new securities by the listed issuer or its subsidiary

14A.92 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

(1) the connected person receives a pro rata entitlement to the issue as a shareholder;

(2) the connected person subscribes for the securities in a rights issue or open offer:

(a) through excess application (see rule 7.21(1) or 7.26A(1)); or

(b) [repealed [●]] ~~in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and rule 7.21 or 7.26A (arrangements to dispose of any excess securities) has been complied with. In this case, the listing document must contain the terms and conditions of the underwriting arrangement;~~

~~*Note: Any commission and fees payable by the listed issuer's group to the connected person for the underwriting arrangement are not exempt under this exemption.*~~

…

…

Appendix 16

DISCLOSURE OF FINANCIAL INFORMATION

…

Information in annual reports

…

11. In the case of any issue for cash of equity securities (including securities convertible into equity securities) ~~made otherwise than shareholders in proportion to their shareholdings and which has not been specifically authorised by the shareholders~~, a listed issuer shall disclose:-

(1) …

…

~~(8) the use of proceeds.~~

(8) the total funds raised from the issue and details of the use of proceeds including:

(a) a detailed breakdown and description of the proceeds for each issue and the purposes for which they are used during the financial year;

(b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for each issue and the purposes for which they are used and the expected timeline; and

(c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

Note: Issuers are recommended to present the above information in tabular format to show separately the amounts used and the purposes for which they are used, and compare each of the actual or intended uses against the intention and expected timeframe previously disclosed by the issuer.

…

11A. To the extent that there are proceeds brought forward from any issue of equity securities (including securities convertible into equity securities) made in previous financial year(s), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in paragraph 11(8).

…

41A. A listed issuer shall include in its interim report the information in relation to any issue for cash of equity securities (including securities convertible into equity securities) during the interim period as set out in paragraph 11, and where applicable, the information required under paragraph 11A.

…

B. Amendments to GEM Rules

Chapter 10

EQUITY SECURITIES

METHODS OF LISTING

…

Placing

10.11 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.

…

10.13 Placings of securities by a listed issuer will be allowed only in the following circumstances:—

(1) where ~~such~~ the placing falls within any general mandate given to the directors of the ~~applicant~~ listed issuer by the shareholders in accordance with rule 17.41(2); or

(2) where the placing is specifically authorised by the shareholders of the ~~applicant~~ listed issuer in general meeting ("specific mandate placing").

10.14 Placings by a listed issuer made in either of the circumstances set out in rule 10.13 are required to comply with the requirements of rule 10.12 (excluding sub-paragraphs (2), (6) and (7) in the case of a placing of securities of a class already listed). Specific mandate placings are also required to comply with rule 10.44A.

…

Rights issue

10.23 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings. Rights issue need not be underwritten.

10.24 A rights issue must be made conditional on shareholders' approval in the circumstances set out in rule~~s~~ 10.29 ~~and 10.31(2)~~.

Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.

10.24A Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:

(1) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or

(2) the underwriters are the controlling or substantial shareholders of the issuers.

The rights issue announcement, listing document and circular (if any) must contain a statement confirming whether the underwriter(s) comply with rule 10.24A(1) or (2).

10.25 If a rights issue is not fully underwritten the listing document must contain full disclosure of the fact that …

…

10.31 (1) In every rights issue, the issuer must ~~may~~ make arrangements to:—

(a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renouncees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or

(b) dispose of securities not subscribed by allottees under provisional letters of allotment or their renouncees by offering the securities to independent placees ~~in the market, if possible,~~ for the benefit of the persons to whom they were offered by way of rights.

The arrangements described in rule 10.31(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the rights issue, the issuer must make the arrangements described in rule 10.31(1)(b).

(3) Where arrangements described in rule 10.31(1)(a) are made:

(a) ~~The offer of such securities and~~ the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular; and~~.~~

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.

~~(2) If no arrangements or arrangements other than those described in rule 10.31(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renouncees and the rights issue is wholly or partly underwritten or subunderwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and / or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

…

Open offer

10.34 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings. Open offers need not be underwritten.

10.35 An open offer must be made conditional on shareholders' approval in the circumstances set out in rule~~s~~ 10.39~~, 10.41 and 10.42(2)~~.

Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.

10.36 In relation to underwriting of open offers, the requirements under rules 10.24A, 10.25, 10.26 and 10.28 apply in their entirety to open offers with the term "rights issue" replaced by open offers. ~~If an open offer is not fully underwritten the listing document must contain full disclosure of the fact that it is not fully underwritten and all other relevant circumstances and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must appear on the front cover of the listing document and in a prominent position at the front of the document and be in a form approved by the Exchange.~~

~~In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.~~

10.37 [Repealed [●]]~~If an open offer is not fully underwritten:—~~

~~(1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and~~

~~(2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained~~.

~~*Note: In the circumstances set out above in rule 10.37(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.*~~

10.38 [Repealed [●]]~~If an open offer is underwritten (whether in whole or in part) by a person or persons whose ordinary business does not include underwriting, the listing document must contain full disclosure of that fact.~~

10.39 A proposed open offer must be made conditional on minority shareholders' approval in the manner set out in paragraphs (1) and (2) below, unless the securities will be issued by the listed issuer under the authority of a general mandate granted to them by shareholders in accordance with rules 17.41(2) and 17.42B. ~~If the proposed open offer would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers)~~:—

(1) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and

(2) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.39A Where shareholders' approval is required under rule 10.39, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

(1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or

(2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.39B Where shareholders' approval is required under rule 10.39, the issuer must comply with the requirements under rules 17.47(6) and 17.47(7) and rules 17.47A, 17.47B and 17.47C.

…

10.41 [Repealed [●]]~~If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities are to be allotted by the directors under the authority of a general mandate granted in accordance with rule 17.41(2), an open offer requires the prior approval of the shareholders in general meeting.~~

10.42 (1) In every open offer the issuer must ~~may~~ make arrangements to:-

(a) dispose of securities not validly applied for by shareholders under ~~in excess of~~ their assured allotments by means of excess application forms, in which case such securities ~~and the basis of allocation of the securities available for excess applications~~ must be available for subscription by all shareholders and allocated on a fair basis~~.~~; or

(b) dispose of securities not validly applied for by shareholders under their assured allotments by offering the securities to independent placees for the benefit of those shareholders.

The arrangements described in rule 10.42(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.

(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the open offer, the issuer must make the arrangements described in rule 10.42(1)(b).

(3) Where arrangements described in rule 10.42(1)(a) are made:

(a) ~~The offer of such securities and~~ the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular; and~~.~~

(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements,

~~(2) If no arrangements or arrangements other than those described in rule 10.42(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

…

Restrictions on rights issues, open offers and specific mandate placings

10.44A A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues, open offers and/or specific mandate placings), unless the issuer can satisfy the Exchange that there are exceptional circumstances (for example, the issuer is in financial difficulties and the proposed issue forms part of the rescue proposal).

Notes: 1. Theoretical dilution effect of an issue refers to the discount of the "theoretical diluted price" to the "benchmarked price" of shares.

(a) The "theoretical diluted price" means the sum of (i) the issuer's total market capitalization (by reference to the "benchmarked price" and the number of issued shares immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.

(b) The "benchmarked price" means the higher of:

(i) the closing price on the date of the agreement involving the issue; and

(ii) the average closing price in the 5 trading days immediately prior to the earlier of:

(1) the date of announcement of the issue;

(2) the date of the agreement involving the issue; and

(3) the date on which the issue price is fixed.

(c) Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the relevant rights issues, open offers and/or specific mandate placings were all made at the same time as the first issue of the series.

For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).

2. Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 10.44A.

10.44B. The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 10.44A if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.06, having regard to its terms (for example, a very large issue size or price discount).

…

Chapter 17

EQUITY SECURITIES

CONTINUING OBLIGATIONS

…

Pre-emptive rights

17.39 Except in the circumstances mentioned in rule 17.41, the directors of an issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—

(1) shares;

(2) securities convertible into shares; or

(3) options, warrants or similar rights to subscribe for any shares or such convertible securities.

…

…

17.41 No such consent as is referred to in rule 17.39 shall be required:—

(1) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings but subject to rule 10.29; or

Notes: 1 …

2 …

3 The exemption for the shareholders' approval requirement under rule 17.41(1) does not apply to the allotment, issue or grant of securities under an open offer.

(2) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, ….

…

17.42B In the case of a placing or open offer of securities for cash consideration, an issuer may not issue any securities pursuant to a general mandate given under rule 17.41(2) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

(1) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(2) the average closing price in the 5 trading days immediately prior to the earlier of:

(a) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;

(b) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(c) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

17.42C The issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate given under rule 17.41(2), unless the initial conversion price is not lower than the benchmarked price (as defined in rule 17.42B) of the shares at the time of the placing.

17.42D The issuer may not issue warrants, options or similar rights to subscribe for (a) any new shares of the issuer or (b) any securities convertible into new shares of the issuer, for cash consideration pursuant to a general mandate given under rule 17.41(2).

…

Trading limits

17.76 Where the market price of the securities of the issuer approaches the extremities of HK$0.01 or HK$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

17.76A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK$1 based on the lowest daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

…

Chapter 18

EQUITY SECURITIES

FINANCIAL INFORMATION

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Annual reports

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Information to accompany directors' report and annual financial statements

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18.32 In the case of any issue for cash of equity securities (including securities convertible into equity securities) ~~made otherwise than to the listed issuer's shareholders in proportion to their shareholdings and which has not been specifically authorized by the listed issuer's shareholders~~:—

(1) …

…

~~(8) the use of the proceeds.~~

(8) the total funds raised from the issue and details of the use of proceeds including:

(a) a detailed breakdown and description of the proceeds for each issue and the purposes for which they are used during the financial year;

(b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for each issue and the purposes for which they are used and the expected timeline; and

(c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

Note: Issuers are recommended to present the above information in tabular format to show separately the amounts used and the purposes for which they are used, and compare each of the actual or intended uses against the intention and expected timeframe previously disclosed by the issuer.

18.32A To the extent that there are proceeds brought forward from any issue of equity securities (including securities convertible into equity securities) made in previous financial year(s), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in rule 18.32.

…

18.55A. A listed issuer shall include in its interim report the information in relation to any issue for cash of equity securities (including securities convertible into equity securities) during the interim period as set out in rule 18.32, and where applicable, the information required under rule 18.32A.

…

Chapter 20

EQUITY SECURITIES

CONNECTED TRANSACTIONS

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What are connected transactions

…

20.22 "Transactions" include both capital and revenue nature transactions, whether or not conducted in the ordinary and usual course of business of the listed issuer's group. This includes the following types of transactions:

…

(6) issuing new securities of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities;

…

Issues of new securities by the listed issuer or its subsidiary

20.90 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

(1) the connected person receives a pro rata entitlement to the issue as a shareholder;

(2) the connected person subscribes for the securities in a rights issue or open offer:

(a) through excess application (see rule 10.31(1) or 10.42(1)); or

(b) [repealed [●]] ~~in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and rule 10.31 or 10.42 (arrangements to dispose of any excess securities) has been complied with. In this case, the listing document must contain the terms and conditions of the underwriting arrangement;~~

~~*Note: Any commission and fees payable by the listed issuer's group to the connected person for the underwriting arrangement are not exempt under this exemption.*~~

…

…

APPENDIX III: LIST OF RESPONDENTS

INSTITUTIONS

Professional Bodies

1. Alternative Investment Management Association Limited, The
2. Asia Securities Industry & Financial Markets Association
3. Association of Chartered Certified Accountants
4. Chamber of Hong Kong Listed Companies, The
5. Hong Kong Institute of Certified Public Accountants
6. Hong Kong Institute of Chartered Secretaries
7. Hong Kong Securities Association
8. Hong Kong Securities Professionals Association
9. Hong Kong Securities & Futures Employees Union
10. Hong Kong Society of Financial Analysts, The
11. Investors Protection Association, The
12. Law Society of Hong Kong, The
13. Y.Elites Association, The

Listed Companies

14. AIA Group Limited
15. Cathay Pacific Airways Limited
16. CK Asset Holdings Limited
17. CK Hutchison Holdings Limited
18. Hong Kong Aircraft Engineering Company Limited
19. Hutchison Telecommunications Hong Kong Holdings Limited
20. Swire Pacific Limited
21. Swire Properties Limited
22. to 28. 7 listed companies (name not disclosed at respondents' request)

Market Practitioners

29. BlackRock
30. Cleary Gottlieb Steen & Hamilton (Hong Kong)
31. Jeffrey Mak Law Firm
32. KPMG
33. Proton Capital Limited
34. Slaughter and May
35. to 37. 3 market practitioners (name not disclosed at respondents' request)

None of the Above

38. China Securities (International) Financial Holding Company Limited
39. SW Corporate Services Group Ltd

INDIVIDUALS

Listed Company Staff

40. to 42. 3 listed company staff (name not disclosed at respondents' request)

Corporate Finance Staff

43. Alvin H. Y. Leung
44. 1 corporate finance staff (name not disclosed at respondent's request)

Lawyers

45. to 46. 2 lawyers (name not disclosed at respondents' request)

Individual Investors

47. Tsz Wang Tang
48. 1 individual investor (name not disclosed at respondent's request)

Accountants

49. Kong Chi Wong

HKEX Participant Staff

50. 1 HKEX Participant staff (name not disclosed at respondent's request)

None of the Above

51. A R Kennedy
52. Alain V. Fontaine
53. Alex Wong
54. Allender
55. Anand Batepati
56. Andrew Salton
57. Angela Ho
58. Arthur HK
59. Chris Coulcher
60. Chris Sims
61. Christopher Cheung Wah-fung
62. Claire Barnes
63. David Jones
64. David M. Webb

65. Douglas Cheung Ho Yuen
66. Erik Petermeijer
67. Fiona Wan
68. Frederik Pretorius
69. Jack Haworth
70. Jean Kong
71. John Jacobson
72. Khai Chek Teah
73. KK Chan
74. L J
75. Low Weng Woh
76. Malcolm I'Anson
77. Manuel Schlabbers
78. Matthew Harrison
79. Matthew Tong
80. Nicholas Mulcahy
81. Omar Moufti
82. Oscar Holm
83. Paul Cheung
84. Peter Gaiger
85. Peter Ulli
86. Plato Ng
87. Raymund Corpuz
88. Richard Witts
89. Rodney Farrar
90. Ronald Stover
91. Ruerd Heeg
92. Sam Inglis
93. Sam John
94. Sammy Lam
95. Shirley Fan
96. Simon Kavanagh
97. Stefan Harfich
98. Sung Nee
99. T. K. Iu
100. Twinkle Star
101. W PM
102. Wai-Lam Chan
103. Wai-Yin Chan
104. Wendy Kam
105. Wing Sun Chui
106. Winnie Wong
107. Zuzana Chvatíková

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