HKEX PUBLISHES CONSULTATION PAPER ON AMENDMENTS TO THE LISTING RULES

INTRODUCTION

The Hong Kong Stock Exchange (the "Exchange") published its Combined Consultation Paper on Proposed Changes to the Listing Rules (the "Consultation Paper") on 11 January, 2008 seeking comments from the market on eighteen substantive policy issues and various minor rule amendments. Responses to the Consultation Paper should be made by completing and returning the questionnaire booklet no later than 7 April 2008. The Consultation Paper and questionnaire booklet are available on the Exchange website at http://www.hkex.com.hk. The following is a summary of the proposals.

1. USE OF WEBSITES FOR COMMUNICATION WITH SHAREHOLDERS

Background

It is not currently possible for a listed issuer, wherever it is incorporated, to refer shareholders to the copy of its annual report (or any other corporate communication required to be sent to its shareholders) published on its website. Each shareholder must be sent a hard copy of the corporate communication. This is because Hong Kong law and the Listing Rules require the express consent of each shareholder concerned. In the case of Hong Kong companies, Table A of the Companies Ordinance permits written communications between a company and its members to be given in the form of an electronic record if the recipient has consented to receiving it in that form. Amendments to the Companies Ordinance to allow the use of websites for communication by companies with their shareholders are apparently under consideration. Overseas issuers are also required to obtain shareholders' express consent even where this is not required under the relevant local law because of the requirement of the Listing Rules (Main Board Rule 2.07(A)(1) and Growth Enterprise Market ("GEM") Rule 16.04A(1)) which require all listed issuers, wherever incorporated, to comply with a standard no less onerous than that required of Hong Kong companies.

The Proposals

The Exchange proposes to amend the Listing Rules to:

- remove the requirement for overseas issuers to comply with a standard equivalent to that applicable to Hong Kong companies under Hong Kong law. It is not yet known whether the Companies Ordinance will be amended to allow the greater use of electronic communications with shareholders. This requirement prevents overseas issuers from benefiting from changes to the Rules in this area unless and until amendments are made to the Companies Ordinance; and

- to relax the Listing Rules' requirement (Main Board Rule 2.07A(2) and GEM Rule 16.04A(2)) that a corporate communication can only be sent to a shareholder using electronic means where the issuer has received the shareholders' express written consent. It is proposed that in order for an issuer to be allowed to send or supply corporate communications to its shareholders by making them available on its website, its shareholders must first have resolved in general meeting that it may do so or its constitutional documents must contain provision to that effect. The listed issuer will then have to ask each shareholder individually to agree that it can send corporate communications generally, or a specific corporate communication, to him by means of the issuer's website and wait 28 days before the shareholder can be deemed to have consented to a corporate communication being made available to him by means of the issuer's website. A holder will not be taken to have agreed if the issuer's request did not clearly state the effect of a failure to respond or was sent less than 12 months after a previous request made to him in respect of the same or a similar class of corporate communications. In addition, the issuer would have to be enabled by its constitutional documents to send corporate communications to shareholders by electronic means.

The proposed relaxation of the Rules will only be available to listed issuers if it does not contravene the law of its place of incorporation. The proposed amendments will not confer any immediate benefit on Hong Kong issuers since Hong Kong law currently requires Hong Kong companies to obtain the consent of the shareholder to the sending of corporate communications by electronic means. Listed issuers incorporated overseas will be able to benefit from the amendments if there is no restriction under the law of their place of incorporation.

The requirement for express shareholder consent will also apply where a corporate communication is sent to shareholders on a CD except where the listed issuer is able to rely on the new provisions for deeming shareholders' consent.

2. INFORMATION GATHERING POWERS

New provisions are proposed giving the Exchange an express general power to gather information. An issuer may be required to provide any information that the Exchange considers appropriate to protect investors or ensure the market's smooth operation and any information the Exchange may require to verify compliance with the Listing Rules.

3. QUALIFIED ACCOUNTANTS

The Exchange proposes to remove the requirement under the Main Board and GEM Listing Rules for listed issuers to employ a qualified accountant in view of developments in financial reporting and corporate governance practices in recent

years. The requirement has been criticised for raising costs, discrimination against accountants with different qualifications from those prescribed and the difficulty for Mainland companies to retain a suitably qualified accountant.

4. REVIEW OF SPONSOR'S INDEPENDENCE

The Listing Rules require that at least one sponsor must be independent of a new applicant. It is proposed that a sponsor's independence should be demonstrated throughout the entire listing process (i.e. from the earlier of the agreement of the terms of engagement or commencement or work until the later of the listing date or end of the stabilisation period) rather than only on the date of submission of the Sponsor's Declaration under Main Board Rule 3A.13 (GEM Rule 6A.13), which is the current requirement.

5. PUBLIC FLOAT

Minimum Level of Public Float

The Main Board Rules currently require a minimum public float of 25% of the issuer's total issued share capital. The Exchange has a discretion to accept a lower percentage of between 10% and 15% if the issuer's market capitalisation at the time of listing exceeds HK$10 billion.

Under the proposed amendments, the minimum public float requirement for Main Board issuers will be set by reference to the issuer's market capitalisation as set out in the table below. The Exchange will no longer have a discretion in setting the minimum level of public float, hence removing the need to apply to the Exchange for waivers.

Market Capitalisation	**Proposed Minimum Public Float**
Not exceeding HK$10 billion	25%
Over HK$10 billion but not exceeding HK$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$2.5 billion (determined at the time of listing); and (ii) 15%
Over HK$40 billion	The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$6 billion determined at the time of listing; and (ii) 10%.

It is also proposed that issuers will also be allowed to comply with the minimum public float prescribed in the Listing Rules regardless of their actual public float

upon listing or upon exercise of the over-allotment option. The Exchange's practice has been to accept the minimum public float as the higher of the prescribed minimum under the Listing Rules and that held by the public immediately after completion of the offering and upon exercise of the over-allotment option.

Under the current Main Board Rules, an issuer with a market capitalisation which marginally exceeds the prescribed HK$10 billion threshold may be subject to a public float of a lower absolute value than that required of an issuer with a smaller market capitalisation. The example given is that an issuer with a market capitalisation of HK$10.1 billion is required to have a minimum public float of HK$1.5 billion, while that for an issuer with a market capitalisation of HK$9.9 billion is approximately HK$2.5 billion. This situation will be rectified by setting the minimum public float for companies with market capitalisation above the threshold at the maximum public float required of companies with market capitalisation below the threshold.

Constituents of "the public"

It is proposed that shareholders with an interest of 5% or more in an issuer will be excluded from the definition of "the public" in Rule 8.24 of the Main Board Listing Rules. As a result, shares held by strategic and cornerstone investors holding an interest of 5% or more will not be counted towards the public float. Monitoring compliance with the proposed requirement will be facilitated by the availability of public information as to the holders of interests of 5% of listed issuers by virtue of the disclosure requirements under Part XV of the Securities and Futures Ordinance.

Market Float

The Exchange is proposing to introduce the concept of "market float" to the Listing Rules to ensure the availability of readily tradable shares in the market. The proposal is aimed at the growing number of listing applications with strategic and/or cornerstone investors, whose shares are typically subject to lock up periods of between six months and three years. The concern is that if shares which count as part of the public float are subject to a lock up following listing, compliance with the existing public float requirement does not reflect the true liquidity of shares in the market.

The Exchange therefore proposes to:

- Set a minimum level of market float which issuers must meet at the time of listing;

- Exclude shares subject to a lock up of more than six months from the market float; and

- Require disclosure in the initial listing document of the attained level of market float and the lock up arrangements with the non-public shareholders.

6. BONUS ISSUES OF A CLASS OF SECURITIES NEW TO LISTING

In the case of a class of securities new to listing, the Main Board Listing Rules require a minimum of 300 holders and not more than 50% of the securities in public hands to be beneficially owned by the three largest public shareholders. The GEM Rules require a spread of 100 public holders at the time of listing but disapply the requirement in the case of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares.

The Exchange recognises that it is often difficult to determine whether the minimum spread of holders requirement is met in the case of bonus issues of a new class of securities due to the practical difficulties faced by issuers in determining their beneficial shareholders after listing. The Exchange therefore proposes to align the Main Board and GEM requirements by disapplying the Main Board requirement for a minimum spread of holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) in the case of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares.

The proposal assumes that there will be an open market in the listed shares, and since the new class of securities is distributed as a bonus issue pro rate to existing shareholders, there should be an open market in the new class of securities to be listed. The proposed exemption would not however be available if there has been any indication in the five years preceding the date of the announcement on the proposed bonus issue that the issuer's shares may be concentrated in the hands of a few shareholders. An announcement on high concentration of shareholding under Main Board Rule 13.34(a) in that five-year period would be taken by the Exchange as reasonable cause for concern that the shares are highly concentrated.

7. REVIEW OF THE EXCHANGE'S APPROACH TO PRE-VETTING PUBLIC DOCUMENTS OF LISTED ISSUERS

In order to discourage over-reliance by listed issuers on pre-vetting and to promote the timely dissemination of information to the market, the Exchange proposes to shift its regulatory focus from pre-vetting towards post-vetting, monitoring and enforcement. It proposes to: (a) cease the pre-vetting of announcements (in two phases) and (b) reduce the pre-vetting of circulars by focusing its resources on matters presenting a higher risk to Rules compliance.

Proposals in relation to announcements

The Exchange intends to cease pre-vetting all announcements of listed issuers within one year following the Rules being amended. The changes would be implemented in two phases.

Phase 1

During Phase 1, only the following announcements would be pre-vetted:

1. announcements of the following **notifiable transactions** under Main Board Chapter 14/GEM Chapter 19:

    a. Major transactions, very substantial acquisitions, very substantial disposals or reverse takeovers under Main Board Rules 14.34 and 14.35/ GEM Rules 19.34 and 19.35;

    b. Transactions or arrangements shortly after listing which would result in material changes in principal business activities under Main Board Rules 14.89 to 14.91/GEM Rules 19.88 to 19.90;

    c. Cash companies under Main Board Rules 14.82 and 14.83/ GEM Rules 19.82 and 19.83; and

2. announcements of all **connected transactions** (including continuing connected transactions) under Main Board Rules 14A.47 and 14A.56/ GEM Rules 20.47 and 20.56

Phase 2

From the introduction of Phase 2, the Exchange will no longer pre-vet any announcements although listed issuers will be able to consult the Exchange on compliance issues before publishing an announcement.

Follow-up Action by the Exchange

The Exchange would supplement the move away from pre-vetting with post-publication scrutiny and enforcement and, where necessary, it will make follow-up enquiries with issuers. Where an announcement does not comply with the Rules, the Exchange may require the issuer to rectify this (e.g. by publishing a clarification announcement) or may take disciplinary action in the case of a serious breach of the Rules.

Exchange's Right to Require Pre-vetting

Currently, the Exchange has the power to require issuers to submit for review draft announcements that are not strictly subject to pre-vetting under the Rules. Situations in which it typically exercises this right include where an

announcement relates to enquiries about compliance, where the announcement involves unusual issues and where an issuer seeks the Exchange's guidance on, or requests the modification of or dispensation with, certain Rules. The Exchange proposes to retain this power to insist on pre-vetting announcements where it considers it necessary.

Announcements Relating to Trading Arrangements

In respect of matters involving a change in or which relate to or affect trading arrangements in listed securities (including suspension or resumption of trading, and cancellation or withdrawal of listing), while the announcements would no longer require pre-vetting, there would be specific requirements in the amended Rules that:

1. listed issuers must consult the Exchange before issuing the relevant announcement;

2. the announcement must not include any reference to a specific date or timetable (e.g. a timetable in relation to a rights issue or share consolidation) unless the date or timetable has been agreed in advance with the Exchange.

The new requirements would allow the Exchange to comment on issues concerning trading arrangements that might affect an orderly market for trading without the need to pre-vet the relevant announcement.

Proposals in relation to circulars

The Exchange proposes to amend the Rules to:

1. codify the Exchange's current practice in relation to pre-vetting circulars for significant transactions or arrangements; and

2. remove the pre-vetting requirements for routine circulars that normally do not raise regulatory concerns, including:

   (a) circulars for proposed amendments to issuers Memorandum and Articles of Association; and

   (b) explanatory statements relating to issuers purchasing their own shares on a stock exchange.

Circulars that Require Pre-vetting

The Listing Rules currently require the circulars for certain matters and transactions to be pre-vetted by the Exchange. In practice, draft circulars relating

to matters that do not require pre-vetting are also submitted to the Exchange. The Exchange considers that there is some regulatory interest in pre-vetting certain circulars for which pre-vetting is not strictly required under the Rules on the basis that they pose a higher risk of non-compliance with the Rules. It therefore proposes to amend the Rules to expressly require pre-vetting of the following categories of circulars:

1. circulars relating to cancellation or withdrawal of listings of listed securities;

2. circulars to a listed issuer's shareholders seeking their approval of:

   (a) issues of securities by a listed issuer or any of its major subsidiaries that require specific mandates from the shareholders;

   (b) transactions or arrangements that require independent shareholders' approval and the inclusion of separate letters from independent financial advisers in the relevant circulars which include, such as:

      - connected transactions;

      - spin-off proposals;

      - transactions which the Rules require to be subject to independent shareholders' approval including rights issues, open offers, refreshments of general mandates before the next annual general meeting, withdrawal of listings, transactions that would result in a fundamental change in the principal business activities of the issuer and issues of shares or securities convertible into equity securities within 6 months of new listing on GEM;

   (c) proposals to explore natural resources; or

   (d) warrant proposals involving shareholders' approvals and all warrantholders.

<u>New Requirements for Circulars Relating to Amendments of M&A and Purchases of Own Shares</u>

The Rules will be amended to remove the pre-vetting requirement for circulars relating to amendments to issuer's Memorandum and Articles of Association and explanatory statements relating to issuers purchasing their own shares on a stock exchange.

The amended Rules will however contain the following new requirements:

1. *Amendments to Memoranda and Articles of Association*

   The circular will be required to include an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. The listed issuer will also be required to submit the published version of the circular together with a letter from its legal advisers confirming that (a) the proposed amendments comply with the Listing Rules and the laws of the issuer's place of incorporation and (b) that there is nothing unusual about the proposed amendments for a Hong Kong listed company.

2. *Explanatory statements relating to purchase of issuers' own shares*

   The listed issuer will have to submit the published circular together with:

   (a) a confirmation that the circular contains the information required under the Rules (Main Board Rule 10.06(1)(b) or GEM Rule 13.08) and that there are no unusual features in either the circular or the proposed share repurchase; and

   (b) an undertaking from the issuer's directors to the Exchange to make the purchases in accordance with the Rules and the laws of its place of incorporation (as required by Main Board Rule 10.06(1)(b)(vi) or GEM Rule13.08(6)).

Circulars for Discloseable Transactions

The Exchange proposes to remove the requirement for a separate circular to be distributed to shareholders in respect of discloseable transactions. However, where the discloseable transaction involves an acquisition of mining assets but does not fall within Main Board Rule 18.07(2)[1], the issuer will be required to include in the announcement (or issue a further announcement containing) the content of the technical adviser report with respect to the estimated reserves of the natural resources. Where the issuer prepares a profit forecast in respect of the discloseable transaction, the content of the reports from the reporting accountants or auditors and the financial adviser will have to be included in the announcement.

Exchange Disclaimer Statement

[1] Where a listed issuer proposes to explore for natural resources as an extension to or change from its existing activities, it is required to send a circular to shareholders under Rule 18.07(2) if the proposed transaction might reasonably be expected to result in the diversion to exploration of 10% or more of its consolidated total assets or the contribution from such exploration of 10% or more to the issuer's pre-tax operating profits or consolidated revenue.

Note 7 to Main Board Rule 13.52 will be amended to require issuers to include the Exchange's disclaimer statement in all listing documents, circulars, announcements and notices issued pursuant to the Rules. Currently the disclaimer statement is required to be included in certain specified documents only.

8. DISCLOSURE OF CHANGES IN ISSUED SHARE CAPITAL

The Exchange proposes to make it obligatory to file Monthly Returns (containing detailed movements in authorised and issued share capital) and, in certain circumstances, Next Day Disclosure Returns (detailing changes in issued share capital).

Background

The Rules currently require an issuer to publish an announcement on an issue of securities in certain specific circumstances such as where the issue constitutes a "share transaction" or an issue of shares under a general mandate. There is no general requirement for issuers to publish an announcement every time they issue shares, including on the issue of shares pursuant to the exercise of convertible securities.

Under the Exchange's current practice, all listed issuers are under a request (but not obligation) to lodge with the Exchange a Monthly Return on the movements in the listed issuer's shares by no later than the 10th day of each succeeding month. There are currently four forms for the Main Board while GEM has only one.

Next day disclosure

The Exchange proposes to require next day disclosure (i.e. disclosure on the Exchange website or GEM website by 9.00 a.m. on the morning of the next business day) of 2 classes of changes in issued share capital. The first class will specify those categories of changes which will always require next day disclosure. The second class will specify categories of changes in issued share capital which will only require next day disclosure in specified circumstances.

1. <u>Changes specified as requiring next day disclosure</u>

   The following categories of changes in issued share capital will always require next day disclosure:

   - Placings
   - Consideration issues

- Open offers
- Rights issues
- Bonus issues
- Scrip dividends
- Share repurchases
- Exercise of an option by a director of a listed issuer or any of its subsidiaries
- Capital reorganisation
- Any other change in issued share capital not falling within any of the categories referred to in paragraph 2. below.

2. <u>Categories of changes requiring next day disclosure in specified circumstances</u>

The following categories of changes in issued share capital will require next day disclosure in certain specified circumstances:

- Exercise of an option other than by a director of the listed issuer or any of its subsidiaries
- Exercise of a warrant
- Conversion of convertible securities
- Share redemption

The circumstances in which these categories will require next day disclosure are:

(a) where the change in issued share capital under that category reaches a prescribed *de minimis* threshold (to be set at 5% of the listed issuer's existing issued share capital before the relevant change) **or** the aggregate of all changes in issued share capital under any of the categories (except those referred to in paragraph 1 above) since the last Monthly Return or next day disclosure, whichever is the later, reaches the *de minimis* threshold; or

(b) the listed issuer is in any case required to disclose some other change in issued share capital under paragraph 1 above and the

change in issued share capital is described in this paragraph 2 but has not yet been disclosed in either a Monthly Return or pursuant to next day disclosure (because the *de minimis* threshold has not been reached).

The percentage change in the listed issuer's issued share capital would be calculated by reference to its total issued share capital as it was immediately before the earliest relevant event which has not yet been reported in either a Monthly Return or pursuant to next day disclosure. Whether the *de minimis* threshold has been reached would be calculated as follows:

$$\frac{\text{aggregate change in issued share capital not yet reported}}{\text{total issued share capital since last Monthly Return or next day disclosure, whichever is the later}}$$

The Next Day Disclosure Return would be required to be submitted through the Exchange's e-Submission System or any other means prescribed by the Exchange from time to time. It would show, among other things, the opening issued share capital as previously disclosed, shares issued subsequent thereto and closing issued share capital as at a specific date. Each category would have to be disclosed individually. A draft of the Next Day Return is set out at Appendix 8B of the Consultation Paper.

Listed Collective Investment Schemes

The Exchange also proposes to require listed collective investment schemes ("CISs") (including REITs) other than open-ended CIS to submit a Next Day Disclosure Return similar to the one proposed for equity issuers. A draft of the proposed Disclosure Return for listed CISs is included at Appendix 8B of the Consultation Paper.

Monthly Returns

The Exchange proposes to make the publication of a Monthly Return obligatory. It is proposed that there will be a single form of Monthly Return for all equity issuers. The draft form of Monthly Return set out at Appendix 8B of the Consultation Paper shows changes from the current form. In addition to reporting details of changes in their authorised and issued share capital, listed issuers will have to report any future obligation to issue shares under options, warrants, convertible securities or any other agreement.

Listed issuers would be required to submit the Monthly Return to the Exchange by 9.00 a.m. on the fifth business day following the end of each calendar month. The Return will have to submitted irrespective of whether there has been any

change in the information provided in the previous Monthly Return. The return would be submitted electronically through the Exchange's e-Submission System and would be published on the Exchange or GEM website (as applicable). A new headline category will be created under which Monthly Returns will be published.

Listed Collective Investment Schemes

All CISs listed under Chapter 20 of the Main Board Rules will be required to submit a Monthly Return setting out movements in the units during the relevant month and an opening and closing balance. Drafts of the revised Monthly Returns for open-ended and non open-end listed CIS are included in the Consultation Paper.

Disclosure of Share Option Grants

The Exchange proposes to require listed issuers to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme. The announcement would be required to include details of the date of grant, the exercise price and number of options granted, the market price of the issuer's securities on the date of the grant, the name of any grantee who is, or is an associate of, a director, chief executive or substantial shareholder of the listed issuer and the number of options granted to such person, and the validity period of the options.

9. DISCLOSURE REQUIREMENTS FOR ANNOUNCEMENTS REGARDING ISSUES OF SECURITIES FOR CASH AND ALLOCATION BASIS FOR EXCESS SHARES IN RIGHTS ISSUES

Announcements of Issues of Securities for Cash

The Rules currently require pre-vetting of announcements relating to the issue of new or further securities and include specific requirements as to the content for announcements regarding issues of securities for cash under a general mandate (Main Board Rules 13.28 and GEM Rule 17.30). The Exchange considers that the content requirements in these Rules are relevant to any fundraising exercise and therefore proposes to extend these disclosure requirements to announcements for all issues of securities for cash (irrespective of whether general mandates are involved).

The proposed contents requirements for such announcements would require:

- a statement on whether the issue is subject to shareholders' approval;
- where the securities are issued under a general mandate, details of the mandate;

- where the securities are issued by way of a rights issue or an open offer, the information relating to the rights issue or open offer specified in paragraph 18 of Appendix 1 Part B of the Listing Rules;

- where the issue involves convertible securities or warrants, their material terms (including the conversion/subscription price and provisions for adjustments of such price) and the maximum number of shares that could be issued upon exercise of the conversion/subscription rights; and

- where applicable, the name of the underwriting/placing agent and the principal terms of the underwriting/placing arrangements.

Certain specific disclosure requirements (including the basis for determining the issue price, any conditions to which the issue is subject and any other material information relating to the issue) that are currently included in GEM Rule 17.30 would also be included in Main Board Rule 13.28.

Disclosure of Allocation Basis for Excess Shares in Rights Issues

The Exchange proposes to require listed issuers to disclose the basis of allocation of excess securities in the announcement, circular and listing document for a rights issue or open offer.

10. ALIGNMENT OF REQUIREMENTS FOR MATERIAL DILUTION IN MAJOR SUBSIDIARY AND DEEMED DISPOSAL

Background

Currently, there are two sets of Rule requirements governing a reduction in the effective equity interest of a subsidiary held by a listed issuer. These are the material dilution requirements in Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2) and the deemed disposal requirements in Main Board Chapter 14 and GEM Chapter 19.

<u>The Material Dilution Requirements</u>

Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2) require shareholders' consent where any major subsidiary of the issuer makes an allotment, issue or grant of shares, securities convertible into shares or options, warrants or similar rights to subscribe for shares or such convertible securities, so as to materially dilute the percentage equity interest of the issuer and its shareholders in such subsidiary. A "major subsidiary" is defined as a subsidiary of the issuer where the value of its total assets, profits or revenue represent 5% or more under any of the size tests defined in Main Board Rule 14.09/GEM Rule 19.09. "Material dilution" occurs where the subsidiary either ceases to be consolidated in the

accounts of the issuer following an allotment of new shares or where the dilution effect measured by any of the size tests is 5% or more.

The Deemed Disposal Requirements

An allotment of shares by a subsidiary is also a deemed disposal under Main Board Chapter 14.29 and GEM Rule 19.29 as it results in a reduction in the percentage equity interest of the listed issuer in the subsidiary. The transaction is therefore subject to the notifiable transaction requirements under Main Board Chapter 14 and GEM Chapter 19 and, depending on the size tests, may be required to be treated as a very substantial disposal, major transaction or discloseable transaction.

The material dilution requirements in Main Board Chapter 13/GEM Chapter 19 are more stringent than the requirements for notifiable transactions in that:

- the shareholders' approval requirement is triggered at 5% whereas it is only triggered at 25% for a major transaction under the notifiable transaction requirements[2]; and

- a physical shareholders' meeting must be held whereas a major transaction allows a written certificate in lieu of a physical meeting.

Proposals

The Exchange proposes to align the requirements for material dilution and deemed disposal in the event of a subsidiary allotting shares to third parties by deleting Main Board Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2). As a result:

- the requirement for shareholders' consent would be based on a size test threshold of 25% (i.e. the threshold for a major transaction); and

- a written certificate in lieu of a physical shareholders' meeting would be acceptable.

11. GENERAL MANDATES

Background

The current Rules generally require that shareholders' approval is obtained for issues on a non-pre-emptive basis of shares, securities convertible into shares or options, warrants or similar rights to subscribe for shares or convertible securities. Shareholders' approval may either be by specific mandate (i.e. approved by

[2] A discloseable transaction, which is triggered at 5%, requires disclosure only and not shareholders' approval.

ordinary resolution in general meeting in relation to a specific transaction) or by general mandate.

General mandates are subject to the restrictions set out below.

1. Size Restriction

   The number of shares which may be allotted must not exceed the aggregate of (a) 20% of the issuer's existing issued share capital and (b) the number of shares repurchased by the listed issuer since the date of the general mandate (up to a maximum of 10% of the issuer's existing issued share capital provided that the shareholders have given a general mandate to the issuer's directors to add such repurchased shares.

2. Duration

   The general mandate lasts until the earlier of the issuer's next AGM and its revocation or variation by ordinary resolution of the shareholders in general meeting. It is also possible, subject to independent shareholders' approval being obtained, for a listed issuer which has issued shares pursuant to a general mandate to refresh the mandate before the next AGM. The refreshment will mean that the issuer again has a mandate to issue shares up to 20% of its existing issued share capital.

3. Price

   In the case of a placing of securities for cash, the listed issuer cannot issue securities pursuant to a general mandate if the relevant price represents a discount of 20% or more to the "benchmarked price" except in exceptional circumstances. The "benchmarked price is the higher of (a) the closing price on the date of the relevant placing or other agreement 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 other arrangement (ii) the date of the placing or other agreement and (iii) the date on which the placing or subscription price is fixed.

Concerns have been expressed that the existing prohibition on issuing shares at a discount is only effective to protect existing shareholders from a diminution in value where the share issue takes place close to the time the benchmark valuation is performed. In certain types of funding, however, there may be a substantial gap between the valuation and the issue of the shares. For example, in the case of options the diminution in shareholder value caused by the option will be deferred until the option is exercised which may be up to 5 years after the option is issued. Thus while the exercise price of the option may have been set above the prevailing "benchmarked price" on issue, it may be substantially below the market price at the time of exercise. This will be a concern where the option is

not properly priced and does not give a fair return to the issuer, e.g. in some cases where the price is nominal and the exercise price is at a discount to the market price at the time of issue.

Another concern in relation to options is that there may be difficulties in valuing them and hence determining that any consideration received on the grant of the options was fair.

In addition, surveys conducted by the Exchange have indicated that since the introduction in 2004 of the requirement for independent shareholders' approval of refreshment of the general mandate, certain issuers have tended to obtain specific mandates rather than general mandates. The use of specific mandates allows listed issuers to avoid obtaining independent shareholders' approval.

Proposals

In order to facilitate discussion, the Exchange has set out various options as alternatives to the Rules' existing requirements.

These are:

1. <u>As to the size of issues of securities under the general mandate</u>:

   (a) restrict the size of the general mandate that can be used to issue securities for cash or to satisfy an exercise of convertible securities to 10% or 5% of the issued share capital at the time of the mandate. The mandate to issue securities for other purposes would be not more than 10% (or some other percentage) of the issued share capital; or

   (b) restrict the size of the general mandate that can be used for any purpose, including to issue securities for cash or to satisfy an exercise of convertible securities, to 10% or some other percentage.

2. <u>As to the calculation of the size limit for the general mandate</u>

   Exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the grant of the general mandate. Accordingly, the issuer's issued share capital as at the date of the general mandate will remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting.

3. <u>As to price</u>

Amend the current Rules so that:

(a) the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmarked price" would apply only to placings of shares for cash;

(b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and

(c) for the purpose of seeking the specific mandate, the listed issuer would have to issue a circular to its shareholders containing all relevant information.

12. VOTING AT GENERAL MEETINGS

Voting by poll

Background

The right to vote at general meetings is an effective means for shareholders to safeguard their interests. In Hong Kong, the practice for voting in general meetings of issuers is by a show of hands unless a poll is demanded in accordance with the constitutional documents of issuers or is required under the Rules. When a vote is taken on show of hands, each person attending the meeting has one vote on each resolution, irrespective of the number of shares he may hold or represent.

The Listing Rules currently require voting by poll for connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting.

The arguments against voting on a show of hands are that: it undermines the voting rights of shareholders with greater numbers of shares and the "one share, one vote" principle; the voting rights of shareholders holding their shares through CCASS are disenfranchised as all votes of these shareholders are counted as a single vote; and since most retail investors hold their shares through CCASS, it is very difficult for such shareholders to demand a poll as they have to withdraw their shares from CCASS in order to demand a poll.

Issuers however tend to favour voting on a show of hands. The arguments in favour of voting by show of hands are that voting by poll requires additional time and is costly, particularly where the voting result would be a foregone conclusion irrespective of the method of voting.

Voting by show of hands was one of the weaknesses of Hong Kong's current regime noted in the Asian corporate governance Association's "CG Watch 2007".

The Consultation Paper notes however that none of the 3 jurisdictions (Australia, the United Kingdom and Singapore) reviewed by the Exchange require voting by poll for all shareholders' resolutions.

Proposals

The Exchange seeks the markets' views on the following alternative proposals:

(i) whether the Rules should be amended to require voting by poll for all resolutions at general meetings; or

(ii) amending the Rules:

(a) to require voting by poll on all resolutions at annual general meetings (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting); an/or

(b) so that where a resolution is decided in a manner other than a poll, the issuer is required to publish the total number of proxy votes and the number of appointments which specify that the proxy should: (1) vote for the resolution; (2) vote against the resolution; (3) abstain on the resolution; and (4) the proxy may vote at his discretion.

Notice of General Meetings

Background

In the case of listed issuers other than H-share issuers, the Rules currently require 14 days' notice for the passing of an ordinary resolution and 21 days' notice for the passing of a special resolution. 21 days' notice is also required for convening an AGM. In the case of H-share issuers, 45 days' notice of shareholder meetings is required under the "Mandatory Provisions for Companies Listing Overseas" for all resolutions.

Proposals

The Exchange is consulting on whether the Listing Rules should be amended to provide for a minimum notice period of to 28 calendar days for convening all general meetings.

The Exchange's alternative proposal is to amend the Listing Rules to provide for a minimum notice period of 28 calendar days for convening all annual general meetings, but not extraordinary general meetings.

In both cases the Exchange is also consulting on whether the requirement should be a mandatory requirement under the Listing Rules or a Code Provision under the Code on Corporate Governance Practices, which would require issuers to explain any failure to comply with the requirement in the Corporate Governance Report included in their annual report.

13. DISCLOSURE OF INFORMATION ABOUT AND BY DIRECTORS

The Rules currently require that issuers publish an announcement in relation to the appointment, resignation or re-designation of a director or supervisor. An announcement of the appointment or re-designation of a director or supervisor must contain certain information, including:

- Positions held by the director with the issuer and other members of the issuer's group;

- Previous experience, including other directorships held with listed companies in the last three years and other major appointments and qualifications;

- Particulars of any public sanctions against the director or supervisor by statutory or regulatory authorities;

- Particulars of any unsatisfied judgments or court orders of continuing effect against him; and

- Details of any investigations, hearings or proceedings (criminal or civil) against the director.

The Exchange proposes that this information should be required to be made available throughout the time a person is a director of a company, and not only upon appointment. Such a change would help keep investors and the market informed. It also recognises the fact that the information remains relevant beyond the appointment (or re-designation).

The Exchange proposes to impose a new obligation on issuers requiring them to disclose the relevant information immediately upon becoming aware of it. To ensure that issuers are made aware of relevant information, a new obligation would be introduced requiring directors and supervisors to keep the issuer informed of relevant developments.

Amendments to Main Board Rule 13.51(2) and GEM Rule 17.50(2)

Clarifying amendments are proposed to paragraphs (u) and (v) of the above rules to confirm that the information referred to in those paragraphs need not be disclosed if such disclosure is prohibited by law. Paragraphs (u) and (v) require disclosure of any investigation, hearing or proceedings brought by any securities regulatory authority, commission or panel, any judicial proceeding alleging a violation of any securities law or regulation and criminal proceedings relevant to an evaluation of the person's character.

Disclosure of Information about Board and other Major Appointments

Currently the Rules require that issuers disclose their directors' and supervisors' current and past (held in the last three years) directorships in other Hong Kong listed companies.

The Exchange proposes to amend the Rules to require that issuers disclose their directors' and supervisors' current and past directorships in all companies with securities listed either in Hong Kong or overseas.

Disclosure of Information about Previous Convictions

It is proposed to amend the Rules so that the convictions of directors and supervisors which have to be disclosed include convictions under the Ordinances which are referred to in GEM Rule 17.50(2)(m)(ii), but not in the equivalent Main Board provision at Main Board Rule 13.51(2). Convictions which must be published will then include convictions under the Commodity Exchanges (Prohibition) Ordinance, the repealed Securities and Futures Commission Ordinance, the repealed Commodities Trading Ordinance, the repealed Stock Exchanges Unification Ordinance, the repealed Securities and Futures (Clearing Houses) Ordinance, the repealed Exchanges and Clearing Houses (Merger) Ordinance and the repealed Securities (Insider Dealing) Ordinance.

14. CONDIFICATION OF WAIVER TO PROPERTY COMPANIES

Background

In December 2006, the Exchange announced a conditional waiver that exempts listed issuers actively engaged in property development as a principal business activity ("Qualified Issuers") from the shareholders' approval requirement for certain acquisitions ("Acquisitions") of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders. The wavier applies to both Main Board and GEM issuers.

The waiver exempts Qualified Issuers engaging in Acquisitions, whether on a sole or joint venture basis, from the shareholders' approval requirements of the Listing Rules. Generally, projects undertaken with non-connected persons will be subject

to the reporting and announcement requirements only. Projects undertaken with an independent third party who has become a connected person of the Qualified Issuer only because such person is a substantial shareholder in one or more non-wholly-owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific (Qualified Connected Person), will not be subject to shareholders' approval requirements for specific projects. However, the Qualified Issuer will have to obtain prior authority from its shareholders in general meeting to engage in the Acquisitiions ("General Property Acquisition Mandate").

The Exchange now proposes to codify this policy, with certain amendments. The issues raised for consideration are: who should be eligible for relief; the scope of the proposed relief; and what conditions should apply to the proposed relief.

Eligibility for the Proposed Relief

The waiver would be available only to Qualified Issuers to ensure that companies who face hardship and practical difficulties in conducting property acquisitions benefit from it.

The Exchange now proposes to provide further guidance on factors it will ordinarily accept as demonstrating compliance with the test of whether or not the listed issuer is actively engaged in property development as a principal business activity. The factors to be taken into account are:

(a) Clear disclosure of property development activity as a current and continuing principal business activity in the Directors' Report of the issuer's latest published financial statements;

(b) Property development activity is reported as a separate and continuing business segment (if not the only segment) in the issuer's latest published financial statements;

(c) The issuer's format for reporting segmental information is in business segments and its latest published annual financial statements are fully compliant with Hong Kong Accounting Standard 14 or International Accounting Standard 14, whose requirements include the reporting of segment revenue and segment expense.

Scope of the Proposed Relief

The waiver currently applies to property acquired through public auction in Hong Kong (and not to other classes of assets, nor auctions overseas).

The Exchange considered whether to widen the scope of the proposed relief, but considers that there are no compelling reasons to do so. The Exchange proposes

that the relief apply only to land or property development projects acquired in Hong Kong from the government or Government-controlled entities through public auctions or tenders i.e. Qualified Property Projects.

Revenue Nature vs. a Combination of Revenue and Capital Elements

Main Board Rule 14.04(1)(g) provides an exemption for transactions undertaken by listed issuers (and their subsidiaries) which "are of a revenue nature in the ordinary and usual course of business". Accordingly transactions containing a capital element are not exempt from the Chapter 14 obligations.

Property projects that are subject to public-sector related auctions or tenders are often large and frequently contain a mixture of revenue and capital elements. The waiver therefore allows the exemption under Main Board Rule 14.04(1) to extend to cover a mixture of revenue and capital elements for these Qualified Property Projects. The waiver currently applies irrespective of the weighting between the revenue and capital elements. The Exchange's intention is, however, that the proportion of the capital element should only account for a minority portion of the estimated investment costs.

The waiver is therefore currently open to the risk of misuse where the project is heavily geared towards the capital element. Notwithstanding this risk, the Exchange proposes that the relief be available to Qualified Property Projects that contain any portion of a capital element as opposed to being restricted to projects that are of a revenue nature only.

Alternatively, the Exchange would consider capping the proportion attributable to the capital element at not more than 50% of the investment costs forecast at the time of applying for the waiver.

Exemption in relation to Connected Transactions

It is common for property issuers to enter into joint venture arrangements to participate in the acquisition of Qualified Property Projects. The Exchange proposes to amend the Rules to codify the exemption from strict compliance with Chapter 14A in relation to shareholders' approval requirements for property joint ventures with connected persons only where the connected person is connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects ("Type B Property Projects"). The exemption would be subject to certain conditions.

Conditions of the Proposed Relief

The waiver provides an exemption from strict compliance with the shareholders' approval requirements for Qualified Issuers engaging in Acquisitions by way of Type B property joint ventures on the basis that these listed issuers will be subject

to alternative compliance requirements. These requirements were designed to safeguard against potential abuse of the waiver.

Under the waiver, a Qualified Issuer is required to obtain prior authority from its shareholders under a General Property Acquisition Mandate ("GPA Mandate"), including an annual cap, to engage in an Acquisition. The Annual Cap for the purpose of the GPA mandate and the detailed basis on which it is calculated must be set out in the shareholders' circular, and both the Independent Financial Adviser ("IFA") and all the Independent Non-executive Directors ("INEDs") must opine that the proposed Annual Cap and the underlying assumptions are reasonable.

The GPA Mandate remains in force until the conclusion of the first annual general meeting following the passing of the resolution at which time it will lapse, unless it is renewed by ordinary resolution passed at that meeting. The Exchange proposes that this mechanism be preserved.

Another requirement is that when the successful qualified property acquisition becomes legally binding, the Qualified Issuer must submit to the Exchange written confirmation that its controlling shareholder(s) and their associates do not have any material business dealings or relationships with the joint venture partner(s) or its/their controlling shareholder(s) and its/their associates.

The Qualified Issuer will also include appropriate information on the basis of the Annual Cap, together with details of each successful transaction, the terms of the joint venture and the dividend policy in its subsequent annual reports. The INEDs are also required to review all successful transactions under the joint venture arrangements annually. That review must be based on an opinion from an IFA, which must be confirmed by all the INEDs in the annual report, that the successful transaction has been carried out in accordance with the initial purpose of the joint venture and the relevant agreement governing the transaction on terms that are fair and reasonable and in the interests of the Qualified Issuer as a whole.

Any refreshments of the GPA Mandate before the next AGM must be approved by shareholders in general meeting. Written shareholders' approval will not be accepted in lieu of holding a general meeting and the relevant circular to shareholders must contain information relating to the use of the GPA Mandate, the Qualified Issuer's history of refreshments of the mandate since the last AGM and the status of each Type B property joint venture formed under the GPA Mandate.

Proposal

The Exchange proposes to that the relief would require Qualified Issuers entering into Type B property joint ventures to obtain, in advance, at an annual general meeting of the Qualified Issuer, a General Property Acquisition Mandate together

with the proposed annual cap to engage in the acquisition of Qualified Property Projects. The Qualified Issuer would be required to substantiate the reasonableness of the annual cap by demonstrating the sufficiency of its working capital in the light of the expected Acquisitions. The conduct of the meeting would have to comply with the conditions set out in the waiver.

The Exchange is consulting on whether the General Property Acquisition Mandate should include any limit on the size of the Annual Cap by reference to quantifiable thresholds.

The Exchange proposes that the relief would only provide an exemption from strict compliance with the shareholders' approval requirements of the Rules for certain scenarios of Acquisitions. Qualified Issuers will continue to be subject to the Rules' other requirements, including the general obligation of disclosure in Main Board Rule 13.09. In undertaking an Acquisition, a Qualified Issuer will be required to make disclosure upon notification of the success of its bid for the relevant land or property development project, and will need to send circulars to holders of its listed securities setting out details of the Acquisition as required by Chapters 14 and 14A of the Main Board Listing Rules.

15. SELF-CONSTRUCTED FIXED ASSETS

The current definition of "transaction" which applies for the purposes of the Notifiable Transaction requirements of Main Board Chapter 14 and GEM Chapter 19, includes any addition to the general pool of assets of a listed issuer in the ordinary and usual course of business.

The Exchange proposes that the Rules be amended to exclude from the definition of "transaction" in the notifiable transactions Rules any construction of a fixed asset, such as property, plant or machinery, by a listed issuer for its own use in the ordinary and usual course of its business.

The provision would not however exempt listed issuers from the notifiable transaction requirements where the acquisition of a component of the self-constructed fixed asset is in itself a transaction. The example given is the acquisition of land intended for use as the site for a self-constructed plant, which is a transaction falling under Rule 14.04(1)(a) as an acquisition of an asset. Where the cost of the land results in a discloseable transaction or higher under the size tests, the acquisition of land would be subject to the notifiable transaction requirements.

16. DISCLOSURE OF INFORMATION IN TAKEOVERS

If a listed issuer acquires a company through an acquisition which is a very substantial acquisition or a major transaction, it is required by the Listing Rules to include in its circular to shareholders certain information regarding the offeree

company. Listed issuers sometimes face difficulties in complying with the full disclosure requirements, particularly where there is no or only limited access to non-public information on the offeree company (such as in the case of hostile takeovers) or where there are legal restrictions in providing non-public information to the listed issuers. In such cases, the Exchange has in the past granted waivers to issuers and allowed them to publish a supplemental circular at a later time when the listed issuer is able to exercise control or gain access to the offeree company's books and records.

The Exchange now proposes to codify these waivers on a structured basis to promote transparency of the Rules and practice.

17. REVIEW OF THE DIRECTOR'S AND SUPERVISOR'S DECLARATION AND UNDERTAKING

Streamlining Disclosure of Director's and Supervisor's Information through an Issuer's Announcement

Under the Rules, where a new director, or supervisor in the case of H share issuers is, is or proposed to be appointed or re-designated, the issuer or new applicant is required to procure that each new director or supervisor signs and lodges it with the Exchange a declaration and undertaking in the form set out in Appendices 5 and 6 of the Main Board and GEM Rules, respectively. The forms contain personal details and biographical data about the director or supervisor, an undertaking that he will comply with the Listing Rules and in the case of directors only, a certification from the sponsor of a new applicant that it has reviewed the director's answers and a certification by a solicitor that he has explained all applicable requirements for completing and making the declaration.

The Exchange proposes to remove duplication of information by deleting the questions relating to biographical data from the forms and removing the statutory declaration requirement. It will add sections requiring the director to declare that the personal details referred to in the Appointment Announcement (required under Main Board Rule 13.51(2) and GEM Rule 17.50(2)) relating to him are true, accurate and complete. The removal of the statutory declaration is proposed to be enforced through the dual filing requirements under the Securities and Futures Ordinance, retaining the sponsor's and solicitor's certifications.

The Exchange also proposes:

(i) to amend the GEM Rules to align them with the practice of the Main Board Rules as to the timing for the submission of undertaking forms by GEM issuers. As a result, GEM issuers would be required to lodge a signed undertaking form of a director or supervisor after (as opposed to before) the appointment of the director or supervisor.

(ii) to amend the Listing Rules to require the listing documents of new applicants to contain no less information about directors and proposed directors (or supervisors) than that required to be included in the Appointment Announcement under Main Board Rule 13.51(2) or GEM Rule 17.50(2).

It is further proposed that the Rules should be amended so that a new applicant for the listing of equity or debt securities must submit to the Exchange the following:

(i) at the time when the application for listing is submitted, a written confirmation and undertaking signed by each director or supervisor that the personal particulars of such director or supervisor stated in the first draft of the listing document that is submitted to the Exchange are true, accurate and complete and to inform the Exchange of any changes to such details;

(ii) where any director or supervisor is appointed after the first draft of the listing document, the confirmation and undertaking referred to in (i) above must also be given by such director or supervisor, but reference to the first listing document should be read as a reference to the draft listing document that contains the personal particulars of such director/supervisor;

(iii) as soon as practicable after the publication of the new applicant's listing document, an undertaking form duly signed by each director or supervisor must be submitted. The submission of the completed undertaking forms will be made a condition to listing approval being granted.

The Main Board form of Formal Application (Form C1 and C2) will be amended to require the issuer to give an undertaking to the Exchange to procure each director (and supervisor, where relevant) to give a duly completed form of undertaking as soon as practicable after publication of the listing document. Corresponding amendments will be made to Appendices 5A and 5C of the GEM Rules.

The Exchange proposes to delete the requirement in the sponsor's declaration in Appendix 19 of the Main Board Rules and Main Board Rule 3A15(1), and their GEM equivalents, for the sponsor to confirm that it has reasonable grounds to believe and believes that the answers provided by the directors in Part I of the undertaking form are true and do not omit any material information. The deletion is necessary as under the revised listing application procedure, the undertaking form will not have been submitted at the time the sponsor is required to give the prescribed declaration. The Exchange is however of the view that the deletion of this declaration by the sponsor will not alter the sponsor's due diligence responsibilities under the Rules. The sponsor will still be required to certify on each undertaking form that it is not aware of any information which would cause

it to question the truthfulness, completeness or accuracy of the director's person details in the listing document or the undertaking form.

Information Gathering Powers of the Exchange

It is also proposed that the Exchange should be granted express general powers to gather information from directors.

Service of Disciplinary Proceedings on Directors

Under the GEM Rules, a director undertakes to inform the Exchange of his residential address while he is a director of a GEM issuer and for three years after ceasing to be director. Where a director fails to notify the Exchange of his new address, any document delivered to his last known address will be deemed validly served.

There is no equivalent provision in the undertaking given by directors of Main Board issuers. The Exchange therefore proposes to amend the form of the Main Board undertaking to bring it into line with the GEM undertaking. It also proposes to make express its ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking. This proposal would cover both the Main Board and the GEM Rules.

18. REVIEW OF MODEL CODE FOR SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED ISSUERS

There are four proposals, under this heading:

(i) expanding the list of exceptions to the definition of dealing in 7(d);

(ii) clarifying the meaning of "price sensitive information" in the context of the Model Code;

(iii) extending the "black out" periods provided in Rule A.3; and

(iv) restricting the time for responding to the request for clearance to deal, and the time for dealing one clearance has been received.

Expanding the List of Exceptions to the Definition of "Dealing" in paragraph 7(d) of the Model Code

The first proposal is to add the following three exceptions to the definition of "dealing" in paragraph 7(a) of the Model Code:

a) Dealing where the beneficial interest or interests in the relevant security of the listed issuer do not change;

b) A director shareholder who places out his existing shares in a "top-up" placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price after expenses is the same as the price at which the existing shares were placed out; and

c) Bona fide gifts to a director by a third party.

Clarifying the meaning of "price sensitive information" in the context of the Model Code

The Exchange proposes to introduce a note in the Model Code to clarify the meaning of "price sensitive information".

Extension of "black out" Periods

The Model Code currently provides that a director of a listed issuer is prohibited from dealing in its securities for a period of one month immediately preceding the earlier of: (a) the date of the board meeting for the approval of the issuer's annual, half year or quarterly results; and (b) the deadline for the issuer to publish the same, and ending on the date of the results announcement.

The Exchange proposes to extend the current "black out" periods so as to commence from the listed issuer's year/period end date and end on the date the issuer publishes the relevant results announcement.

The rationale behind the proposal is that unpublished price sensitive information in respect of a listed issuer continues to accrue after the year/period end. The current black-out period may therefore be insufficient to ensure that company insiders do not abuse the market while in possession of such information and to remove or mitigate any suspicion of abuse by company insiders of price sensitive information.

Restricting the Time for Responding to the Request for Clearance to Deal, and the Time for Dealing once Clearance has been Received

The Exchange proposes to introduce a deadline of 5 business days within which an issuer must respond to a request clearance to deal.

Further, once clearance has been granted, the deal must take place as soon as possible, and in any event within 5 business days.

The Exchange considers that the time limits are important to avoid dealings taking place in a prohibited period. If a price sensitive development arises in relation to

the issuer after a director has been granted clearance to deal, the director must refrain from dealing notwithstanding the receipt of a clearance.

This note is intended as a summary only of the proposals set out in the Exchange's Combined Consultation Paper on Proposed Changes to the Listing Rules, a copy of which is available on the Exchange's website at www.hkex.com.hk. Specific advice should be sought in relation to any particular transaction.