



Hong Kong

May 2015

HONG KONG LISTING RULE AMENDMENTS TO REFLECT NEW FINANCIAL INFORMATION DISCLOSURE AND OTHER REQUIREMENTS

Introduction

The Hong Kong Stock Exchange (the **Exchange**) has published its Consultation Conclusions¹ on amendments to the Listing Rules to reflect changes in the requirements for disclosure of financial information and other changes made by the new Companies Ordinance (Cap 622) (**New CO**) which came into effect on 3 March 2014. The original proposals were set out in the Exchange's consultation paper of August 2014. This newsletter provides a summary of the changes to the Listing Rules.

The Listing Rule amendments relate mainly to changes to the requirements for disclosure of financial information (mainly to reflect the disclosure requirements under the New CO). Key changes to the Listing Rules relate to:

Changes relating to Financial Information Disclosure

- Amendments to the requirements for disclosure of financial information in Chapter 4 and Appendix 16 of the Main Board (**MB**) Listing Rules (Chapters 7 and 18 of the Growth Enterprise Market (**GEM**) Rules) to reflect the disclosure provisions of the New CO;

- New financial disclosure requirements apply to accountants' reports for periods commencing after **31 December 2015**;
- New requirements for non-Hong Kong issuers to:
 - include the names of all their directors (but not their subsidiaries' directors) in their financial statements;
 - produce a directors' report complying with the requirements of the New CO and including a business review as set out in Schedule 5 of the New CO. If management discussion and analysis (**MD&A**) information required by paragraph 32 of Appendix 16 has been included in a business review in the directors' report, no additional disclosure is required;
- Streamlining the disclosure requirements to remove duplications with Hong Kong Financial Reporting Standards (**HKFRS**); and
- New requirements for issuers that revise their published financial reports or publish results announcements that include prior period adjustments to correct material errors.

¹ HKEx Consultation Conclusions – Review of Listing Rules on Disclosure of Financial Information with reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/Housekeeping Rule Amendments available at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408cc.pdf>.

Changes not relating to Financial Information Disclosure

- All amendments not related to financial disclosure came into effect on **1 April 2015**;
- **Notice of General Meetings** – Bermuda- and Cayman Islands-incorporated issuers will be able to call annual general meetings (**AGMs**) on **21 days' notice** and any other general meeting on **14 days' notice** irrespective of whether ordinary or special resolutions will be considered;
- References to “nominal value” and “issued share capital” have been replaced by references to the number of, or the voting rights attaching to, the issued shares in various provisions of the Listing Rules to reflect the abolition of nominal or par value;
- **Announcement of dividends** – an announcement of a dividend or other distribution must include the expected payment date as well as the rate and amount (Listing Rule 13.45);
- **Property valuation for connected transactions** - a property valuation is required for circulars for all connected transactions involving an acquisition or disposal of any property interest or property company;
- **Disclosure of directors' competing interests** – the requirement to disclose competing interests of subsidiaries' directors and their close associates in notifiable and/or connected transaction circulars has been removed; and
- **Delay in publication of GEM issuers' financial results** - the Exchange will codify their current practice in a new GEM Rule 17.49A (equivalent to MB Rule 13.50) to require trading suspension of issuers that fail to publish their financial results announcements.

The Exchange received 55 submissions during the 2-month consultation period and the proposed amendments were generally well received. The Exchange has revised the amendments to incorporate respondents' comments and addressed some concerns expressed by respondents. The updated versions of the amendments to the Main Board Rules and the amendments to the GEM Rules are now available on the Exchange's website and have already been approved

by the Exchange's Board and the Securities and Futures Commission. The Exchange has also published FAQs Series 31 which are available on the Exchange's website.²

1. Effective Date

Financial Information Disclosure

The revised MB Appendix 16 (**Appendix 16**) (GEM Chapter 18 (**GEM Ch. 18**)) in relation to financial disclosure will apply to preliminary results announcements and financial reports for accounting periods ending on or after **31 December 2015**. Thus issuers with a 31 December financial year-end will have to comply with revised Appendix 16 (GEM Ch. 18) in their annual reports for the year ending 31 December 2015 and their subsequent financial reports.

Hong Kong incorporated issuers must however comply with the New CO now since Part 9 “Accounts and Audit” of the New CO came into effect for the first financial reporting year beginning on or after 3 March 2014. Accordingly, Hong Kong incorporated companies with a financial year starting from 1 April 2014 will have to comply with the New CO's financial disclosure requirements in their financial statements and directors' reports for the year ending 31 March 2015.

Early adoption of Appendix 16 (GEM Ch. 18) is permitted but only for the first financial reporting year commencing on or after 3 March 2014 (the commencement date of the New CO). Thus an issuer publishing a financial report (whether quarterly, interim or annual) for the accounting period ending on 30 June 2015, could adopt the revised MB Appendix 16 or GEM Ch.18. It would not however be possible to adopt these revised rules in an annual report for the financial year ending 28 February 2014. Issuers should take note that the new provisions would only apply if their financial year started from 1 April and early adoption is not permitted.

Accountants' Reports and Pro Forma Financial Information

The amendments to MB Chapter 4 (**Ch. 4**) (GEM Chapter 7 (**GEM Ch. 7**)) in relation to disclosure of financial information in the accountants' report will apply to accountants' reports in listing documents and circulars for listing applications, reverse takeovers, major transactions and very substantial acquisitions where the last period reported on in the accountants' report ends on or after **31 December 2015**. Thus listing applicants with prospectuses covering a track record period ending on

² FAQ Series 31 at http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_31.pdf

or after 31 December 2015 will have to comply with revised MB Ch. 4 (GEM Ch. 7). Early adoption of these revised rules is allowed and a listing applicant whose latest period reported on in the accountants' report ends on 31 March 2015 would be allowed to adopt revised MB Ch. 4 (GEM Ch. 7).

Other Amendments

All other Listing Rule amendments came into effect on 1 April 2015.

2. Amendments to Align Listing Rules with the New CO

Original Proposal

Appendix 16 and GEM Ch. 18 were proposed to be amended to align the Listing Rules' requirements for disclosure of financial information with the disclosure provisions of the New CO in order to ensure a level playing field for all issuers, wherever incorporated, and to enhance corporate governance. Some of the key disclosure requirements for directors' reports and financial statements introduced under the New CO to improve corporate governance include:

- a) a new Business Review section;
- b) disclosure of directors' names on a consolidated basis;
- c) directors' interests to include transactions, arrangements or contracts;
- d) permitted indemnity provisions;
- e) equity-linked agreements; and
- f) reasons for a director resigning or not seeking re-appointment.

Summary of Comments & Response

Although some respondents argued that the inclusion of a business review in the directors' report is unnecessary since such information is already covered in the annual report, respondents generally agreed with the Exchange's proposed revisions. Respondents' comments and the Exchange's replies on various proposed disclosure requirements are summarised below.

- a) Disclosure of directors' names on a consolidated basis

Section 390 of the New CO requires a company to disclose the names of all directors of the issuer and its subsidiaries in its consolidated financial statements. The Exchange proposed to extend this obligation to listed issuers incorporated outside Hong Kong. Some respondents questioned the need for such information and its value in assisting shareholders to assess the consolidated financial statements while pointing to the significant compliance burden this would impose on non-Hong Kong issuers, especially those with large numbers of subsidiaries.

In response, the Exchange referred to Question 13 of the Companies Registry's "Frequently Asked Questions on Accounts and Audit"³ which provides that if the number of directors of all subsidiary undertakings is, in the opinion of the directors of the holding company, excessive, disclosure of the directors' names of the issuer's subsidiary undertakings can be made by way of inclusion by reference, provided that the information on the relevant directors' names is clearly contained in the directors' report by making a list of such names readily available to the reader. This may include, for example, by providing a link to the relevant website(s) which contains a full list of the names. The Exchange recommends that Hong Kong-incorporated issuers should adopt this practical approach suggested by the Companies Registry.

However, the Exchange will not require non-Hong Kong incorporated issuers to disclose the names of their subsidiaries' directors and a note to this effect has been added at paragraph 28.1 to Appendix 16 (Note 2 to GEM Rule 18.07A(2)). Non-Hong Kong issuers are however required to disclose the names of all directors on their own boards in their financial statements.

b) Business Review

Schedule 5 of the New CO requires a business review to be included in the directors' reports for Hong Kong-incorporated companies. The Exchange proposed to extend this requirement to all listed issuers under the Listing Rules. There were a number of requests for the Exchange to clarify how the business review, which is a form of management discussion, would interact with the continuing requirements to prepare a discussion and analysis of the business. It was also pointed out that the proposed rule overlaps with an existing requirement in paragraph 28 of MB Appendix 16.

³ Companies Registry. "New Companies Ordinance – Frequently Asked Questions – Accounts and Audit" at http://www.cr.gov.hk/en/companies_ordinance/faq_account-audit.htm

The Exchange has therefore decided to explain how the business review in the directors' report will interact with the MD&A. A note will be added to paragraph 32 of Appendix 16 stating that the information which that paragraph requires to be included in an annual report need not be included elsewhere in the annual report, if it is already disclosed in the business review section of the directors' report. Issuers can present the business review required by the New CO and the information required under paragraph 32 of Appendix 16 anywhere in their annual reports, as long as the disclosure complies with the disclosure requirements of the New CO and Appendix 16.

Some respondents also noted that information in the business review could potentially overlap with information required to be disclosed in the Environmental, Social and Governance Reporting Guide (**ESG Guide**) under MB Appendix 27 and urged the Exchange to clarify the interaction between the two to avoid duplication of disclosure.

The Exchange noted that the ESG Guide requires disclosure of information on policies, compliance and key performance indicators in respect of specified ESG areas. The directors' report, on the other hand, requires directors to discuss their environmental policies and performance, compliance with relevant laws and regulations, and key stakeholder relationships in more general terms. The disclosure made under MB Appendix 27 should therefore complement that in the business review instead of duplicating it.

c) Laying financial statements before AGM

The Exchange proposed to replace references to section 122 of the Companies Ordinance (Cap. 32) (the **Predecessor Ordinance**) in force before 3 March 2014 in relation to the period specified for companies to lay their reporting documents (annual financial statements) in an AGM with section 431 of the New CO in relevant Listing Rules. Some respondents however spotted that the Exchange failed to update the terms used in the Listing Rules to reflect those adopted in the New CO.

The Exchange noted the problem and has updated the relevant Listing Rules accordingly.

d) Accounting Standards

Schedule 4 of the New CO requires financial statements to state whether they have been prepared in accordance with HKFRS, and if not, to include particulars of, and the reasons for any material departure from HKFRS. Some respondents

expressed concern that issuers adopting other accounting standards would not be able to comply with the revised Listing Rules.

The Exchange decided to remove the reference to the provision requiring compliance with HKFRS.

3. Listing Rule Amendments to Avoid Duplicating Requirements under Financial Reporting Standards

Original Proposal

The Exchange proposed streamlining the Listing Rules' financial disclosure requirements so that they would not duplicate the requirements of HKFRS by amending Appendix 16 (GEM Ch. 18) to remove:

- the components of financial statements that are already covered by HKFRS;
- the line items in the income statement and balance sheet that are already covered by HKFRS;
- the disclosure requirements of segmental information that are required under HKFRS 8 "Operating Segments";
- the disclosure of amount of interest capitalised during the financial year that is required under HKAS 23 "Borrowing Costs";
- the disclosure of the nature of retirement schemes operated by the issuer and pension costs charged to the income statement for the financial year that are required under HKAS 19 "Employee Benefits"; and
- the components of financial statements in an interim report that are already covered by HKFRS.

MB Rule 4.05 was proposed to be amended in relation to accountants' reports to remove:

- a) line items in the income statement and balance sheet that are already covered by HKFRS; and
- b) the disclosure requirements of segmental information required under HKFRS 8.

Chapter 1 “Interpretation” of the MB Rules was also proposed to be updated to align terms used in the Listing Rules with those used in the current accounting standards.

Summary of Comments & Response

Several editorial suggestions made have been adopted by the Exchange as follows:

a) Aligning accounting terms

The Exchange proposed inserting definitions for old accounting terms (e.g. “balance sheet”, “income statement” and “profit and loss account”) in MB Rules Chapter 1 “Interpretation” by stating that they would have the same meaning as the respective updated accounting terms used in HKFRS (i.e. “statement of financial position” and “statement of profit or loss and other comprehensive income”). The Exchange proposed to use the updated accounting terms only in Appendix 16 and GEM Ch. 18 and not to align every accounting terms in other parts of the Listing Rules. A respondent disagreed with the proposal to define both “income statement” and “profit and loss account” as “statement of profit or loss and other comprehensive income” and suggested instead separate definitions of:

- “statement of profit or loss and other comprehensive income” (under the one statement approach); and
- “statement of profit or loss” and “statement of profit or loss and other comprehensive income” (under the two statements approach).

The Exchange decided to change only relevant provisions in MB Rules Chapter 4 and Appendix 16 (GEM Rule Chapters 7 and 18) and considers that amendments made in MB Rules Chapter 1 (Interpretation) can address the matter.

The Exchange also pointed out that paragraph 10 of HKAS 1 “Presentation of Financial Statements” states that a statement of profit or loss and other comprehensive income for the period is one of the primary statements of a complete set of financial statements; and paragraph 10A of HKAS 1 provides a choice for an entity to present a single statement or two separate statements in relation to the statement of profit or loss and other comprehensive income for the period. It therefore believes that its approach is appropriate.

b) Accounting standards other than HKFRS

Not all Hong Kong-listed companies prepare their financial statements in accordance with HKFRS or International Financial Reporting Standards (IFRS). Some respondents emphasised the need for the Exchange to ensure that companies preparing their financial statements in accordance with other accounting standards are subject to the same disclosure requirements as companies adopting HKFRS or IFRS to ensure a level playing field.

The Exchange referred to the SFC/Exchange Joint Policy Statement regarding the Listing of Overseas Companies which provides that suitability of alternative financial reporting standards depends on whether there is any significant difference between the foreign financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the foreign financial reporting standards with IFRS. It emphasised that it would ensure comparability of financial reports and a level playing field by requiring foreign financial reporting standards to substantially converge with HKFRS or IFRS.

c) Basis of ageing analysis of accounts receivable

One respondent suggested that issuers in industries that do not issue invoices to their customers may face compliance difficulties since the amended MB Rule 4.05(2)(a) requires preparation of ageing analysis of accounts receivable based on the invoice date. The submission explained that some companies may have sales and purchase contracts entered into between the company and its customers which set out the agreed payment schedule rather than invoices.

To address the issue, the Exchange agreed to insert a note to Appendix 16 to provide guidance on presenting ageing analysis of accounts receivable and payable.

d) Aligning accounting term of associated companies

It was suggested that the terminology of “associated companies” should be changed to “associates and joint ventures” for consistency with HKFRS.

The Exchange agreed to incorporate the change in MB Rules Chapter 4 and Appendix 16 (GEM Rules Chapters 7 and 18).

4. Amendments to Streamline Disclosure Requirements by Reference to HKFRS

Original Proposal

The Exchange proposed to:

- a) repeal the disclosure requirements concerning financial conglomerates in MB Rules Chapter 4 and Appendix 16 (GEM Rules Chapters 7 and 18) which overlap with HKFRS 7 and 8 issued in recent years;
- b) update MB Rules Chapter 4 and Appendix 16 to replace references to “Financial Disclosure by Locally Incorporated Authorized Institutions” with the HKMA’s “Guideline on the Application of the Banking (Disclosure) Rules”; and
- c) repeal MB Rules Appendix 15 in relation to bank reporting.

Summary of Comments & Response

A respondent suggested that an overseas bank that does not provide any local banking services in Hong Kong seeking a listing on the Exchange should be outside the remit of the Hong Kong Monetary Authority (HKMA) and exempted from the disclosure requirement under MB Rule Appendix 15.

The Exchange explained that these banks are already outside the scope of MB Rules Appendix 15 and abolition of the section would not lead to a change to the current situation. Listing application continues to be determined on a case-by-case basis by the Exchange.

5. New Requirements for Issuers that revise Published Financial Statements

Original Proposal

The Exchange proposed to:

- a) explicitly require issuers to publish an announcement as soon as practicable after the directors decide to revise the financial statements stating:
 - that the financial statements are to be revised;
 - reason(s) for the revision; and
 - any financial impact of the revision; and

- b) create a new announcement headline category called “Revision of Published Financial Statements” under MB Rules Appendix 24 for the above announcements.

The Exchange further proposed a new headline category called “Prior Period Adjustments due to Correction of Material Errors” under MB Rules Appendix 24 in order to flag results announcements which contain a prior period adjustment to correct a material error unless the adjustment was made as a result of adopting of a new accounting standard.

Lastly, the Exchange proposed to add two notes to Appendix 16 referencing disclosure requirements that are currently only set out in other Listing Rules.

Summary of Comments and Response

Despite general support for enhanced disclosure of revised statements and reports, the Exchange received several queries regarding details of the proposal. Some commented on the following:

- a) the need to add a new separate headline category instead of putting the new announcements under an existing category;
- b) whether the new requirement applies to revision of quarterly reports and summary financial reports published;
- c) whether additional disclosure is required given that if the revision of financial statements is material, it will be inside information which requires disclosure in any event.

Sections 449 (for Hong Kong issuers) and 790 (for overseas issuers) of the New CO, require a company to inform the Companies Registry when its financial statements and reports are revised. The Exchange supports the position that financial statement revision is important and therefore requires that it should be announced.

The Exchange considers that a separate headline category will assist shareholders in locating revised financial statements. The Exchange will make a slight amendment to the headline category to “Revision of Published Financial Statements and Reports” and extend the announcement requirement to cover revisions to summary financial reports and quarterly reports in MB Rule 13.51(7) (GEM Rule 17.50(6)).

As for additional disclosure requirements of prior period adjustment, one respondent questioned the need to have a separate headline category and for disclosure of the adjustment which will be made in the financial statements in any event.

The Exchange believes that the additional cost and time incurred under the new arrangements would not be significant since this disclosure is already required under existing accounting standards. It considers that the creation of a new headline category will facilitate online searches and provide valuable information to investors.

Finally, although some respondents worried that the housekeeping amendments would increase the disclosure burden on mid-sized issuers, most reflected support for the proposal. It was recommended that a full list of disclosure requirements should be included in Appendix 16 to ensure full compliance and other editorial amendments.

In response, the Exchange restated that the housekeeping amendments create no new disclosure obligations and editorial suggestions made would be considered.

6. Other Rule Amendments Resulting from the New CO

6.1 Notice Periods for General Meetings

Original Proposal

Section 571(1) of the New CO requires that AGMs must be called on 21 days' notice and any other general meeting must be called on 14 days' notice irrespective of whether ordinary or special resolutions will be considered at the meeting. The Exchange proposed to align the notice periods required for general meetings of companies incorporated in Bermuda and the Cayman Islands with the requirements for Hong Kong issuers under the New CO.

The Exchange also proposed that Bermuda and Cayman Islands companies should be allowed to convene general meetings on shorter notice on the same terms as Hong Kong companies in the New CO.

Summary of Comments & Response

Comments submitted reflected general support for the change aligning notice periods required of Bermuda and Cayman incorporated issuers with those for Hong Kong incorporated issuers for the sake of fairness. Respondents' major comments or suggestions included:

- a) issuers should be allowed to follow the notice period requirements under their respective jurisdictions and providing a level playing field was not an issue;
- b) potential conflict with company law in Bermuda or Cayman Islands;
- c) extension of proposal to issuers incorporated in all Acceptable Jurisdiction;
- d) abolition of the 45-day notice period for general meetings required under Mainland law; and
- e) making the new notice periods optional.

The Exchange noted that the current notice period for Bermuda- and Cayman Islands-incorporated issuers is the same as that under the Predecessor Ordinance. Thus to allow overseas-incorporated issuers to adopt notice period requirements under the laws of their jurisdiction of incorporation would be a major shift from the Exchange's long-standing policy position. The Exchange also confirmed that the proposal is consistent with company laws in Bermuda and the Cayman Islands.⁴

The Exchange further explained that the listing of companies incorporated in Acceptable Jurisdictions are subject to the requirements of the Joint Policy Statement which requires members to be given reasonable written notice of companies' general meetings without specifying a number of days. Bermuda and the Cayman Islands are treated differently because they (along with Hong Kong and Mainland China) are Recognised Jurisdictions of incorporation under the Listing Rules. Furthermore, many issuers incorporated in Bermuda and the Cayman Islands are essentially Hong Kong companies, as all or a substantial part of their assets and shareholders are located in Hong Kong.

⁴ According to Bermuda Companies Act 1981, Part VI, section 75(1), the minimum notice period is five days, but may be further extended by the bye-laws of the company. According to Cayman Islands Companies Law (2013 Revision), Part IV, section 61, the notice period required will depend on what is prescribed under the company's articles of association. In default of any such notice provision, five days' notice is required under the company law.

The Exchange also clarified that it has no right to remove the 45-day notice for companies incorporated in Mainland China and abolition would only be possible if the relevant Mainland laws were changed.

As for the issue of whether such issuers should be allowed to call meetings on shorter notice in the same circumstances as Hong Kong incorporated companies, the Exchange received similar comments including the following:

- a) issuers should be allowed to follow notice period requirements under the laws of their jurisdictions of incorporation;
- b) potential conflict with the company law in Bermuda and the Cayman Islands;
- c) extension of the proposal to issuers incorporated in all Acceptable Jurisdictions and Mainland China; and
- d) making the new notice periods optional.

Some respondents who agreed with the proposed amendments were nevertheless of the view that these rights were unlikely to be invoked considering the many procedural hurdles imposed. Those neutral on the amendment also suggested that the Exchange explain the reason for not including similar provisions in the Listing Rules in the past and the reasons for the amendment.

In response, the Exchange restated that it would not allow issuers to follow notice period requirements under the laws of their jurisdictions of incorporation and confirmed that the proposal is consistent with company laws in Bermuda and the Cayman Islands.⁵ Despite the infrequent use of such provisions due to the practical difficulty of invoking it, the Exchange believes that the proposed amendment helps create a level playing field for all issuers.

As a result, the Exchange decided to adopt the proposed amendments relating to notice period requirements. The latter would be made optional, which means that issuers incorporated in Bermuda and the Cayman Islands will be able to choose whether to convene meetings on shorter notice on the same terms as issuers incorporated in Hong Kong as set out in the New CO.

⁵ According to Bermuda Companies Act 1981, Part VI, section 75(2), companies may do so on nearly identical terms as Hong Kong incorporated companies. According to Cayman Islands Companies Law (2013 Revision), Part IV, section 60(3), a meeting may be called on shorter notice so long as it accords with the company's articles of association.

6.2 Nominal (par) Value

Original Proposal

The concept of "nominal value" was abolished under the New CO. The Exchange proposed to reflect the abolition by replacing "nominal value" or "issued share capital" with the number of, or the voting rights attaching to, the issued shares in various provisions of the Listing Rules.

Summary of Comments & Response

One response suggested that the Exchange should only use the term "issued voting shares" rather than using different terms such as "number of issued shares" and "issued voting shares" in all chapters which would require amendments.

The Exchange however considers that different terms are appropriate in different parts of the Listing Rules. It decided to adopt the proposed amendments and will take into account any editorial comments for enhanced clarity.

6.3 Other Amendments

Original Proposal

The Exchange also suggested the following amendments:

- a) allowing issuers without a company seal to state in their articles that "certificates for capital must be executed under signature of appropriate officials with statutory authority";
- b) removing references to share warrants to bearer issued by Hong Kong incorporated issuers;
- c) removing references to the memorandum of Hong Kong incorporated issuers;
- d) amending the definition of "holding company" so that it is self-contained and no longer linked to the Predecessor Ordinance; and
- e) in relation to certificate replacement services, aligning the threshold value of securities represented by lost share certificates with that under the New CO.

Summary of Comments & Response

A respondent suggested adoption of the definition of "holding company" under the Predecessor Ordinance for greater clarity.

The Exchange will however adopt the proposed definition for its simplicity.

7. Minor and Housekeeping Amendments

Finally, the Exchange included a number of minor and housekeeping amendments in their proposals.

7.1 Disclosure of dividend payment date

Original Proposal

The Exchange proposed to require announcements of the expected payment date of dividends or other distributions (**Payment Dates**).

Summary of Comments & Response

Respondents against the proposal suggested that:

- a) issuers should be allowed more flexibility and pointed out that smaller issuers would generally need more time to handle their cash flow;
- b) disclosure of the exact Payment Date should not be required; and
- c) such disclosure is not meaningful to investors.

Those who supported the proposed change recommended clarification that subsequent changes to the expected Payment Dates should also be made known to shareholders.

The Exchange again stressed that Payment Dates are considered important information for shareholders and early notification would be in their interest. It confirmed that it would adopt the proposed amendments and would also require issuers to update shareholders on any subsequent changes to the expected Payment Date.

7.2 Property valuation for connected transaction

Original Proposal

The current Listing Rules only explicitly require inclusion of a property valuation in a connected transaction circular if an issuer acquires or disposes of a property interest or property company from or to a connected person. The Rule does not articulate whether inclusion of a property valuation is necessary for other types of connected transactions.

The Exchange therefore proposed to clarify that a property valuation is required for circulars for all connected transactions involving an acquisition or disposal of any property interest or property company.

Summary of Comments & Response

Although the proposal received general support from respondents, the following issues were raised:

- a) whether disclosure of the property value shown in the latest available accounts or that the agreed consideration is in line with the market would suffice and whether an independent property valuation provides additional value for connected transactions;
- b) that a property valuation is unnecessary where the connected transaction involves an acquisition or disposal involving a third party which is not related to a connected person at the issuer level. For example, where the issuer and its connected person at the issuer level form a joint venture to acquire a property company from an independent third party; and
- c) that a property valuation should not be required for connected transactions involving an acquisition of a property company from a third party where the issuer's controlling shareholder has a substantial interest in the property company, since the potential benefits that may be conferred on the issuer's controlling shareholder would also be available to the other shareholders.

The Exchange noted the concerns of respondents but emphasised the need for disclosure to allow shareholders to assess the fairness and reasonableness of connected transaction terms and the need to safeguard against possible influence of connected persons. The proposed amendments will be made.

7.3 Disclosure of Competing Interests of Directors in Transaction Circulars

Original Proposal

Issuers are currently required to disclose any competing interests of their subsidiaries' directors and close associates of those directors in notifiable and/or connected transaction circulars. The Exchange proposed to remove this requirement.

Summary of Comments & Response

One respondent expressed concern that directors at the subsidiary level could obtain a benefit from dealings with the issuer's subsidiaries, while another suggested the Exchange should retain mandatory disclosure of material competing interests based on the size tests for classifying transactions.

In response, the Exchange explained that the disclosure provides no meaningful information in terms of assisting shareholders to assess a transaction and transactions between the issuer group and directors of material subsidiaries must be disclosed and comply with the connected transaction rules. It will therefore adopt the proposal with a view to easing issuers' compliance burden.

7.4 Delay in Publication of Financial Results Announcement

The Exchange will codify their current practice in a new GEM Rule 17.49A (equivalent to MB Rule 13.50) to require trading suspension of issuers that fail to publish their financial results announcements.

8. Amendments Involving no Change in Policy Direction

Original Proposal

The Consultation Paper proposed a number of housekeeping Rule amendments in relation to:

- a) updating outdated references to the Codes on Takeovers and Mergers and Share Buy-backs;
- b) clarifying the applicability of Appendix 3 (Articles of Association) to new applicants;
- c) removing references to "telex"; and
- d) aligning the GEM Rules with the Main Board Rules in respect of requiring periodic updates from suspended GEM issuers.

Summary of Comments & Response

Respondents pointed out that there are still inconsistent references to "share buy-back" and "share repurchases" in the Listing Rules. The Exchange explained that all references to the Code on Share Repurchases have been replaced by

references to the Code on Share Buy-backs. However, it found it unnecessary to change other references to "share purchases" outside the context of the Code.

Other suggestions were:

- a) amending Rule 9.11(20)⁶ to state that applicants' legal advisers should provide confirmation that new applicants' articles or equivalent documents "conform with" with MB Appendices 3 or 13. The amendments proposed by the Exchange would require confirmation that applicants' articles "are not inconsistent" with those Appendices; and
- b) amending Rule 13.51(1) (and Note 1 to that Rule)⁷ so that the letter provided by an issuer's legal advisers in relation to proposed changes to its articles would have to confirm that the proposed changes would not make the Articles inconsistent with Appendices 3 and 13, rather than that they comply with those Appendices.

Other respondents recommended, instead of simply removing references to "telex", replacing it with other means of communication such as email.

The Exchange agreed with both comments and will modify its amendments accordingly.

The Exchange received no comments on the amendments on periodic updates after trading suspension and will adopt their original proposal.

Other Housekeeping Amendments

A statement under MB Rule 9.08(2)(c) is a standard form statement warning the public not to rely on media reports on an Application Proof or Post Hearing Information Packs (**PHIP**) under Rule 9.08(2)(c). Since the Application Proof and PHIP do not require pre-vetting or clearance from the Exchange or SFC, the Exchange proposed to amend paragraph 20 of MB

⁶ "...a confirmation from the new applicant's legal advisers that the new applicant's articles of association conform with Appendix 3 and, if relevant, Appendix 13 to the Exchange Listing Rules and the laws of the place where the new applicant is incorporated or otherwise established..."

⁷ "...a letter addressed to the issuer from its legal advisers confirming that the proposed amendments are not inconsistent with the requirements of under Appendix 3 and, if relevant, Appendix 13 to the Exchange Listing Rules and the laws of the place where it is incorporated..."

Notes: 1. Changes to articles of association or equivalent documents must not be inconsistent with the requirements of Appendix 3 and, if relevant, Appendix 13."

Practice Note 22 (paragraph 19 of GEM Practice Note 5) to clarify that pre-vetting or clearance from the Exchange or SFC is not required for the statement issued under Rule 9.08(2)(c).

A number of housekeeping amendments have been made to Forms A2 and C3 of Appendix 5 to the Rules regarding the listing of Collective Investment Schemes. These:

- a) define the term “Securities and Futures Commission” as “SFC” when it first appears in Forms A2 and C3 of Appendix 5 and uses the abbreviated term in those forms thereafter; and
- b) replace references to the “Companies Ordinance” with the “Companies (Winding Up and Miscellaneous Provisions) Ordinance” where appropriate.

References to Appendix 10 (Model Code for Securities Transactions by Directors of Listed Issuers)

The Exchange will also adopt a few housekeeping changes to correct inaccurate references to the title of Appendix 10 to the Rules, the “Model Code for Securities Transactions by Directors of Listed Issuers”. Some Listing Rules refer to this incorrectly as the “Model Code for Securities Transactions by Directors of Listed Companies”.

CHARLTONS

Best Boutique Firm 2014

Asian Legal Business Awards

This newsletter is for information purposes only.

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com