HONG KONG SOCIETY OF ACCOUNTANTS

SUBMISSION ON CONSULTATION PAPER

ON

PROPOSED AMENDMENTS TO THE LISTING RULES

RELATING TO

INITIAL LISTING AND CONTINUING LISTING ELIGIBILITY

AND

CANCELLATION OF LISTING PROCEDURES

[A total of 100 pages]

[30 October 2002]

PART B OF THE CONSULTATION PAPER
INITIAL LISTING ELIGIBILITY CRITERIA

TRACK RECORD

Trading Record Period

Paragraph 29 of Part B of the Consultation Paper

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

Q1. Do you agree with our proposal?

✓ ***Agree***

Paragraph 30 of Part B of the Consultation Paper

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

Q2. Do you agree with our proposal?

- ✓ ***Agree***

Management and Ownership Continuity

Paragraph 34 of Part B of the Consultation Paper

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

Q3. Do you agree with our proposal?

✓ ***Agree***

However, there should be allowance made in the Listing Rules to accommodate venture capital and mezzanine pre-IPO financing. This often takes the form of convertible notes which enable the venture capital or financial investor to take security which would not be possible with a straight equity investment. Conversion of such convertible debt instruments into equity pre-listing should not be treated as a change of ownership (as is the current practice of the Listing Division).

FINANCIAL STANDARDS

Profit

Paragraph 41 of Part B of the Consultation Paper

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

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

✓ ***Yes***

Paragraph 42 of Part B of the Consultation Paper

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

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

- ✓ ***Agree.*** **Provided that the current minimum thresholds are not raised.**

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

✗ ***Disagree.*** **The exclusion of the results of associated companies (including joint ventures) should be reconsidered given that there are a significant number of companies with joint ventures in the PRC which are significant and may have been held at the "associated company level" due to control restrictions in laws of the PRC.**

Paragraph 43 of Part B of the Consultation Paper

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

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

✓ ***Agree***

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

✓ ***Agree***

Market Capitalisation/Revenue/Cash Flow

Paragraph 48 of Part B of the Consultation Paper

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

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

Q9. Do you agree with our proposal?

- ✓ ***Agree***

Market Capitalisation/Revenue

Paragraph 52 of Part B of the Consultation Paper

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

Q10. Do you agree with our proposal?

- ✓ ***Agree***

Paragraph 53 of Part B of the Consultation Paper

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

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

- ✓ ***Agree.*** **This is subjective and may be difficult to apply in practice. More guidance should be provided.**

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

- ✓ ***Agree***

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

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

☐ *No*

We do not have any view.

WORKING CAPITAL SUFFICIENCY

Paragraph 57 of Part B of the Consultation Paper

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

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

✓ ***Agree***

Paragraph 58 of Part B of the Consultation Paper

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

(a) has obtained written confirmation from the listing applicant that the working capital available to the group is sufficient for its present requirements, and for at least the next 12 months from the date of publication of the initial listing document; and

(b) is satisfied that the confirmation in paragraph 58(a) of Part B of the Consultation Paper has been given after due and careful enquiry by the listing applicant and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.

Q15. Do you agree with our proposal?

- ✓ ***Agree.*** **The period covered should not be longer than 12 months.**

MARKET CAPITALISATION

Paragraph 67 of Part B of the Consultation Paper

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

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

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

✓ ***Agree.*** **The proposal is in the right direction but it should not be an ongoing requirement.**

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

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

✓ ***Agree***

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

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

✗ ***Disagree.*** **Securities of a different class which are traded on other markets should be disregard. One of the key reasons for a minimum Hong Kong market capitalization is to provide comfort that there will be meaningful market for the securities in Hong Kong. The fact that securities of a different class are traded elsewhere may not be a significant factor in the context of liquidity and so forth in Hong Kong.**

Paragraph 68 of Part B of the Consultation Paper

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

Q19. Do you agree with our proposal?

- ✓ ***Agree***

PUBLIC FLOAT

Paragraph 73 of Part B of the Consultation Paper

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

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

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

✓ ***Agree***

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

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

✓ ***Agree***

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

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

✗ ***Disagree.*** **At least 25% of the securities listed on the Hong Kong Stock Exchange should be in public hands regardless of the percentage of total securities (including other types of securities listed overseas) which may be in public hands. It is important to focus on the percentage of the class of securities listed in Hong Kong which are publicly held. There should also be an adequate spread of shareholders.**

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

☐ *Agree (please answer Q24)*

☐ *Disagree (please tick one of the following)*

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

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

Please refer to comments in Q.22.

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

☐ *Agree*

☐ *Disagree. The threshold of the aggregate market capitalization represented by the 10% of the listing applicant's issued share capital should be HK$_____ . Please sate reasons(s) for your view:*

Please refer to comments in Q.22.

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

☐ *Agree.*

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

Please refer to comments in Q.22.

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

☐ *Agree.*

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

Please refer to comments in Q.22.

Paragraph 74 of Part B of the Consultation Paper

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

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

✓ ***Agree***

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

✓ ***Agree***

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

- ✓ ***Agree.*** **Further clarification and guidance should be provided with the proposal.**

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

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

☐ *No*

We do not have any view.

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

✕ ***Disagree*. All issuers should be treated equally. Such issuers should be given a suitable grace period (say 12 months) in which to comply.**

SPREAD OF SHAREHOLDERS

Paragraph 82 of Part B of the Consultation Paper

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

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

✕ ***Disagree.*** **The proposed change is too drastic and the number of shareholders required is too high.**

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

✕ ***Disagree.*** **The proposed change is too drastic and the number of shareholders required is too high.**

Paragraph 83 of Part B of the Consultation Paper

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

Q34. Do you agree with our proposal?

- ✕ ***Disagree*. In principle there should be a rule aimed at ensuring that the public float is diversely held and not concentrated in a few hands. However, the proposed requirement that the top 5 public shareholders should not hold more than 50% of the public float at time of listing is too restrictive.**

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

- ✓ ***Agree.*** **Beneficial ownership may be difficult to establish.**

Paragraph 84 of Part B of the Consultation Paper

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

Q36. Do you agree with our proposal?

- ✓ ***Agree***

Paragraph 85 of Part B of the Consultation Paper

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

Q37. Do you agree with our proposal?

- ✓ ***Agree***

MINIMUM ISSUE PRICE

Paragraph 93 of Part B of the Consultation Paper

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

Q38. Do you agree with our proposal?

✕ ***Disagree.*** **Price of shares is irrelevant.**

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

Please refer to our comments in Q.38.

MINERAL COMPANIES

Paragraph 98 of Part B of the Consultation Paper

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

Q40. Do you agree with our proposal?

✕ ***Disagree.*** **Part ownership and management continuity are irrelevant to new mineral companies embarking on new exploration; the previous experience of the promoter and management is. Mineral companies should be considered separately. There should be an avenue for them to raise funds.**

Paragraph 99 of Part B of the Consultation Paper

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

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

✕ ***Disagree.*** **Please refer to our comments in Q.40.**

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

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

_____

☐ *No*

We do not have any view.

INFRASTRUCTURE COMPANIES

Paragraph 103 of Part B of the Consultation Paper

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

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

- ✓ ***Agree***

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

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

Paragraph 104 of Part B of the Consultation Paper

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

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

- ✓ ***Agree***

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

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

☐ *No*

We do not have any view.

DEEMED NEW LISTING

Paragraph 109 of Part B of the Consultation Paper

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

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

Q47. Do you agree with our proposal?

✗ ***Disagree.*** **Present requirements already have sufficient controls and rules. The proposals will result in more companies becoming unsuitable for listing and will make it harder for companies which find themselves in difficulties to be turned around by cash injections, business acquisitions, disposals of non-performing businesses and/or debt restructuring. Accordingly, there needs to be a cost-benefit analysis carried out before the proposals are implemented.**

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

(i) the asset to be injected must meet:

- the track record requirement inclusive of trading record period and management and ownership continuity requirements; and
- the financial standards requirement.

Q48. Do you agree with our proposal?

✗ ***Disagree.*** **Please refer to our comments in Q.47.**

(ii) the enlarged group of the existing issuer, or NewCo, must meet:

- the working capital sufficiency requirement;
- the market capitalisation requirement;
- the public float requirement; and
- the minimum issue price requirement, as represented by the value of the consideration shares.

Q49. Do you agree with our proposal?

✗ ***Disagree.*** **Please refer to our comments in Q.47.**

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

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

Q50. Do you agree with our proposal?

- ✗ ***Disagree.*** **Please refer to our comments in Q.47.**

MARKET'S VIEW

Paragraph 110 of Part B of the Consultation Paper

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

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

✗ ***No.*** **Please see our answers to each specific question.**

EFFECTIVE DATE

Paragraph 111 of Part B of the Consultation Paper

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

Q52. Do you agree with our proposal?

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

Q.53 to Q.82 relate to Part C on "Continuing Listing Eligibility Criteria" which has been withdrawn

PART D OF THE CONSULTATION PAPAR
CONTINUING OBLIGATIONS

GENERAL

Paragraph 185 of Part D of the Consultation Paper

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

Q82. Do you agree with our proposal?

✗ **Disagree. The proposal as drafted is simply too vague and subjective to elicit a meaningful and weighted response. The possibility of unequal and arbitrary treatment being applied is too great.**

PUBLIC FLOAT

Paragraph 193 of Part D of the Consultation Paper

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

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

✓ ***Agree***

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

✓ ***Agree***

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

✓ ***Agree***

Paragraph 194 of Part D of the Consultation Paper

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

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

✓ ***Agree***

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

✓ ***Agree***

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

- ✓ ***Agree.*** **The threat of delisting should not place additional pressure on shareholders to accept an offer. Even if the float is less than 10%, there should be no suspension. All this does is making it more difficult for the issuer to place down. These proposals are unfair to shareholders. The SEHK can monitor trading to ensure that there is no false market, or if it does, suspend temporarily.**

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

✓ ***Agree***

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

Not possible to specify a time limit which varies with market conditions.

Paragraph 195 of Part D of the Consultation Paper

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

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

Q91. Do you agree with our proposal?

✗ ***Disagree.*** **A company which was permitted on listing to have a lower percentage in public hands may find its market capitalization fall if its share price falls. Other companies which may grow to be very successful and have market capitalisations for exceeding HK$10 billion would however not be permitted the same public float relaxation. There would appear to be inequality of treatment in such circumstances. Moreover, a market capitalization achieved over years of trading on the Exchange may be a much better reflection of the worth of a company than the expected initial market capitalization on IPO. Surely it is the size of the market capitalization which gives comfort in terms of the relaxation.**

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

Q92. Do you agree with our proposal?

- ✗ ***Disagree.*** **Regard must be had to long term market capitalisation. For example, if the company's market capitalisation remains consistently below a given threshold (say HK$5 billion) for a period of time (say 6 months) then the relaxation should be withdrawn and adequate time given for the company to comply with the 25% requirement.**

Paragraph 196 of Part D of the Consultation Paper

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

Q93. Do you agree with our proposal?

- ✓ ***Agree***

SPREAD OF SHAREHOLDERS

Paragraph 201 of Part D of the Consultation Paper

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

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

✗ ***Disagree.*** **The Exchange appears to recognise that this is difficult to monitor and that for a company to investigate the spread of its shareholder base would impose a cost on the listed company.**

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

✗ ***Disagree.*** **Please refer to our comments in Q.94.**

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

✗ ***Disagree.*** **Please refer to our comments in Q.94.**

Paragraph 202 of Part D of the Consultation Paper

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

Q97. Do you agree with our proposal?

✕ ***Disagree.*** **Please refer to our comments in Q.94.**

Paragraph 203 of Part D of the Consultation Paper

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

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

✕ ***Disagree.*** **Please refer to our comments in Q.32 and Q.94.**

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

✕ **Disagree with the introduction of the proposed rule in the first place.**

TIMELINESS OF ACCOUNTS

Paragraph 206 of Part D of the Consultation Paper

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

Q100. Do you agree with our proposal?

- ✗ ***Disagree.*** **Given that those issuers that failed to publish their financial results on the due date were commonly facing problems, e.g. debt restructuring, change of ownership, the Exchange should not deny shareholders the opportunity to sell-off their shares in those problem companies by suspending the trading of securities of such companies. Such a suspension would be detrimental to the interests of minority shareholders, as it would result in locking-up the minority shareholding in the problem companies, the share price of which might probably drop substantially once the shares resumed trading.**

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

Depends on circumstances of the case.

PROVISION OF INFORMATION TO THE EXCHANGE

Paragraph 208 of Part D of the Consultation Paper

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

Q102. Do you agree with our proposal?

- ✗ ***Disagree*. May not be in the best interest of minorities if suspended. The Exchange should sanction the management responsible in such circumstances. The Exchange should not sanction or penalize all the shareholders by (as would appear to be the implication) putting the company in a position where it has failed to comply with its continuing obligations and suspending and/or commencing delisting of the company.**

CORPORATE GOVERNANCE

Paragraph 209 of Part D of the Consultation Paper

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

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

In view of the growing complexity of financial reporting and corporate financial transactions, there should be a requirement for a mandatory appointment of a CFO at board level, with designated responsibility for the finance function, who should be a signatory to the financial statements on behalf of the board, and have the right of access to the Audit Committee. We believe the appointment of a locally qualified accountant with special responsibility for the financial statements will give better assurance of the quality of accounting information and its compliance with generally accepted accounting principles. In this way, the preparer of the accounts is subject to the regulation of the Hong Kong Society of Accountants to maintain high professional standards and is directly accountable to the Society for his professional conduct. This gives added protection to minority shareholders and is in the public interest. This is one of the recommended measures to improve corporate governance set out in the Society's "Report of the Working Group on Corporate Governance" which was published in December 1995.

EFFECTIVE DATE

Paragraph 210 of Part D of the Consultation Paper

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

Q104. Do you agree with our proposal?

✗ ***Disagree.*** **We do not agree with many of the proposals.**

CANCELLATION OF LISTING PROCEDURES

Paragraph 219 of Part E of the Consultation Paper

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

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

✗ ***Disagree for the following reasons:***

1. **This proposal is heavily reliant on Part C and can only be properly considered in conjunction with Part C. A fair and reasonable consultation process for Part E can only be contemplated once Part C has been finalised. We respectfully submit that any consideration of Part E be delayed until the consultation period for Part C is completed.**

2. **Subject to point 1, above, and our comments on the Exchange's use and misunderstanding of insolvency terms below, we consider that it is inappropriate for the appointment of a Liquidator, Provisional Liquidator or Receiver in itself to trigger the commencement of the delisting procedures.**

   A growing theme worldwide has been to develop a "rescue culture" whereby businesses are saved for the benefit of the stakeholders including creditors, shareholders, employees, unions, customers, suppliers, government and anyone else with an interest in the business. It is frequently impossible to achieve such a rescue without the imposition of a moratorium on creditors' actions because otherwise those seeking the rescue will be held to ransom by those with short term interests. Under Hong Kong law, moratoriums are only available through the appointment of an external, independent person, such as a Liquidator, Provisional Liquidator or Receiver. To deny a re-listing in these circumstances is to defy both the current worldwide movement on the rescue of businesses in trouble and the Hong Kong courts, which have long recognised that, for example Provisional Liquidators have, and should have the power to effect rescues.

   This "rescue culture" has received the strong support of the High Court of Hong Kong in Hong Kong in recent years where the Courts have initiated, assisted and monitored the rescue of listed Hong Kong companies facing financial difficulties by, broadly, appointing insolvency administrators to those listed companies in order to initiate and facilitate a restructuring, provided those practitioners with the power necessary to facilitate the rescue and allowed and supported adjournments of many months in order for these rescues to be successfully concluded.

   Our members are familiar of a number of instances where companies in considerable financial difficulties have struggled on in circumstances where a Liquidator, Provisional Liquidator or Receiver would normally have been appointed but have not for technical reasons, such as to avoid triggering the

determination of contracts with third parties. The process has taken much longer, proved much more painful and been a lot riskier than it would have been with a statutory moratorium. It cannot be correct to encourage this sort of rescue but prevent the easier and more certain route.

Exacerbating this mis-direction will worsen the current state of the Hong Kong economy. With no immediate recovery in sight, all steps possible should be taken to encourage and facilitate liquidity and growth. Blocking the opportunity to salvage a business in difficulties will further harm the economy.

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3. It is unclear whether the Consultation Paper is seeking to introduce the de-listing procedures on the mere presentation of a winding-up petition but this will lead to significant abuses. The presentation of a winding-up petition is recognised as a means of enforcing debts. If such a proposal were implemented, a person with a claim against Hong Kong's major institutions could present a winding-up petition in Hong Kong or in another jurisdiction. The consequences are obvious and it is even easier to present a winding-up petition if there are allegations of unfair prejudice to minority shareholders.

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4. The arguments for allowing much longer periods for a company in financial difficulties to restructure are valid and the processes currently in place have, in recent times, resulted in substantial benefit for shareholders and creditors of listed Hong Kong companies. A survey of the members who have assisted with this response to the Consultation Paper highlighted approximately 15 rescues of insolvent listed companies in Hong Kong through formal insolvency procedures which have provided financial benefits to the stakeholders concerned of at least HK$1 billion. This preliminary assessment makes no estimate of the ongoing benefits available to other stakeholders such as employees, suppliers and the Hong Kong economy.

While restructuring proposals often involve a substantial dilution of existing shareholders' equity interests, shareholders are invariably better off with a much diluted shareholding in a restructured issuer then an undiluted shareholding in an insolvent company or a company which has been wound up. A small return of their investment will always to be preferred to a total loss.

We consider that it should not be for the Exchange to dictate to shareholders what they should or should not be entitled to or to ignore the shareholders interest in a distressed company. Regardless of the dilution that shareholders invariably suffer when a distressed entity is to be restructured, any decision in relation to a shareholder's interest belongs to that shareholder alone.

The Exchange has also set out that "*creditors and controlling shareholders tend to benefit the most from any rescue proposals.*" We can see no basis for the proposition that controlling shareholders benefit the most and, in their experience, controlling shareholders are not treated any differently to all other shareholders when distressed companies are restructured.

The proposals put forward in the Consultation Paper lack any assessment of the costs and benefits of the proposals to Hong Kong. As a statutory body which has a monopoly in respect of the regulation of the share market in

Hong Kong, it is incumbent upon the Exchange to consider the costs and benefits of the proposals on Hong Kong as a whole as an integral part of any consultation and assessment of the Proposals. With that flow responsibilities for the Exchange in respect of all participants including the Hong Kong business investment community. The current proposals, if implemented, will lead to a scenario whereby Hong Kong's smaller businesses and those in financial difficulty and Hong Kong's typically smaller retail investors will be no longer afforded the assistance and protection of this monopoly. Further, the Exchange does not appear to have considered what mechanisms and platforms will be available for these businesses and shareholders once the Proposals associated with delisting are implemented.

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5. **At paragraph 214 the Consultation Paper sets out that the Exchange "*aim at shortening the whole delisting process*" without substantiating why this is necessary or the benefits associated with it. As evidenced from the examples set out above, the current processes in place in relation to distressed entities and their restructuring indicates that the current processes work well and that there are substantial benefits to be derived from them by all of the company's stakeholders including the shareholders, creditors and employees. Further, as set out herein, the timeframes recommended are not realistic or practical and require further thought and reasoning.**

   The proposals ignore the precedent established by the Courts in Hong Kong in recent times (and much earlier in other jurisdictions) to provide listed companies in financial difficulty with a sufficient and reasonable timeframe with which to investigate, negotiate and facilitate a restructuring proposal. By way of example, the Court will adjourn winding-up petitions against companies in difficulty in order to allow rescue proposals to be pursued and implemented. These adjournments are based on substantial information put before the Courts to set out the work undertaken and the work required to facilitate a restructuring and regularly exceed 6 to 9 months. In a recent example adjournments were provided for a period of approximately 18 months in order to allow a restructuring proposal which was clearly preferred by the Company's stakeholders.

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6. **Listed companies trading in Hong Kong may have been trading for decades before encountering financial difficulties. As a result, it is not uncommon for many aspects of the businesses developed over this period and the transactions entered into to require review or attention in the restructuring process. The fact that this may require 12 to 18 months to complete is neither surprising nor negative.**

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7. **The suggestion that the interests of minority shareholders can be adequately protected by increasing the transparency of the delisting criteria is seriously flawed. Suspensions, delistings and similar restrictions deprive shareholders of any opportunity to dispose of their shares. Any proposals which would have the effect of limiting the scope for restructuring insolvent companies can only penalise shareholders and in particular shareholders with minority interests (who will already be facing significant losses). Such proposals are inappropriate both as a matter of procedural fairness and in terms of the way in which the Exchange is viewed as owing duties to both a listed issuer and its shareholders.**

NEW DELISTING PROCEDURES

Paragraph 221 of Part E of the Consultation Paper

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

(a) the Exchange will notify the issuer in writing of the fact that the issuer has failed to meet any one or more of the relevant continuing listing eligibility criteria. The Exchange will also issue an announcement notifying the public of such fact;

(b) the securities of the issuer will continue trading until the Exchange issues an announcement notifying the date of when the securities of the issuer will cease trading and the listing status of the securities will be cancelled. However, in case of prolonged suspension where the Exchange does not see the justification for the continued suspension, the Exchange may, where circumstances require, exercise its power under the Main Board Rules to direct resumption;

(c) the issuer will be required to submit to the Exchange, within 1 month from the date of the Exchange's notification (the "One-Month Period"), a proposal (and not multiple proposals) with definitive action that the issuer has taken, or is in the course of taking, which if implemented, would restore the issuer to long-term, sustained compliance with the continuing listing eligibility criteria (the "Proposal"). The Proposal must demonstrate how the issuer will achieve long-term, sustained compliance with the continuing listing eligibility criteria. Examples of matters that the Exchange will consider in determining whether a proposal is acceptable include whether there is a legally binding agreement that is in compliance with the Main Board Rules and the implementation of which is likely to result in long-term, sustained compliance. If the issuer fails to submit the Proposal within the One-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement. The Exchange will only consider the Proposal. No other proposals will be considered. The Exchange will also not allow any amendment to the Proposal;

(d) the issuer may appeal against the decision of the Exchange to cancel the listing of its securities upon its failure to submit the Proposal within the One-Month Period in accordance with such procedures and within such time as prescribed by the Exchange from time to time;

(e) the Exchange will review the Proposal and determine as to whether the Proposal has demonstrated a reasonable case of being able to bring the issuer back to conformity with the relevant continuing listing eligibility criteria. The Exchange will notify the issuer in writing and will require the issuer to issue an announcement notifying the public of its determination relating to the Proposal;

(f) if the Exchange accepts the Proposal, the issuer has 6 months from the date of the Exchange's notification of determination (the "Six-Month Period") to implement the Proposal. The issuer is required to provide monthly updates of its progress in implementing the Proposal during the Six-Month Period. If the issuer fails to implement the Proposal at the end of the Six-Month Period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;

(g) the Exchange may at its absolute discretion, require immediate suspension of the issuer's securities at any time during the Six-Month Period should circumstances necessitate it;

(h) if the Exchange does not accept the Proposal, the Exchange will notify the issuer in writing of the determination to cancel the listing of the securities of the issuer and setting out the basis for such decision (the "Decision Letter");

(i) the issuer will have the right to appeal to the relevant Committee that has the authority to consider the appeal matters ("Relevant Committee") against the decision of the Exchange to cancel the listing of the issuer's securities. The appeal must be lodged by the issuer within such time as prescribed by the Exchange from time to time and set out in the Decision Letter;

(j) if the issuer does not lodge the appeal within the stipulated period, the Exchange shall proceed immediately to cancel the listing of the issuer's securities and inform the public of the status by way of an announcement;

(k) if the Relevant Committee decides in favour of the Exchange's decision to cancel the listing of the securities of the issuer, the Exchange shall proceed immediately to cancel the listing of the issuer's securities in accordance with the decision of the Relevant Committee and inform the public of the status by way of an announcement; and

(l) if the Relevant Committee decides that the Proposal is acceptable, the issuer has 6 months from the date of the decision of the Relevant Committee to implement the Proposal. The issuer must inform the public of the status by way of an announcement on the next business day following receipt of the Exchange's notification letter regarding the decision of the Relevant Committee.

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

✕ ***Disagree for the following reasons:***

1. **Please refer to our answer to point 1 of our answer to Q.105 – this proposal cannot be properly considered without Part C.**

2. **The Exchange's proposal to issue an announcement that a company has failed to meet the continuing listing eligibility criteria without any input or review from or consultation with, the issuer is a substantial step with potentially disastrous ramifications. We consider that for an announcement to be issued without a consultation process with the issuer is unreasonable and procedurally unfair. Please contrast this with paragraph 221(1) where the issuer is responsible for the announcement where a proposal is accepted.**

3. **It is our view that a deadline of one month to submit a proposal is obviously inadequate and unreasonable. Any distressed restructuring will often involve the introduction of persons independent of the company, such as legal and financial advisers and investors and their advisers, and these people will know little if anything about the company. In our experience, a one month period will not be sufficient for any outsider to properly understand the company's state of affairs and the options available to it or negotiate the best result possible for the company's stakeholders.**

4. **Where the company's financial position may result in the appointment of a Liquidator, Provisional Liquidator or Receiver, the proposed one month deadline will be impossible to meet. Any Liquidator, Provisional Liquidator or Receiver will be independent and will have little or no understanding of the company's affairs. It will however be incumbent on him to undertake at least the following work before being able to proceed with a restructuring exercise:**

   a. collect and protect all books and records;
   b. identify and protect all assets and undertakings'
   c. understand and stabilise the company's business;
   d. assess the financial position of the company and the merits associated with a restructuring of the company; and
   e. brief and instruct the necessary advisers.

   As we trust is clear, it is highly likely that many months will pass before a distressed company in this situation is able to contemplate a restructuring let alone pursue, negotiate and settle a proposal (while consulting and providing the necessary information to shareholders and creditors).

   Further, in such circumstances (and indeed, even without such circumstances), a one month period will not permit any reasonable timeframe within which to conduct due diligence, take necessary advice (and, if necessary, seek rulings) undertake negotiations and consult with stakeholders. This is highly likely to lead to situations where the stakeholders, including the minority shareholders, will be forced to accept less than a fully negotiated value for their interests.

   The Liquidator, Provisional Liquidator or Receiver will need a period to conduct negotiations in order to obtain the best deal. These negotiations will typically involve a number of potential investors, the major creditors, shareholders and management. These are complex negotiations and it is critical that sufficient time is given to the Liquidator, Provisional Liquidator or Receiver to negotiate a proposal which has good prospects of success. We suggest that the current delisting procedure gives an adequate timeframe in which these negotiations can take place. An absolute minimum period to ensure that properly formulated proposals can be produced which have a good prospect of success would be six to nine months from the appointment of the Liquidator, Provisional Liquidator or Receiver and we recommend that if the Exchange believes an absolute timetable is necessary then a period of 12 months should be considered.

It is not uncommon for creditors and other stakeholders to pursue the appointment of a Liquidator, Provisional Liquidator or Receiver to ensure that all parties are treated fairly, in circumstances where the stakeholders have lost faith in management's ability to resolve the company's problems and the directors continue to oppose the attempts to appoint this independent person. Where this is the case, rarely does such opposition cease upon the appointment of a Provisional Liquidator or Receiver. Accordingly, our members frequently are faced with appeals to the Court and difficulties in identifying and taking control of important assets and books and records. Unfortunately, such behaviour is common in distressed circumstances and the timetables proposed would frequently prove disastrous for all the company's stakeholders.

Put simply, the process required to properly assess a company's affairs and structure and negotiate a reasonable proposal requires substantially more than one month and the Exchange's proposal in this regard is neither fair nor reasonable.

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5. **The Exchange has provided no basis for (and we cannot understand the basis for) the Exchange not being able to consider, and the stakeholders not having the benefit of, more than one proposal. There will often be frequent changes in the company's circumstances in this situation and the need for revised or new proposals has been readily accepted by Courts in Hong Kong and elsewhere. Procedural and practical fairness requires that a company should be entitled to submit as many proposals as it needs to within the (suggested) 6 month time period.**

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6. **We are also concerned that there are a number of disadvantages to the one proposal rule. The following are reasons why seeking to impose a limit of one proposal and not allowing amendments is impractical, unreasonable and procedurally unfair:**

   a. **any proposals will be based on the information available at any given time. If this changes it will frequently be in everyone's interest to terminate or modify the proposal or it may (simply) be necessary to assess the proposal for this information;**
   b. **one investor may withdraw for reasons beyond the company's control but the company should not be prohibited from considering other proposals;**
   c. **it may be possible to identify and negotiate better proposals for all stakeholders but the introduction of a single proposal would force the company to complete the deal with the investor proposed, leading to a major shift in the bargaining power of the company to the disadvantage of is stakeholders; and**
   d. **it is common for investors, companies and regulators to have different interpretations of rules, regulations and other requirements. This is the case today, notwithstanding the years they have been in place and the number of rescue proposals that have considered them, and is likely to increase with the proposed amendments rather than decrease.**

The current process allows these matters to be resolved through negotiation and consultation so that the resultant agreements can then be amended. This is fair and reasonable. The current proposals in this regard are neither fair nor reasonable.

7. **We believe the appeal process referred to in paragraph 221(d) is a positive step but caution that, in light of the unreasonableness of the other aspects of Part E which proceed this paragraph, it will be extremely likely that this appeal process will be used frequently and will become a standard part of the restructuring proposal process. This will have a disastrous effect on the ability of the company to meet deadlines and will significantly increase the resources which the Exchange will have to devote to this area. By adopting some of the recommendations made in this questionnaire, it will be possible to ease the financial, administrative and time burden that this appeal process will entail.**

8. **A six month period for the implementation of a proposal from the date of its acceptance by the Exchange should be achievable in any straightforward transaction or restructuring. In all cases, it is in the interests of all stakeholders for the proposal to be progressed as quickly as possible. But in difficult cases a six month period will be too short and will heavily penalise all stakeholders. Experience has shown that the existing procedures (while not perfect) provides adequate time to deal with difficult cases and, on that basis, we strongly disagree with an absolute six month time period. This is primarily because an infrastructure or understanding has been developed and adopted by listed companies, Courts, regulators and practitioners on the basis of the current processes and systems over many years and where necessary the Courts and regulators have adapted their own rules and processes to ensure rescues remain possible.**

   The restructuring of distressed companies often covers a number of areas which are outside the various parties' control and therefore require for flexibility. This includes the timetables of the courts in various jurisdictions for court approved schemes of arrangement and the often unpredictable but usually lengthy timeframe required in order to meet regulatory obligations in the PRC, such as those associated with MOFTEC, COFTEC or SAIC registration. Often, particularly in relation to the PRC approval process, these steps must be carried out sequentially and there is little or no room for any parallel processing of the applications. It is unreasonable to penalise the stakeholders because an arbitrary deadline is not met owing to the failure of a court to process the case or a regulatory delay in the PRC. We believe a more practical and reasonable solution, if the Exchange is determined to shorten existing timing, is to review the progress of the resumption proposal after a twelve month period and then proceed to the delisting procedures only if the Exchange is not satisfied with the progress.

   Not allowing any amendments to a proposal is unfair and unreasonable – particularly if combined with a short deadline within which to submit a single definitive proposal.

Paragraph 222 of Part E of the Consultation Paper

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

Q107. Do you agree with our proposal?

✕ ***Disagree for the following reasons:***

1. **We are concerned that the information set out in paragraph 136 of Part C of the Questionnaire and the information set out in Part E displays an inadequate understanding of the role, powers and authority of Provisional Liquidators, Liquidators and Receiverships and the processes associated with them.**

2. **Paragraph 136 contains a definition of "provisional liquidation" which is incorrect and is not consistent with the definitions used for that term around the world. It is true that a Provisional Liquidator can be appointed once a winding-up petition has been issued but before a winding-up order has been made but it does not follow that the presentation of a winding-up order will lead to the appointment of a Provisional Liquidator or the liquidation of the company. In a substantial majority of cases around the world, the mere issuing of a winding-up petition does not lead to the appointment of a Provisional Liquidator or, indeed, have any practical effect on the conduct of the affairs of the company. Importantly, notwithstanding the issue of the winding-up petition, the company which is the subject of such a petition will remain in the hands of and subject to the control of its directors who will be charged with and are entitled to defend such a petition.**

3. **The Exchange should take advice in relation to this matter and also in relation to the practical and commercial use of winding-up petitions and winding-up orders. Winding-up petitions are presented by one side of a dispute, usually without prior court approval or sanction. They are often used in Hong Kong and elsewhere as a debt collection or dispute resolution device but, for instance, in shareholder disputes, may not signify that a company is in financial difficulties. It is unfair and unreasonable (and substantially improper) to impose any of penalty on a company solely because it is the subject of a winding-up petition and we believe that any company who was the victim of such a ruling would have no difficulty in setting the Exchange's decision aside in the court.**

4. **Further, we do not believe that the delisting procedures should apply just where a company or any of its subsidiaries have been served with a winding-up petition. Any process which considers the implication of a winding-up petition should not ignore the status of the company's business and assets and should also be mindful that it is open for a variety of stakeholders to satisfy the demand underpinning the petition or to seek to show it is without merit. It may also be possible for a Liquidator, in a relatively short time, to realise sufficient assets or undertake other transactions which are able to return the company to solvency. In these circumstances, the imposition of substantial penalties as a result of the winding-up petition or winding-up order are unfair and unreasonable.**

Broadly, any action to be taken by the Exchange as a result of winding-up order should only be undertaken when there are no prospects of a successful re-organisation which will be of advantage to the company stakeholders.

5. **We strongly disagree that an issuer which has been the subject of a winding-up order (normally described as having a winding-up order made against it) should be immediately delisted. In at least four recent cases in which our members have been involved, substantial value has been generated for stakeholders by assistance given by the company in liquidation to the listing by way of introduction of another applicant. While we appreciate that these are difficult and time consuming transactions, substantial value was derived for all stakeholders notwithstanding a winding-up order. The Stock Exchange should not unilaterally deprive shareholders of the realisations available to them from the assets in which they have an interest.**

6. **We also strongly urge the Exchange to seek appropriate advice in relation to the role, power and authority of a Receiver. We have assumed for the purposes of this Questionnaire that the Exchange is referring only to the appointment of a Receiver over all the assets of an issuer. We say that because it is usually possible for a secured lender to appoint a Receiver over individual assets of the company and it is unfair and unreasonable for such a severe penalty to flow from the appointment over discrete assets. The Consultation Paper does not appear to consider a court appointed Receiver but the distinction of what is a quite different role should be made.**

7. **The proposals contemplated by the Exchange in this section are unbalanced in that they are limited to only three possible insolvency appointments. The ramifications of what is likely to happen upon the appointment of creditors voluntary liquidators or members voluntary liquidators (both of which can occur without an order of the court) must be considered.**

8. **We do not agree that the delisting timetable should not alter upon the appointment of a Liquidator, Provisional Liquidator or Receiver. If a Provisional Liquidator, Liquidator or Receiver is appointed to an issuer, the timetable should start to run from the date of that appointment. The primary reason for this is that the persons who take these are experts in implementing rescue proposals while the management that precedes them cannot be expected to have this expertise.**

9. **We often find that attempts by creditors to appoint a Liquidator, Provisional Liquidators, or Receiver are generally associated with a lack of trust in the current management whether it is a result of a specific transaction undertaken by them or by pursuit of non-independent restructuring proposals. The time spent by management in putting together a proposal which may not be in the best interests of the stakeholders should not count against the time in which the Liquidator, Provisional Liquidator or Receivers have to produce workable proposal which is in the best interests of all stakeholders.**

NEW IMMEDIATE-DELISTING PROCEDURES FOR ISSUERS IN LIQUIDATION

Paragraphs 223 and 224 of Part E of the Consultation Paper

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

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

Q108. Do you agree with our proposal?

✕ ***Disagree for the following reasons:***

1. Our comments as stated in point 2 to Q107.

2. Further, as set out in point 5 to our response to Q107, such a proposal will penalise stakeholders for the actions or inaction of the incumbent directors which usually leads to the appointment of the insolvency practitioner.

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

✕ ***No.*** **This matter cannot be properly considered without a full consideration of Part C.**

SPECIAL CIRCUMSTANCES

Market Capitalisation

Paragraph 226 of Part E of the Consultation Paper

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

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

- ✕ ***Disagree.*** **This matter is impossible to consider and address without a full consideration and assessment of Part C.**

Minimum Share Price

Paragraph 227 of Part E of the Consultation Paper

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

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

✕ ***Disagree.*** **This matter is impossible to consider and address without a full consideration and assessment of Part C.**

EFFECTIVE DATE

Paragraph 228 of Part E of the Consultation Paper

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

Q112. Do you agree with our proposal?

- ✕ ***Disagree.*** **We do not agree with the new delisting proposals. However, if such and any proposals are to be adopted then an appropriate grace period should be provided to reflect the potentially drastic consequences which the new proposals will have for, in particular, shareholders of companies in financial difficulties and to allow all those concerned to seek the necessary advice and try to implement remedies before the changes effect them. In our view, a reasonable transitional period of 18 months should be provided.**

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

GENERAL

Paragraph 232 of Part F of the Consultation Paper

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

Q113. Do you agree with our proposal?

- ✓ ***Agree*** **but subject to disclosure only. It depends on individual circumstances. See our comments in Q.115.**

PROTECTION OF SHAREHOLDERS' RIGHTS

Over-allotment Option and Price Stabilising Activities

Paragraph 234 of Part F of the Consultation Paper

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

(a) confirmation that the price stabilising activities will be entered into in accordance with the laws, rules and regulations in place in Hong Kong on stabilisation;

(b) the reason for entering into the price stabilising activities;

(c) the number of shares subject to the over-allotment option, the option price, whether the shares issued or sold under an over-allotment option are to be issued or sold on the same terms and conditions as the shares that are subject to the main offering;

(d) whether there are any other terms, such as the duration, of the option; and

(e) the purpose for which the option has been granted.

Q114. Do you agree with our proposal?

- ✓ ***Agree***

DIRECTORS AND BOARD PRACTICES

Information about the Listing Applicant's Past Corporate Governance Practices

Paragraph 237 of Part F of the Consultation Paper

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

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

(b) whether the listing applicant was able to meet the minimum standard in the Code of Best Practice and its own code (if any). If not, details of any deviations or non-existence of the minimum standard should be disclosed;

(c) whether the listing applicant had an audit committee or other specialised committees, and details on their role and function, composition and work performed by such committee; and

(d) internal controls over the listing applicant's financial, operational and compliance matters and risk management.

Q115. Do you agree with our proposal?

✕ ***Disagree.*** **Three-year financial track record period may be too long. Should consider restricting proposal to one year.**

CORPORATE REPORTING AND DISCLOSURE OF INFORMATION

Information about the Persons in Control of the Listing Applicant

Paragraph 239 of Part F of the Consultation Paper

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

Q116. Do you agree with our proposal?

- ✓ ***Agree***

Accounts and Financial Information

Paragraph 243 of Part F of the Consultation Paper

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

Q117. Do you agree with our proposal?

- ✓ ***Agree***

Paragraph 244 of Part F of the Consultation Paper

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

Q118. Do you agree with our proposal?

✕ ***Disagree.*** **This proposal does not take into account the practical difficulties involved. For certain applicants, the proposal would be impractical to adhere to. The Exchange must recognise that the date upon which the listing application is heard by Listing Committee is subject to change and rescheduling and that some companies wish to carry out a road show after the hearing but prior to issue of the listing document. Such a proposal would be very difficult to comply with, particularly for H share companies.**

The Management

Paragraph 247 of Part F of the Consultation Paper

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

Q119. Do you agree with our proposal?

- ✓ ***Agree***

Paragraph 248 of Part F of the Consultation Paper

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

Q120. Do you agree with our proposal?

- ✓ ***Agree***

Prospects of the Group

Paragraph 250 of Part F of the Consultation Paper

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

Q121 Do you agree with our proposal?

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- ✓ ***Agree***

EFFECTIVE DATE

Paragraph 251 of Part F of the Consultation Paper

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

Q122. Do you agree with our proposal?

- ✗ ***Disagree*. Should only apply to new applicants.**