

Consultation Paper

# Proposed Amendments to Listing Rules Relating to Treasury Shares

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## HOW TO RESPOND TO THIS CONSULTATION PAPER

The Exchange, a wholly owned subsidiary of HKEX, invites written comments on the matters discussed in this paper, or comments on related matters that might have an impact upon the matters discussed in this paper, on or before **27 December 2023**.

You may submit written comments by completing the questionnaire which can be accessed via the link and QR code below:

Link: [https://surveys.hkex.com.hk/jfe/form/SV\\_81XiEIN0YD7LvUO](https://surveys.hkex.com.hk/jfe/form/SV_81XiEIN0YD7LvUO)

QR code:



Our submission enquiry number is (852) 2840-3844.

Respondents are reminded that the Exchange will publish responses on a named basis. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in Appendix II.

Submissions received during the consultation period by **27 December 2023** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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## DEFINITIONS

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TERM	DEFINITION
“BVI”	British Virgin Islands
“Canada (BC)”	British Columbia, Canada
“Codes”	The Takeovers Code and the Share Buy-backs Code
“Companies Ordinance”	The Companies Ordinance (Cap.622) as amended from time to time
“CWUMPO”	The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as amended from time to time
“CSRC”	China Securities Regulatory Commission
“Exchange”	The Stock Exchange of Hong Kong Limited, a wholly owned subsidiary of HKEX
“FSTB”	The Financial Services and the Treasury Bureau of Hong Kong
“GEM Rules”	The Rules Governing the Listing of Securities on GEM
“HKEX”	Hong Kong Exchanges and Clearing Limited
“Listing Rules” or “Rules”	The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Main Board unless otherwise stated)
“LSE”	The London Stock Exchange
“Main Board”	The Main Board of the Exchange
“NYSE”	New York Stock Exchange
“PRC”	For purposes of the Exchange Listing Rules, the People’s Republic of China, other than the regions of Hong Kong, Macau and Taiwan
“SFC”	The Securities and Futures Commission
“SFO”	The Securities and Futures Ordinance (Cap. 571) as amended from time to time
“SGX”	Singapore Stock Exchange
“Share Buy-backs Code”	The Code on Share Buy-backs published by the SFC as amended from time to time
“SSE”	Shanghai Stock Exchange
“TSX”	Toronto Stock Exchange

TERM	DEFINITION
“Takeovers Code”	The Code on Takeovers and Mergers published by the SFC as amended from time to time
“treasury shares”	Shares repurchased and held by a company in treasury, as authorised by the law of the company's place of incorporation and its articles of association or equivalent constitutional document
“UK”	The United Kingdom
“US”	The United States of America

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## **EXECUTIVE SUMMARY**

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1. Under the Rules, upon a repurchase of its own shares by a listed issuer, the listing of the repurchased shares is automatically cancelled and the issuer must ensure that the documents of title of the repurchased shares are cancelled and destroyed immediately following settlement of any such repurchase. This prevents any repurchased shares from being held in treasury for future resale.
2. This consultation paper seeks market views on our proposal to remove the requirement to cancel repurchased shares and to adopt a framework in the Rules to govern the resale of these treasury shares.

### **Background**

3. The requirement under the Listing Rules to automatically cancel the listing of all repurchased shares corresponds to a similar requirement under the Companies Ordinance requiring a Hong Kong incorporated company to cancel repurchased shares.
4. The Listing Rules requirement was established to safeguard against the risk of market manipulation by listed issuers repeatedly repurchasing and reselling their own shares on the market. It also prevents insiders from trading in the shares to benefit from non-public information about the share repurchases and the resales of treasury shares.
5. With the enactment of the SFO in 2003, it provides the primary safeguards against stock market manipulation and insider dealing through its parallel civil (Part XIII) and criminal (Part XIV) regimes. All activities, including any dealings by a listed issuer in its treasury shares, which amount to stock market manipulation and insider dealing are restricted by the SFO.
6. The cancellation requirement under the Listing Rules remains today. Listed issuers incorporated in Hong Kong are also still prohibited from holding treasury shares under the Companies Ordinance.

### **Proposals**

7. This paper sets out our proposals on the removal of the Listing Rules requirement to cancel repurchased shares, and the proposed framework to govern the resale of the treasury shares following the removal of the requirement.
8. With the removal of the requirement to cancel repurchased shares under the Listing Rules, listed companies may repurchase shares and hold them in treasury for future resale if permitted under the laws of their places of incorporation and their constitutional documents.

9. Currently, 92% of issuers listed on the Exchange are incorporated in jurisdictions which allow holding of treasury shares<sup>1</sup>. The removal of this requirement will give these overseas issuers more flexibility in managing their capital structure. They can react promptly to market conditions and resell treasury shares in small lots on the market at market prices, which offers an alternative means to raise fund compared to a placing of new shares which typically involves discount to market prices. Treasury shares can also be transferred as consideration, for satisfying employees' share schemes or upon conversion of convertible securities, subject to the company laws of the places of incorporation of the issuers<sup>2</sup>.
10. Subject to the outcome of our consultation on the above proposal, we will work with the relevant parties to further consider the necessary amendments to the Companies Ordinance<sup>3</sup> so that Hong Kong incorporated issuers could also benefit from the treasury share regime as the other overseas issuers do.
11. The proposed removal of the Listing Rules requirement to cancel repurchased shares will be accompanied by a framework to ensure a fair and orderly market in the trading of repurchased shares and to afford fair and equal treatment for shareholders.
12. The key proposals are summarised as follows:
  - (a) remove the requirement to cancel repurchased shares so that issuers may hold repurchased shares in treasury subject to the laws of their places of incorporation and their constitutional documents (see Chapter 2 of this paper);
  - (b) govern the resale of treasury shares by an issuer in the same manner as the Rules currently applicable to an issue of new shares (see Proposal (1) of Chapter 3);
  - (c) maintain a fair market and mitigate the risk of market manipulation by imposing a moratorium period of 30 days on (i) a resale of treasury shares (whether on or off-market) after a share repurchase; and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares (see Proposal (2)(a) of Chapter 3);

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<sup>1</sup> These jurisdictions include Bermuda, the BVI, Canada (BC), the Cayman Islands, Italy, Japan, Jersey, Luxembourg, the PRC, Singapore, the UK and the US.

<sup>2</sup> There may be restrictions on the permitted uses of the treasury shares under the domestic company laws. For example, treasury shares may not be used as consideration shares in the UK and the PRC.

<sup>3</sup> On 22 February 2023, the Financial Secretary stated in his budget speech that the Exchange would explore ways to further enhance the Listing Rules with the SFC in order to strike a balance between market development and regulatory needs, including relevant arrangement concerning share buy-backs by issuers. As mentioned in the budget speech, the Government would make necessary amendments to the Companies Ordinance if the recommendation is supported by the market.

- (d) maintain a fair market and mitigate the risk of market manipulation and insider dealing by prohibiting a resale of treasury shares on the Exchange (i) when there is undisclosed inside information; (ii) during the one-month period preceding results announcement; or (iii) if it is knowingly made with a core connected person (see Proposal (2)(b) of Chapter 3);
- (e) allow new listing applicants to retain their treasury shares upon listing and restrict them from reselling their treasury shares within six months after listing (see Proposal (3) of Chapter 3); and
- (f) make consequential amendments to (i) require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules; (ii) exclude treasury shares from an issuer's issued or voting shares under various parts of the Rules (e.g. public float and size test calculations); (iii) require an issuer to disclose in the explanatory statement its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares; and (iv) clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees(see Proposal (4) of Chapter 3).

### **Request for comment**

13. The proposed Rule amendments are set out in Appendix I.
14. We would like to invite public comments on the proposals. Any final Rule amendments and details regarding implementation would be published in a conclusions paper after we have considered the public's views. When providing your comments please give reasons for your views.



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## CHAPTER 1: INTRODUCTION

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15. This chapter provides an overview of the development of the regulatory framework for treasury shares in Hong Kong and other jurisdictions. It also sets out our current regulatory framework governing share repurchases and the potential benefits arising from allowing listed issuers to hold repurchased shares in treasury for subsequent resale.

### Background

16. Generally, a company may repurchase its own shares and hold them in treasury for future resale if the company laws of its place of incorporation and its constitutional document permit. An issuer listed on the Exchange is also subject to the Listing Rules, which require the listing of all shares to be automatically cancelled upon repurchase, and the issuer to ensure that the documents of title of the repurchased shares are cancelled and destroyed immediately following settlement of any share repurchase<sup>4</sup>.
17. The Companies Ordinance (Chapter 622 of Laws of Hong Kong) (the **Companies Ordinance**) currently requires a Hong Kong incorporated company to cancel repurchased shares, thereby effectively preventing repurchased shares from being held "in treasury" for "resale" at a later date. However, the majority of companies listed on the Exchange are not incorporated in Hong Kong and are not bound by the share repurchase provisions of the Companies Ordinance. These overseas companies are bound by the share repurchase legislation of their places of incorporation.
18. Over the years, there have been discussions in the market that repurchased shares should not automatically be cancelled, and that they should instead be capable of being held by the company and resold when market conditions allow. This would give the company greater flexibility to adjust its share capital more quickly, which may in turn lead to a reduction in its cost of capital.
19. The issue of whether the Companies Ordinance should legislate treasury shares was last considered by the FSTB in 2008 when the Companies Ordinance was being rewritten<sup>5</sup>. Taking into account the market responses to the consultation, the FSTB concluded not to legislate treasury shares as market views were divided and treasury shares are more relevant to listed companies than unlisted companies.

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<sup>4</sup> Rule 10.06(5). This cancellation requirement does not apply to issuers with a secondary listing on the Exchange under Chapter 19C.

<sup>5</sup> The issue of whether to allow treasury shares was also considered in an earlier public consultation by the SFC in 1998 when the then Share Repurchase Code was being reviewed.

20. At the time of the consultation in 2008, many of the Exchange listed issuers were incorporated in jurisdictions which did not allow treasury shares. Since then, the laws and regulations of various jurisdictions have changed to allow companies to hold treasury shares for future resale. For example, Cayman Islands incorporated issuers were allowed to hold treasury shares following changes to their domestic company laws in 2011.
21. Currently, approximately 92% of listed issuers are incorporated in jurisdictions which allow holding of treasury shares<sup>6</sup>. However, these overseas issuers remain unable to hold treasury shares due to the requirement under the Listing Rules to automatically cancel the listing of all repurchased shares.

### **Benefits of treasury share regime**

22. Companies may repurchase shares for a variety of reasons, such as to return cash to shareholders, to adjust debt-to-equity ratio, to increase earnings per share or other metrics based on the number of outstanding shares, to facilitate the exit of shareholders from the company, or to signal to the market that its shares are undervalued.
23. If listed issuers can hold the repurchased shares in treasury for future resale when market conditions allow, it will give them greater flexibility to adjust their share capital quickly which may in turn lead to a reduction in their cost of capital. For example, listed issuers may resell the treasury shares in small lots on the market at full market price as an alternative fund raising means to placings, where new shares are typically sold at a discount to market price.
24. In the jurisdictions we have reviewed<sup>7</sup>, the domestic company laws generally do not restrict the use of treasury shares<sup>8</sup>. Treasury shares can be used in essentially the same way as newly issued shares. They can be resold for cash, transferred as consideration, for satisfying employees' share schemes or upon conversion of convertible securities. This offers additional flexibility to overseas issuers.

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<sup>6</sup> These jurisdictions include Bermuda, the BVI, Canada (BC), the Cayman Islands, Italy, Japan, Jersey, Luxembourg, the PRC, Singapore, the UK and the US.

<sup>7</sup> These jurisdictions include Bermuda, the Cayman Islands and the PRC (where over 90% of the issuers listed on the Exchange are incorporated), Canada, Singapore, the UK and the US.

<sup>8</sup> With minor exceptions in the UK and the PRC where treasury shares may not be used as consideration shares. The UK's prohibition is to avoid circumvention by a company of a valuation requirement under the UK Companies Act that it must comply before issuing new shares for non-cash consideration. Under the Rules for Repurchase of Shares by Listed Companies promulgated by the CSRC, repurchased shares can be cancelled, resold for cash or transferred to satisfy employees' share awards or conversion of convertible bonds.

## **Current regulatory framework for repurchase and cancellation of shares**

25. Set out below is a summary of the existing regulatory framework for share repurchases for listed issuers and the potential regulatory concerns it addresses.
26. There are concerns that on-market share repurchases may create conditions for market manipulation and insider dealing as an issuer may influence its share price through share repurchases and insiders may trade in the shares to benefit from non-public information.
27. In 2003, the SFO was enacted, among others, to introduce largely parallel civil (Part XIII) and criminal (Part XIV) regimes to deter various forms of market misconduct or abuse, including stock market manipulation and insider dealing. All activities, including any dealings by a listed issuer in its treasury shares, which amount to stock market manipulation and insider dealing are restricted by the SFO.

### ***Restrictions under the Listing Rules***

28. While the SFO provides the primary safeguards against stock market manipulation and insider dealing, the Listing Rules impose restrictions on share repurchases to further mitigate the risks:
  - (i) Rule 10.06(2)(a) prohibits share repurchases on the Exchange at a price higher by 5% or more than market price such that share repurchases are not conducted at a price substantially higher than the market price;
  - (ii) Rule 10.06(2)(e) prohibits share repurchases on the Exchange during the one-month period preceding results announcement or when there is undisclosed inside information; and
  - (iii) Rule 10.06(3) prohibits an issuance of new shares within 30 days after any share repurchase to ensure that the issue of new shares does not take place at a price that has been affected by the issuer's previous share repurchase.
29. Rule 10.06(5) requires the listing of all shares be automatically cancelled upon repurchase. This cancellation requirement provides additional safeguards to further mitigate the risk of market manipulation and abuse of inside information through the resale of repurchased shares.
30. Rule 10.06(4) requires immediate disclosure of share repurchases by next day disclosure returns, and periodic reporting in monthly returns and annual reports. These disclosures not only ensure transparency of share repurchases, they also facilitate the regulators in enforcing the laws against market manipulation and insider dealing and the dealing restrictions under Rule 10.06.

### ***Shareholders' protection***

31. Generally, on-Exchange share repurchases are governed by the Listing Rules. The Takeovers Code governs the situation where a shareholder (or a group of shareholders acting in concert) obtains or consolidates control through share repurchases. Off-market share repurchases and share repurchases by general offers are further governed by the Share Buy-backs Code. The Codes and the Listing Rules seek to afford fair and equal treatment for shareholders who are affected by share repurchases.

#### *(a) The Codes*

32. Rule 32 of the Takeovers Code deals with the circumstance where as a result of the listed issuer's share repurchases, the shareholding of a shareholder (or a group of shareholders acting in concert) increases. Such increase will be treated as an acquisition of voting rights for purposes of the Takeovers Code, and any acquisition or consolidation of control of the repurchasing issuer may require the shareholder (or a group of shareholders acting in concert) to make a general offer under Rule 26 of the Takeovers Code.
33. The Share Buy-backs Code sets out the requirements for off-market share repurchases and share repurchases by general offers by companies, including the need for these share repurchases to be approved by disinterested or independent shareholders in general meetings. In situations where a shareholder triggers a general offer obligation as a result of these repurchases, the obligation may be waived by disinterested or independent shareholders in general meetings at the same time. General offer obligations triggered by on-market repurchases however cannot be waived by disinterested or independent shareholders at a general meeting, but no obligation will normally arise if the shareholder who exceeds the trigger or creeper threshold is neither a director of the listed issuer nor a party acting, or presumed to be acting, in concert with any of the directors of the listed issuer.

#### *(b) Listing Rules*

34. Rule 10.06(1) requires an issuer to obtain shareholders' approval for a specific repurchase or a repurchase mandate to repurchase shares on the Exchange. The repurchase mandate is limited to a maximum of 10% of the issued share capital of the issuer on the date of the resolution granting the repurchase mandate. Rule 10.06(1) also requires an issuer to send to its shareholders an explanatory statement containing all information reasonably necessary to enable shareholders to make an informed voting decision.

*(c) Disclosure of interests under Part XV of the SFO*

35. Under Part XV of the SFO, treasury shares remain part of the listed issuer's issued voting shares and voting shares<sup>9</sup> and the percentage figures of interests of substantial shareholders are not affected by the number of treasury shares held by the listed issuer (see paragraph 81(b) below for further explanation).

**Purpose of this consultation**

36. The Exchange considers it appropriate to consult the public on the removal of the Listing Rules requirement to cancel repurchased shares and the adoption of a framework in the Listing Rules to govern the resale of these treasury shares.
37. The current requirement to cancel repurchased shares reduces the potential for market manipulation and abuse of inside information (see paragraph 29). The removal of this requirement would enable listed issuers substantially more flexibility to buy and resell their own shares on the Exchange. This flexibility must be accompanied by an appropriate framework to ensure a fair and orderly market is maintained in the issuer's shares.
38. The shareholders' rights attached to treasury shares (including dividend, distribution and voting rights) will be suspended by laws. Furthermore, as these rights will be resumed when the treasury shares are resold or transferred out of treasury, a resale of treasury shares impacts existing shareholders in a similar manner as an issuance of new shares. There should also be a framework to manage any significant market overhang and a potential disorderly market.
39. Chapter 2 of this paper sets out our proposal to remove the requirement under the Listing Rules to cancel repurchased shares.
40. Chapter 3 of this paper sets out our proposed framework to govern treasury shares.
41. The text of our proposed amendments to the Rules is set out in Appendix I.
42. Unless otherwise stated, Rules cited in this paper refer to the Main Board Rules. The proposals apply equally to the GEM Rules.

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<sup>9</sup> "Issued voting shares" and "voting shares" are defined in section 308(1) of the SFO.

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## CHAPTER 2: PROPOSAL TO REMOVE THE REQUIREMENT TO CANCEL REPURCHASED SHARES

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### Background

43. Generally, the rights and status attached to treasury shares are governed by the company laws of a company's place of incorporation and its constitutional document. Further, the listing rules of many exchanges also govern the circumstances upon which a listed issuer may repurchase and resell its treasury shares.
44. Companies may repurchase shares for a variety of reasons, such as to return cash to shareholders, to adjust debt-to-equity ratio, to increase earnings per share or other metrics based on the number of outstanding shares, to facilitate the exit of shareholders from the company, or to signal to the market that its shares are undervalued.
45. If listed issuers can hold the repurchased shares in treasury for future resale when market conditions allow, it will give them greater flexibility to adjust their share capital quickly, which may in turn lead to a reduction in their cost of capital. Listed issuers may resell treasury shares for cash, for example in small lots on the market at full market price as an alternative fund raising means to issuing new shares en bloc, where new shares are typically sold at a discount to market price. Treasury shares can also be transferred as consideration, for satisfying employees' share schemes or upon conversion of convertible securities, subject to the company laws of the places of incorporation of the issuers<sup>10</sup>.
46. Currently, the Listing Rules automatically cancel the listing of all repurchased shares, and the issuer must ensure that the documents of title of repurchased shares are cancelled and destroyed immediately following settlement of any such repurchase<sup>11</sup>. Although approximately 92% of listed issuers are incorporated in jurisdictions which allow holding of treasury shares<sup>12</sup>, these overseas issuers remain unable to do so due to the restriction under the Listing Rules. Listed issuers incorporated in Hong Kong are still prohibited from holding treasury shares under the Companies Ordinance, accounting for the remaining 8%.

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<sup>10</sup> There may be restrictions on the permitted uses of the treasury shares under the domestic company laws. For example, treasury shares may not be used as consideration shares in the UK and the PRC.

<sup>11</sup> Rule 10.06(5). These requirements do not apply to issuers with a secondary listing on the Exchange under Chapter 19C.

<sup>12</sup> These jurisdictions include Bermuda, the BVI, Canada (BC), the Cayman Islands, Italy, Japan, Jersey, Luxembourg, the PRC, Singapore, the UK and the US.

## **Proposal to remove the requirement to cancel repurchased shares**

47. We propose to amend the Listing Rules to remove the requirement to cancel repurchased shares so that issuers may hold these shares in treasury and enjoy the flexibility of having treasury shares, subject to the laws of their places of incorporation and their constitutional documents. Where treasury shares remain issued shares by law, they also retain the listing status granted at the time of their issuance.
48. Subject to the above proposal, we also propose a framework to govern the resale of treasury shares to ensure a fair and orderly market and fair and equal treatment of all shareholders on the resale of treasury shares (see Chapter 3). We will also work with the relevant parties to further consider the necessary amendments to the Companies Ordinance so that Hong Kong incorporated issuers could also benefit from the treasury share regime as the other overseas issuers.

**Q1. Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares? Please provide reasons for your views.**

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## CHAPTER 3: PROPOSALS RELATING TO REGULATION OF TREASURY SHARES AND OTHER CONSEQUENTIAL RULE AMENDMENTS

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### Background

49. Shareholders' rights attached to treasury shares, including dividend, distribution and voting rights, are normally suspended by laws and resumed when the treasury shares are resold or transferred out of treasury. Further, company laws may govern the resale of treasury shares<sup>13</sup>, for example, the UK company laws subject a resale of treasury shares to preemptive rights as if it were an issuance of new shares (i.e. be offered pro-rata to all existing shareholders unless shareholders' approval is sought).
50. In addition, the listing rules of some markets require shareholders' mandate for the resale of treasury shares. For example, a resale of treasury shares by companies listed in the UK<sup>14</sup> or on NYSE<sup>15</sup> or TSX<sup>16</sup> is subject to the shareholder approval requirement in the same way as an issuance of new shares, whereas in some markets, other restrictions apply. For example, companies listed on the SGX require shareholders' approval for a resale of treasury shares where the price is discounted by more than 10% to market price, and companies listed on SSE are subject to restrictions on the size and minimum price<sup>17</sup> upon a sale of repurchased shares. These requirements are complemented by the Singapore and PRC company laws which limit companies from holding more than 10% of their total issued shares in treasury<sup>18</sup>.

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<sup>13</sup> The UK restricts treasury shares from being used as consideration shares, and under the Rules for Repurchase of Shares by Listed Companies promulgated by the CSRC, repurchased shares can be cancelled, resold for cash or transferred to satisfy employees' share awards or conversion of convertible bonds.

<sup>14</sup> The UK Listing Rules seek to impose essentially the same shareholder approval requirement for issuance of new shares and resale of treasury shares as the laws impose on UK incorporated companies. The UK Listing Rules also provide that the price for issuance of new shares or resale of treasury shares (other than in respect of an employee's share scheme) must not be at a discount of more than 10% to the market price of the shares, except approved by the shareholders.

<sup>15</sup> The NYSE Listed Company Manual requires a NYSE listed issuer to obtain prior shareholder approval for issue of new shares or resale of treasury shares equal to or exceeding 20% of its issued shares, or that the selling price is below the lower of the closing price immediately preceding the signing of binding agreement or the average closing price for the immediately preceding five trading days.

<sup>16</sup> Under the TSX Company Manual, resale of treasury shares is treated as new issue, which is subject to restrictions on the size of issue (up to 25%, unless the issue price is at or above the prevailing market price) and maximum discount to market price (ranging from 15% to 25% depending on the market price of the shares) for private placement, unless prior shareholders' approval is obtained. TSX defines the term "private placement" as an issuance of treasury shares for cash consideration or in payment of an outstanding debt of the issuer without prospectus disclosure.

<sup>17</sup> The number of repurchased shares to be resold must not exceed (i) the daily limit of 200,000 shares or 25% of the average daily trading volume over the 20 trading days immediately preceding the announcement of the proposed resale, whichever is the higher; and (ii) 1% of the issuer's issued shares in any consecutive 90 days. The resale price must be higher than the daily floor price limit imposed by SSE (i.e. 10% discount to the closing price on the previous trading day).

<sup>18</sup> In addition, PRC companies must cancel any treasury shares 3 years after repurchase.



51. While repurchased shares must be cancelled under current Rules, a listed issuer may seek a general mandate from its shareholders to issue an additional number of new shares representing the number of shares repurchased in the year (of up to 10% of its issued shares)<sup>19</sup>. This allows an issuer to benefit from the flexibility under the general mandate to the fullest extent. Since any unissued mandate cannot be brought forward to the next year, it also prevents prolonged period of market overhang and a potential disorderly market.

## **I. Proposals relating to the Listing Rules**

### **(1) Proposals to treat a resale of treasury shares as new shares**

52. We consider that given a resale of treasury shares impacts existing shareholders in a similar manner as an issuance of new shares, it is appropriate to apply the framework for an issuance of new shares to govern a resale of treasury shares. This approach is consistent with the approach adopted in major markets including the UK, NYSE and TSX.
53. We propose to amend the Listing Rules to apply the current requirements for an issuance of new shares to a resale of treasury shares by a listed issuer:
- (a) Resale of treasury shares to be conducted on a pre-emptive basis or with a shareholders' mandate*
54. In other words, a resale of treasury shares shall be subject to pre-emption similar to an issuance of new shares under Rule 13.36 and be offered to all shareholders on a pro-rata basis, or alternatively, approved by shareholders under a specific mandate or a general mandate approved in advance by shareholders. As mentioned in paragraph 51 above, the number of shares repurchased in the year under a repurchase mandate (subject to a limit) is added to the general mandate limit. Both the general mandate limit and the repurchase mandate limit would be calculated based on the number of issued shares excluding treasury shares held by the listed issuer at the given time.<sup>20</sup> An on-market resale of treasury shares under the general mandate shall be subject to a maximum price discount of 20% of the higher of (i) the closing price on the trading day immediately prior to the resale; and (ii) the average closing price in the 5 trading days immediately prior to the resale.<sup>21</sup> An off-market resale of treasury shares under the general mandate shall be subject to the same price discount limit as an issuance of new shares.

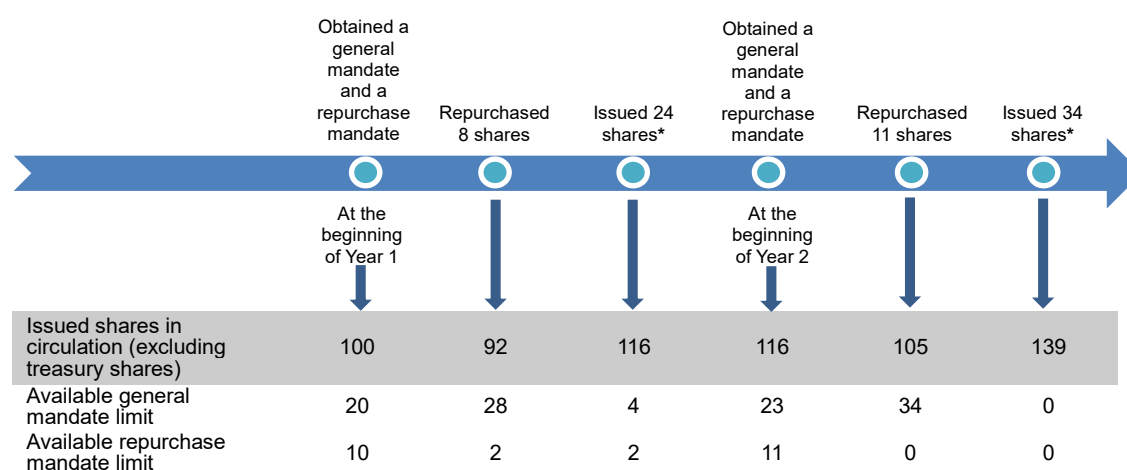
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<sup>19</sup> Under Rule 13.36(2)(b), an issuer may issue new shares under a general mandate of up to 20% of its issued shares, plus the additional number of shares (up to 10% of its issued shares) repurchased by the issuer during the year under a repurchase mandate approved by shareholders.

<sup>20</sup> Proposed Rules 13.36(1A) and 13.36(2)(b)

<sup>21</sup> Proposed Rule 13.36(5A)

55. This framework will govern the total number of shares available for issue or resale under a general mandate but not limit the actual number of treasury shares that may be held by an issuer, and would manage any potential market overhang (see paragraph 51) that may have resulted from a disproportionately large holdings of treasury shares.
56. As an illustrative example, assuming that over a two-year period, a listed issuer repurchased its shares and resold/issued treasury/new shares as follows:
- It had 100 shares in issue at the beginning of Year 1, and obtained a repurchase mandate (to buy back up to 10 shares) and a general mandate (to issue or resell up to 20 shares, plus the number of shares repurchased in the year under the repurchase mandate) from its shareholders.
  - During Year 1, it repurchased 8 shares first and then issued 24 shares.
  - During Year 2, it obtained a new repurchase mandate and a new general mandate, repurchased 11 shares first and then issued 34 shares.



\* Scenario 1: all issuance in the form of resale of treasury shares first, with any remainder fulfilled by issue of new shares

Total issued shares, comprising of:	100	100	116	116	116	139
• Treasury shares	0	8	0	0	11	0
• Issued shares in circulation (excluding treasury shares)	100	92	116	116	105	139

\* Scenario 2: all issuance in the form of issue of new shares

Total issued shares, comprising of:	100	100	124	124	124	158
• Treasury shares	0	8	8	8	19	19
• Issued shares in circulation (excluding treasury shares)	100	92	116	116	105	139

57. Scenario 1 assumes that the issuer will resell all treasury shares before issuing new shares, and scenario 2 assumes that the issuer will retain the treasury shares and issue new shares only. Our proposal governs the total number of new shares that may be issued and treasury shares that may be resold. Accordingly, under both scenarios the issued shares in circulation (i.e. excluding treasury shares) are the same, while the total issued shares are greater under scenario 2, reflecting the treasury shares in issue (but not in circulation).
58. For PRC issuers, Rules 10.05 and 10.06 govern repurchases of shares listed on the Exchange only so repurchases of A shares by these issuers are not subject to these Rule requirements.<sup>22</sup> Under existing PRC laws, an A+H issuer does not need to cancel its treasury A shares and may hold and use such A shares to satisfy its employee share scheme or upon conversion of convertible securities, or for resale in the open market for price stabilisation purposes. This arrangement to hold and/or use treasury A shares is currently subject to board approval only. Whilst we propose to amend the Listing Rules to apply the current requirements for an issuance of new shares to a resale of treasury shares by a listed issuer generally, we consider that the resale of treasury shares that are not listed on the Exchange (in the case of an A+H issuer, its treasury A shares) should be carved out from the requirement to conduct with a shareholders' mandate as these treasury shares are not listed on the Exchange and should only be subject to their home jurisdiction listing requirements as in the case of repurchases of shares under Rules 10.05 and 10.06.

*(b) Share scheme*

59. Under our proposal, a share scheme using treasury shares to satisfy share grants would be treated as a share scheme funded by new shares under Chapter 17 of the Listing Rules. Accordingly, the grant of shares under the scheme would be subject to the scheme mandate limit approved by shareholders under Chapter 17 of the Listing Rules.
60. Currently, where a listed issuer establishes a share scheme funded by existing shares (for example, by appointing a trustee to administer the scheme and to purchase shares on market to satisfy share grants), such share scheme would only be subject to annual reporting requirements under Rule 17.12. This is because the scheme is satisfied by issued shares of the issuer rather than shares held in treasury (the rights of which are suspended by laws). This arrangement will continue under our proposal.

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<sup>22</sup> With exceptions that an A+H issuer must (i) provide information on its repurchases of A shares in the explanatory statement for seeking shareholders' approval for repurchasing H shares on the Exchange; and (ii) report its repurchases of A shares in next day disclosure returns and annual reports. See Rule 19A.24.

*(c) Other proposals relating to resale of treasury shares*

61. To ensure the protection of shareholders, the listing rules in other markets<sup>23</sup> impose additional requirements on resale of treasury shares by listed companies in relation to related party transactions, disclosure and treatment of treasury shares.
62. We propose that any resale of treasury shares to a connected person would be subject to the same connected transaction requirements as an issue of new shares under Chapter 14A. This means a resale of treasury shares to a connected person would be subject to independent shareholders' approval, unless exempted under Rule 14A.92<sup>24, 25</sup>. This provides safeguards against connected persons taking advantage of their positions to confer benefits on themselves through the resale of treasury shares.
63. We also propose to apply the following Rules to a resale of treasury shares by a listed issuer, in addition to their current applications to an issuance of new shares:
  - (i) a listed issuer shall disclose its resale of treasury shares and any movement in the number of treasury shares under Rule 13.28 (announcement)<sup>26</sup>, Rule 11.04 (listing document), Rule 13.25A (next day disclosure return), Rule 13.25B (monthly return) and Paragraphs 11 and 11A of Appendix 16 (annual report); and
  - (ii) while a listed issuer is not required to submit a listing application for the resale of treasury shares<sup>27</sup>, it shall comply with the documentary requirements<sup>28</sup> under Rules 9.18 to 9.23 for its resale of treasury shares, as if it were an application for the listing of the newly issued shares.

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<sup>23</sup> Being listing rules issued by NYSE, SGX, SSE, TSX and the Financial Conduct Authority of the UK.

<sup>24</sup> For example, under a pro rata issue to existing shareholders or a share scheme that complies with Chapter 17.

<sup>25</sup> Proposed Rule 14A.92A. See also paragraph 69(ii) below for the proposed exemption relating to on-market resale of treasury shares.

<sup>26</sup> The announcement requirement under Rule 13.28 does not apply to an on-market resale of treasury shares. See proposed Rule 13.27A and paragraph 70(i) below.

<sup>27</sup> For the avoidance of doubt, issuers would still need to obtain our prior approval for any issue of warrants or convertible securities. This is despite the fact that an issuer might choose to use treasury shares to cover the exercise of subscription or conversion rights under the warrants or convertible securities.

<sup>28</sup> For example, if there is a listing document for the resale of treasury shares, the documentary requirements would include submission to the Exchange of documents including statement of adjustments relating to accountants' report, profit forecast memorandum and working capital comfort letter, where appropriate.

**Q2. Do you agree with the proposal to require a resale of treasury shares to be subject to the same requirements as an issue of new shares as described in Proposal (1)(a) to (c) above? Please provide reasons for your views.**

**(2) Proposals relating to mitigation of risks of market manipulation and insider dealing**

64. As set out in paragraph 27, the prohibitions on stock market manipulation and insider dealing under the SFO apply to dealings in treasury shares. To ensure a fair and orderly market is maintained after the proposed relaxation, we propose additional requirements below.

*(a) Proposed moratorium periods for share repurchases and resales of treasury shares*

65. Rule 10.06(3) restricts the issuance of new shares by a listed issuer for a 30-day period (**moratorium period**) after any share repurchase<sup>29</sup>. This is to ensure the issue of new shares does not take place at a price that has been affected by the issuer's previous share repurchase. As the price for a resale of treasury shares may be similarly affected, we propose to extend this moratorium period to any resale of treasury shares, whether on or off-market<sup>30</sup>.

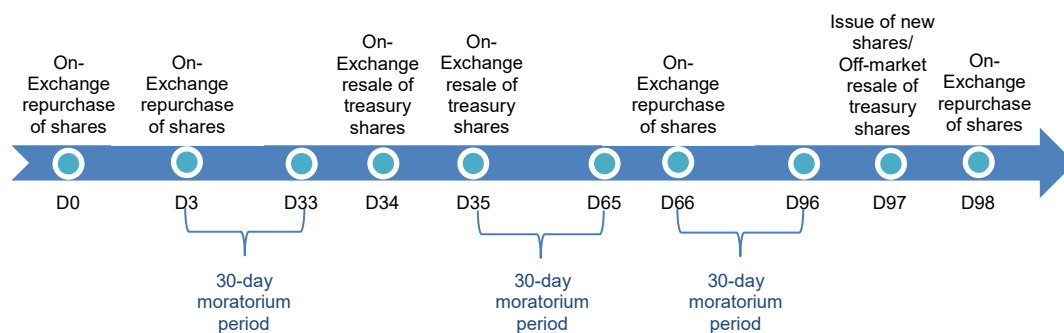
66. Where a listed issuer resells its treasury shares on the Exchange, we propose that a moratorium period also applies to a subsequent on-Exchange share repurchase. As the intention of allowing treasury shares is to provide listed issuers with more flexibility to manage their share capital structure, we do not envisage issuers to repeatedly repurchase and resell their shares on market. This proposal will deter issuers from repeatedly repurchasing and reselling their own shares on market for the motives of making a trading profit or to manipulate the share price.

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<sup>29</sup> This moratorium period does not apply to an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities.

<sup>30</sup> For PRC issuers, Rule 10.06(3) governs repurchases and subsequent issuance of H shares listed on the Exchange only. Under the proposal, the moratorium period would apply to a resale of treasury H shares after a repurchase of H shares.

67. As an illustrative example, assuming a listed issuer repurchases shares on the Exchange on Days 0 and 3, it may resell treasury shares on the Exchange on Day 34. If it resells treasury shares on the Exchange again on Day 35, it may repurchase shares on the Exchange on Day 66. If it issues new shares or resells treasury shares off-market on Day 97, there is no restriction on subsequent share repurchases.



68. We invite market comments on whether the duration of the moratorium period (in either direction) should be shorter than 30 days to provide reasonable flexibility for capital management by listed issuers. As the purposes of the moratorium periods are to discourage actions that unduly influence the market share price and repeatedly repurchasing and reselling shares on market by listed issuers, an appropriate moratorium period should provide sufficient time for the market to disseminate information about the issuers' share repurchase and resale activities<sup>31</sup>, and to sufficiently deter issuers from unfair share trading activities on market.

*(b) Dealing restrictions for resale of treasury shares on the Exchange*

69. We propose to extend the application of the following dealing restrictions to on-Exchange resale of treasury shares<sup>32</sup> to provide additional safeguards to further mitigate the risk of market manipulation and insider dealing:

- (i) Rule 10.06(2)(e) currently prohibits share repurchases on the Exchange during the one-month period preceding results announcement or when there is undisclosed inside information (the **Restricted Period**) to deter potential insider dealing. We propose to extend this restriction to a resale of treasury shares such that issuers are also prohibited to resell treasury shares on the Exchange during the Restricted Period;

<sup>31</sup> Under current Rules and our proposals (see paragraph 63(i)), listed issuers will be required to announce its share repurchase and resale activities through the next day disclosure return.

<sup>32</sup> Proposed Rule 10.06A

- (ii) Rule 10.06(2)(c) prohibits an issuer from knowingly purchasing its shares from a core connected person and a core connected person shall not knowingly sell shares to the issuer on the Exchange. We propose to extend this restriction to a resale by the issuer of treasury shares on the Exchange to prevent a listed issuer from manipulating the market by knowingly reselling the treasury shares to a core connected person on the market.

However, we propose that an on-market resale of treasury shares to a connected person without knowledge would be fully exempt from the connected transaction Rules<sup>33</sup>. This is consistent with the current exemption available for on-market share repurchases under Rule 14A.94(1); and

- (iii) Rule 10.06(2)(d) requires an issuer to procure its broker appointed to repurchase its shares to disclose to the Exchange information in respect of the purchases if so requested. We propose to extend this requirement to on-market resale of treasury shares such that an issuer shall procure its broker to disclose to the Exchange information concerning its resale of treasury shares on the Exchange.

70. We do not propose to extend the following requirements for new issuance of shares to an on-market resale of treasury shares:

- (i) an issuer shall not be required to publish an announcement for its on-market resale of treasury shares under Rule 13.28<sup>34</sup> as it must disclose its on-market resale of treasury shares through a next day disclosure return which would provide information about a resale of treasury shares to the market; and
- (ii) an issuer shall not be required to submit placee information to the Exchange under Rule 9.23(2)<sup>35</sup> as it will be impracticable to do so under the auto-matching trading system of the Exchange.

71. Listed issuers will need to consider whether the resale of treasury shares under the circumstances (including where applicable the issue of any related documents or marketing materials) constitutes an offer of securities or triggers any other requirements under the SFO and the CWUMPO. They should ensure that all applicable laws, rules and regulations are complied with in relation to the repurchase and resale activities.

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<sup>33</sup> Proposed Rule 14A.92B

<sup>34</sup> Proposed Rule 13.27A

<sup>35</sup> Proposed Rule 9.23(2)

- Q3. Do you agree with the proposal to require a resale of treasury shares (whether on-market or off-market) to be subject to a moratorium period after a share repurchase? Please provide reasons for your views.**
- Q4. Do you agree with the proposal to require an on-Exchange share repurchase to be subject to a moratorium period after an on-Exchange resale of treasury shares? Please provide reasons for your views.**
- Q5. Do you consider that the moratorium periods (in either direction) should be shorter than 30 days? If so, please share with us your views on the appropriate duration of the moratorium periods and the reason for your suggestion including your views on how the considerations in paragraph 68 should be addressed.**
- Q6. Do you agree with the proposal that dealing restrictions described in paragraph 69 under Proposal (2)(b) above shall be imposed on a resale of treasury shares on the Exchange? Please provide reasons for your views.**
- Q7. Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 under Proposal (2)(b) above? Please provide reasons for your views.**

### **(3) New listing applicants**

72. Currently, as the Listing Rules do not allow the holding of treasury shares, new listing applicants must cancel all their treasury shares prior to their listing on the Exchange. After the Rule amendments, new listing applicants may retain their treasury shares after listing. The new listing applicant must disclose details of its treasury shares in its prospectus.
73. Rule 10.08 restricts the issuance of new shares by a listed issuer within six months of its new listing. This lock-up requirement protects investors by preventing dilution of their interests shortly after listing, and also ensures the commitment of the controlling shareholders<sup>36</sup>.
74. We propose to extend the application of Rule 10.08 to a resale of treasury shares. A new listing applicant shall not issue any new shares or resell any treasury shares or enter into any agreement for such new issue or resale within six months after listing. This is consistent with our proposal to govern a resale of treasury shares as an issuance of new shares.

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<sup>36</sup> See Listing Decision [LD68-1](#)



**Q8. Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above? Please provide reasons for your views.**

**(4) Consequential Rule amendments to address the treatment of treasury shares in other parts of the Rules**

*(a) Voting rights attached to treasury shares*

75. As issuers themselves should not vote on transactions or matters that require shareholders' approval under the Rules, we propose to make it clear under the Rules<sup>37</sup> that issuers (being holders of treasury shares) should abstain from voting on matters that require shareholders' approval under the Listing Rules. This would also prevent controlling/ substantial shareholders from using treasury shares as a means to consolidate its control of the issuer. The proposal provides certainty of the Exchange's position despite that the voting rights attached to treasury shares are normally suspended by laws. As set out in paragraph 49 above, shareholders' rights attached to treasury shares, including dividend, distribution and voting rights, are normally suspended by laws. Listed issuers should provide appropriate instructions to the relevant parties, including their share registrars, brokers and agents, to ensure that treasury shares are appropriately identified and segregated.

*(b) Excluding treasury shares in the calculation of issued shares*

76. As treasury shares are held by issuers themselves and the rights attached to them are normally suspended by laws, we propose to amend the Rules to make it clear that treasury shares would be disregarded when calculating an issuer's issued shares or voting shares for the purposes of determining:

- (i) the public float of the issuer<sup>38</sup>;
- (ii) the market capitalisation of the issuer<sup>39</sup>;
- (iii) the equity capital ratio for size test calculation<sup>40</sup>;

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<sup>37</sup> Proposed Rule 1.01

<sup>38</sup> Proposed Rules 8.08, 8.24 and 19A.13A

<sup>39</sup> Proposed Rules 1.01 and 8.09(2)

<sup>40</sup> Proposed Rule 14.07(5)

- (iv) the size limit for issuing or purchasing securities as a percentage of the issued shares (e.g. general mandate limit, repurchase mandate limit, scheme mandate limit and the size of rights issue requiring minority shareholders' approval)<sup>41</sup>;
  - (v) a person's percentage of rights to vote at a general meeting of the issuer (e.g. definitions of controlling shareholder and substantial shareholder)<sup>42</sup>; and
  - (vi) a person's percentage interest in the issuer (e.g. when assessing the independence of independent non-executive directors)<sup>43</sup>.
77. Our proposal is consistent with the approach adopted in the Codes, but not Part XV of the SFO. As set out in Section III below, treasury shares are disregarded in the determination of various thresholds under the Codes as such thresholds are based on voting rights. However, for the purposes of Part XV of the SFO treasury shares remain part of an issuer's issued voting shares and voting shares when calculating the percentage figures of interests of shareholders (see paragraph 81 below for details).

*(c) Disclosure of issuers' intention to hold treasury shares*

78. We propose to amend Rule 10.06(1)(b) to require an issuer to disclose in the explanatory statement for share repurchase mandate its intention as to whether the repurchased shares will be cancelled or kept as treasury shares. This would allow shareholders to understand the potential impact of the proposed share repurchases and to vote accordingly.

*(d) Resale of treasury shares through agents or nominees*

79. Rule 10.06(6)(c) provides that the requirements and restrictions on share repurchases under Rules 10.05 and 10.06 apply equally to repurchases by agent or nominee on behalf of an issuer or its subsidiary. We propose to make it clear under the Rules that a resale of treasury shares by an issuer or its subsidiary through an agent or nominee would also be subject to the proposals set out in this paper.<sup>44</sup>

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<sup>41</sup> Proposed Rules 7.19A(1), 10.06(1)(c), 13.36(2)(b), 17.03B, 17.03C, 17.03D, 17.04, 18B.23, 18B.29 and 19A.25(3)

<sup>42</sup> Proposed Rules 1.01, 8A.09, 8A.23, 14.44, 14A.37 and 19A.14

<sup>43</sup> Proposed Rules 3.13(1), 3A.07(1) and 13.84

<sup>44</sup> Proposed Rule 1.01

- Q9. Do you agree with the proposal to require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules as described in Proposal (4)(a) above? Please provide reasons for your views.**
- Q10. Do you agree with the proposal to disregard treasury shares for calculating an issuer's issued shares and voting shares under the Rules as described in Proposal (4)(b) above? Please provide reasons for your views.**
- Q11. Do you have any comments regarding the different treatment of treasury shares when calculating an issuer's issued voting shares under the proposed Rules and Part XV of the SFO as described in paragraph 77 above?**
- Q12. Do you agree with the proposal to require an issuer to disclose in the explanatory statement its intention as to whether the repurchased shares will be cancelled or kept as treasury shares as described in Proposal (4)(c) above? Please provide reasons for your views.**
- Q13. Do you agree with the proposal to clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees as described in Proposal (4)(d) above? Please provide reasons for your views.**

## **II. Transitional arrangements**

80. We granted waivers from the share cancellation requirement to permit overseas issuers to hold treasury shares. These waivers were granted on the condition that the issuers are required to comply with the relevant requirements in the event of changes to the Listing Rules in relation to treasury shares. Accordingly, these issuers must comply with the new Listing Rule requirements following the Rule amendments. We may consider waivers from the new Listing Rule requirements on a case by case basis taking into account the specific circumstances of the case.

## **III. Consequential implications of the proposal on other laws and regulations in Hong Kong**

81. The proposal to introduce treasury shares may have implications on other laws and regulations, details of which are set out below:

(a) *Takeovers Code and Share Buy-backs Code*

The introduction of the treasury share regime is not expected to create any major implications under the Codes, nor any major changes to the existing practices for takeovers and share buy-backs. The Codes are mainly concerned with voting rights. As the voting rights of treasury shares are normally suspended by laws, they are disregarded in the determination of various thresholds under the Codes, including but not limited to the takeover thresholds under Rule 26 of the Takeovers Code (i.e. the 30% trigger and the 2% creeper). In particular, the definition of “voting rights” under the Codes specifically carves out treasury shares. As such, since treasury shares are not considered to have any voting rights under the Codes, a shareholder’s voting right percentage in the repurchasing company will increase as a result of share buy-backs in the same way as if the shares bought back were cancelled. Under the circumstances, if a shareholder’s voting rights exceed the trigger or creeper threshold as a result of shares bought back being held as treasury shares, such shareholder will normally trigger a mandatory general offer obligation unless he is neither a director of the repurchasing company nor a party acting, or presumed to be acting, in concert with any of the directors of the repurchasing company. This is no different from the existing practice where the shares bought back are cancelled.

As regards the possible resale of treasury shares, the implications under the Codes would be similar to those related to an issuance of new shares. For example, the resale of treasury shares by an offeree company during an offer period may give rise to frustrating action implications under Rule 4 of the Takeovers Code.

As such, the overall practical effect on the operation of the Codes provisions will remain largely the same before and after the introduction of the treasury share regime. If the treasury share regime comes into effect, the SFC will issue a practice note setting out the treatment and implications of treasury shares in the context of a Codes-related transaction.

(b) *Disclosure of interests under Part XV of the SFO*

We do not expect that the introduction of the treasury share regime as proposed will result in major changes to the existing practices for disclosure of interests under Part XV of the SFO. For this purpose, treasury shares remain part of an issuer’s issued voting shares and voting shares<sup>45</sup> on the basis that voting rights attached to treasury shares are temporarily suspended and should not affect the application of Part XV of the SFO in relation to interests in those

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<sup>45</sup> “Issued voting shares” and “voting shares” are defined in section 308(1) of the SFO.

shares<sup>46</sup>. Accordingly, any repurchase of shares and holding or reselling of treasury shares by an issuer will not affect the total amount of issued voting shares for the calculation of percentage figures of interests of shareholders<sup>47</sup>.

An issuer acquiring an interest in 5% or more of its own shares by repurchasing and holding those shares in treasury would become a substantial shareholder of itself and would have to file a disclosure notification in accordance with Part XV of the SFO. The SFC will consider updating the Outline of Part XV of the SFO – Disclosure of Interests to provide further information on the treatment of treasury shares.

*(c) Stamp Duty Ordinance*

A resale of treasury shares at the secondary market constitutes a disposal of the shares in existence for valuable consideration and triggers stamping of contract notes as specified in the Stamp Duty Ordinance (the **SDO**). Therefore, it is considered that the transaction is subject to ad valorem stamp duty under the SDO.

#### **IV. Accounting treatment of treasury shares**

82. Generally, any consideration paid by an issuer to repurchase its own shares is debited directly to equity. This applies whether the repurchased shares are cancelled immediately or held in treasury for future resale. Consideration received on the resale of treasury shares is credited directly to equity. No gain or loss is recognised in profit and loss on the purchase, sale, issue or cancellation of the issuer's own shares.
83. The amount of treasury shares held is disclosed separately either in the statement of financial position or in the notes to the financial statements. For the purpose of calculating the issuer's earnings per share, treasury shares are not regarded as outstanding and are excluded from the weighted average number of shares outstanding (i.e. the denominator) for the period during which they are held by the issuer.

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<sup>46</sup> Section 308(2) of the SFO provides that the temporary suspension of voting rights in respect of shares comprised in a class of the issued shares in a listed corporation does not affect the application of Part XV in relation to interests in those shares or any other shares in that class.

<sup>47</sup> In short, a shareholder's percentage figure of his interest in voting shares in a listed corporation is calculated by dividing the number of "voting shares" (whether issued or unissued) in which he is interested by the total number of "issued voting shares" of the listed corporation of the same class.

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## APPENDIX I: DRAFT AMENDMENTS TO THE LISTING RULES

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### A. Draft Amendments to the Main Board Rules<sup>1</sup>

#### Chapter 1

#### GENERAL

#### INTERPRETATION

...

1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

...

**“controlling shareholder”**

...

any person (including a holder of depositary receipts) who is or group of persons (including any holder of depositary receipts) who are together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer (*Note*) or who is or are in a position to control the composition of a majority of the board of directors of the issuer; or in the case of a PRC issuer, the meaning ascribed to that phrase by rule 19A.14 provided always that a depositary shall not be a controlling shareholder merely by reason of the fact that it is holding shares of the issuer for the benefit of the holders of depositary receipts

Proposal (4)  
of Chapter 3

*Note: Voting rights attaching to treasury shares are excluded.*

...

**“listing document”**

...

a prospectus, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing or a sale or transfer of treasury shares by

Proposal (1)  
of Chapter 3

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<sup>1</sup> The Main Board Rules reflect the rule changes set out in the Consultation Conclusions on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments.

a listed issuer (where applicable)

...

...

**“market capitalisation”**

the market value of the entire size of an issuer, which shall include all classes of securities (excluding treasury shares) of the issuer, irrespective of whether any of such class(es) of securities are unlisted, or listed on other regulated market(s)

Proposal (4)  
of Chapter 3

...

...

**“substantial shareholder”**

in relation to a company means a person (including a holder of depositary receipts) who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company (*Note 2*), provided always that a depositary shall not be a substantial shareholder merely by reason of the fact that it is holding shares of the issuer for the benefit of the holders of depositary receipts

Proposal (4)  
of Chapter 3

*Notes: (1) This definition is modified in the case of Chapter 14A by the provisions of rule 14A.29.*

*(2) Voting rights attaching to treasury shares are excluded.*

...

...

**“treasury shares”**

shares repurchased and held by an issuer in treasury, as authorised by the law of the issuer’s place of incorporation and its articles of association or equivalent constitutional document

*Notes: (1) For the purpose of the Rules, a holder of treasury shares shall abstain from voting on matters that require shareholders’ approval under the Rules.*

Proposal (4)  
of Chapter 3

*(2) References to sales or transfers of treasury shares include sales or transfers by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.*

...

## Chapter 2

### GENERAL

#### INTRODUCTION

...

#### General Principles

2.03 The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:—

...

- (6) all new issues of equity securities, or sales or transfers of treasury shares, by a listed issuer are first offered to the existing shareholders by way of rights unless they have agreed otherwise.

Proposal (1)  
of Chapter 3

In these last four respects, the rules seek to secure for holders of securities, other than controlling interests, certain assurances and equality of treatment which their legal position might not otherwise provide.

...

## Chapter 3

### GENERAL

#### AUTHORISED REPRESENTATIVES, DIRECTORS, BOARD COMMITTEES AND COMPANY SECRETARY

...

#### Directors

...

3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—

- (1) holds more than 1% of the number of issued shares (excluding treasury shares) of the listed issuer;

Proposal (4)  
of Chapter 3

...



...

...

## Chapter 3A

### GENERAL

#### SPONSORS, COMPLIANCE ADVISERS, OVERALL COORDINATORS AND OTHER CAPITAL MARKET INTERMEDIARIES

...

##### Impartiality and independence of sponsors

...

3A.07 At least one sponsor of a new applicant must be independent of it. The sponsor is required to demonstrate to the Exchange its independence or lack of independence and give a statement as to independence to the Exchange as set out in the Form A1 (published in Regulatory Forms).

A sponsor is not independent if any of the following circumstances exist at any time from the date of submission of a listing application on Form A1 up to the date of listing:

- (1) the sponsor group and any director or close associate of a director of the sponsor collectively holds or will hold, directly or indirectly, more than 5% of the number of issued shares (excluding treasury shares) of the new applicant, except where that holding arises as a result of an underwriting obligation;

Proposal (4)  
of Chapter 3

...

...

##### Compliance Adviser's undertaking to the Exchange

...

3A.23 During the Fixed Period, a listed issuer must consult with and, if necessary, seek advice from its Compliance Adviser on a timely basis in the following circumstances:

...

- (2) where a transaction, which might be a notifiable or connected transaction, is contemplated including share issues, sales or transfers of treasury shares and share repurchases;

Proposal (1)  
of Chapter 3

...

...

**Chapter 7**  
**EQUITY SECURITIES**  
**METHODS OF LISTING**

...

**Rights Issue**

...

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

Proposal (4)  
of Chapter 3

...

...

**Restrictions on rights issues, open offers and specific mandate placings**

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

proposal).

Notes: 1. *Theoretical dilution effect of an issue refers to the discount of the “theoretical diluted price” to the “benchmark price” of shares.*

- (a) *The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (by reference to the “benchmark price” and the number of issued shares (excluding treasury shares) immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares (excluding treasury shares) as enlarged by the issue.*

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of Chapter 3

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## Chapter 8

### EQUITY SECURITIES

#### QUALIFICATIONS FOR LISTING

8.08 There must be an open market in the securities for which listing is sought. This will normally mean that:—

- (1) (a) at least 25% of the issuer’s total number of issued shares (excluding treasury shares) must at all times be held by the public.
- (b) where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer’s total number of issued shares (excluding treasury shares). However, the class of securities for which listing is sought must not be less than 15% of the issuer’s total number of issued shares (excluding treasury shares), having an expected market capitalisation at the time of listing of not less than HK\$125,000,000.

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of Chapter 3

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of Chapter 3

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8.09 ...

- (2) The expected market capitalisation of a new applicant at the time of listing must be at least HK\$500,000,000 which shall be calculated on the basis of all issued shares (including the class of securities for which listing is sought and such other class(es) of securities, if any, that are either unlisted or listed on other regulated market(s), but excluding treasury shares) of the new applicant at the time of listing.

Proposal (4)  
of Chapter 3

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### **Basis of allocation and “the public”**

...

8.24 The Exchange will not regard any core connected person of the issuer as a member of “the public” or shares held by him as being “in public hands”. In addition the Exchange will not recognise as a member of “the public”:—

- (1) any person whose acquisition of securities has been financed directly or indirectly by a core connected person;
- (2) any person who is accustomed to take instructions from a core connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him; and

- (3) the issuer as the holder of treasury shares.

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## **Chapter 8A**

### **EQUITY SECURITIES**

#### **WEIGHTED VOTING RIGHTS**

...

#### **Voting power of non-WVR shareholders**

8A.09 Non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer’s general meetings (Note 3).

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of Chapter 3

*Note 1: Compliance with this rule means, for example, that an issuer cannot list with a WVR structure that attaches 100% of the right to vote at*

*general meetings (Note 3) to the beneficiaries of weighted voting rights.*

*Note 2: A beneficiary of weighted voting rights must not take any action that would result in a non-compliance with this rule.*

*Note 3: Voting rights attaching to treasury shares are excluded.*

...

## CORPORATE GOVERNANCE

### Right of Non-WVR Shareholders to Convene an Extraordinary General Meeting

8A.23 Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights (Note) on a one vote per share basis in the share capital of the listed issuer.

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of Chapter 3

*Note: Voting rights attaching to treasury shares are excluded.*

...

## Chapter 9

### EQUITY SECURITIES

#### APPLICATION PROCEDURES AND REQUIREMENTS

##### Preliminary

9.01 This Chapter sets out the procedures and requirements for applications for the listing of equity securities, whether by new applicants or by listed issuers, and the documentary requirements for selling or transferring treasury shares by listed issuers.

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of Chapter 3

...

##### Documentary Requirements – Applications by Listed Issuers

9.17 Rules 9.18 to 9.23 set out the documentary requirements for applications for the listing of equity securities, or sale or transfer of treasury shares, by listed issuers.

Proposal (1)  
of Chapter 3

**At the time of application for listing ~~Submission of listing application and/or draft listing document~~**

...

9.19A In the case of a sale or transfer of treasury shares which is required to be

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of Chapter 3

supported by a listing document, the documents required under rule 9.19, as applicable, must be lodged with the Exchange at least 10 clear business days before the date on which the issuer proposes to bulk print the listing document.

...

**Before dealings commence, or completion of the sale or transfer of treasury shares**

9.23 The following documents must be submitted to the Exchange before dealings commence, or in the case of a sale or transfer of treasury shares, before completion of the sale or transfer:-

Proposal (1)  
of Chapter 3

...

(2) in the case of the placing by a listed issuer of a class of equity securities or interests (including equity securities, interests in a REIT, stapled securities and securities of an investment company (as defined in rule 21.01)) new to listing:

...

In the case of the placing by a listed issuer of a class of securities already listed and/or treasury shares by a listed issuer (other than a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed), the Exchange may require the issuer to submit information on the placees for the purpose of establishing their independence (see also rule 13.28(7));

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## Chapter 10

### EQUITY SECURITIES

#### RESTRICTIONS ON PURCHASE AND SUBSCRIPTION

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#### Restrictions and Notification Requirements on Issuers Purchasing their own Shares on a Stock Exchange

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10.06 (1) ...

(b) the issuer must send to its shareholders an Explanatory Statement (at

the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

...

(x) a statement giving the highest and lowest prices at which the relevant shares have traded on the Exchange during each of the previous twelve months;

~~(xi) a statement on the front page as follows:~~

~~"Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.";~~  
and

(xii) a statement that neither the Explanatory Statement nor the proposed share repurchase has any unusual features;

(xii) a statement of whether the issuer intends to cancel the repurchased shares or hold them as treasury shares; and

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(xiii) a statement on the front page as follows:

"Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.";

(c) the ordinary resolution proposed to shareholders to give the directors of the issuer a specific approval or general mandate to purchase shares must include the following:—

(i) the total number and description of the shares which the issuer is authorised to purchase, provided that the number of shares which the issuer is authorised to purchase on the Exchange or on another stock exchange recognised for this purpose by the Commission and the Exchange under the Code on Share Buy-backs, may not exceed 10 per cent. of the number of issued shares (excluding treasury shares) of the issuer and the total number of warrants to subscribe for or purchase shares (or other relevant class of securities) authorised to be so

Proposal (4)  
of Chapter 3

purchased may not exceed 10 per cent. of the warrants of the issuer (or such other relevant class of securities, as the case may be), in each case as at the date of the resolution granting the general mandate; and

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(3) (a) Subsequent Issues or Sales or Transfers of Treasury Shares

An issuer whose primary listing is on the Exchange may not (i) make a new issue of shares or sale or transfer of any treasury shares; or (ii) announce a proposed new issue of shares or sale or transfer of any treasury shares, for a period of 30 days after any purchase by it of shares, whether on the Exchange or otherwise (other than an issue of securities or transfer of treasury shares pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities or transfer treasury shares, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

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of Chapter 3

(b) Subsequent Purchase of its Own Shares

An issuer whose primary listing is on the Exchange may not repurchase any of its own shares on the Exchange for a period of 30 days after any sale or transfer of any treasury shares on the Exchange, without the prior approval of the Exchange.

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of Chapter 3

(4) Reporting Requirements

An issuer shall:—

- (a) submit for publication to the Exchange through HKEx-EPS not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following any day on which the issuer makes a purchase of shares (whether on the Exchange or otherwise), the total number of shares purchased by the issuer the previous day and whether they are cancelled or held as treasury shares, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and shall confirm that those purchases which were made on the Exchange were made in accordance with the Exchange Listing Rules and if the issuer's primary listing is on the Exchange, that there have been no material changes to the particulars contained in the Explanatory Statement. In respect of purchases made on

Proposal (1)  
of Chapter 3



another stock exchange, the issuer's report must confirm that those purchases were made in accordance with the domestic rules applying to purchases on that other stock exchange. Such reports shall be made on a return in such form and containing such information as the Exchange may from time to time prescribe. In the event that no shares are purchased on any particular day then no return need be made to the Exchange. The issuer should make arrangements with its brokers to ensure that they provide to the issuer in a timely fashion the necessary information to enable the issuer to make the report to the Exchange; and

...

#### (5) Status of Purchased shares

The shares repurchased by an issuer shall be held as treasury shares or cancelled. The listing of all shares which are held as treasury shares shall be retained.

Proposal of  
Chapter 2

The listing of all shares which are purchased by an issuer (whether on the Exchange or otherwise) but not held as treasury shares shall be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of these purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

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### Treasury Shares

10.06A An issuer may sell treasury shares on the Exchange under a general mandate approved by shareholders in accordance with rule 13.36(2)(b), subject to the following:

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of Chapter 3

- (a) it shall not knowingly sell the shares to a core connected person and a core connected person shall not knowingly purchase the shares from the issuer, on the Exchange;
- (b) it shall procure that any broker appointed by the issuer to effect the sale of the shares shall disclose to the Exchange such information with respect to the sales made on behalf of the issuer as the Exchange may request; and
- (c) it shall not sell the shares on the Exchange at any time after inside information has come to its knowledge until the information is made publicly available. In particular, during the period of one month immediately preceding the earlier of:
  - (i) the date of the board meeting (as such date is first notified to the

Exchange in accordance with the Listing Rules) for the approval of the issuer's results for any year, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and

- (ii) the deadline for the issuer to announce its results for any year or half-year under the Listing Rules, or quarterly or any other interim period (whether or not required under the Listing Rules),

and ending on the date of the results announcement, the issuer may not sell treasury shares on the Exchange, unless the circumstances are exceptional.

...

**No further issues of securities or sales or transfers of treasury shares within 6 months of listing**

10.08 No further shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed) may be issued or sold or transferred out of treasury or form the subject of any agreement to such an issue, sale or transfer within 6 months from the date on which securities of the listed issuer first commence dealing on the Exchange (whether or not such issue, sale or transfer of shares or securities will be completed within 6 months from the commencement of dealing), except for:

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of Chapter 3

- (1) the issue of shares, (the listing of which has been approved by the Exchange,) or transfer of shares out of treasury pursuant to a share scheme under Chapter 17;

...

- (4) the issue, sale or transfer out of treasury of shares or securities pursuant to an agreement entered into before the commencement of dealing, the material terms of which have been disclosed in the listing document issued in connection with the initial public offering; and

...

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**Chapter 11**

**EQUITY SECURITIES**

**LISTING DOCUMENTS**

...

## Definition

- 11.03 A listing document is defined in rule 1.01 as a prospectus, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application ~~of~~ for listing or sale or transfer of treasury shares by a listed issuer. Issuers are recommended to consult the Exchange at the earliest opportunity if they are in any doubt as to whether a particular document constitutes a listing document as so defined.

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## When Required

- 11.04 The methods of listing or sale or transfer of treasury shares required by these Exchange Listing Rules to be supported by a listing document are: —
- (1) offers for subscription;
  - (2) offers for sale;
  - (3) placings by or on behalf of a new applicant or by or on behalf of a listed issuer of securities of a class new to listing;
  - (4) introductions which include transfers of listing from GEM to the Main Board;
  - (5) rights issues;
  - (6) open offers;
  - (7) capitalisation issues (including the bonus issue of warrants);
  - (8) an exchange or a substitution of securities; and
  - (9) any deemed new listing under the Exchange Listing Rules.

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- 11.05 Other methods of listing or sale or transfer of treasury shares are not required by these Exchange Listing Rules to be supported by a listing document, but if a listing document is otherwise required or issued, it must comply with the relevant requirements of this Chapter.

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of Chapter 3

## Contents

- 11.06 Subject to rule 11.09 and rule 11.09A, listing documents must contain all of the specific items of information which are set out in either Appendix D1A, D1B, D1E or D1F (as the case may be). In those cases where listing is sought for securities of an issuer no part of whose share capital is already listed the items of information specified in Appendix D1A or D1E (as the case may be) must be included; in those cases where listing is sought for securities of an issuer some part of whose share capital is already listed and/or where treasury shares are sold or transferred by the issuer, the items of information specified in Appendix D1B or D1F (as the case may be) must be included.

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of Chapter 3

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**Chapter 13**  
**EQUITY SECURITIES**

**CONTINUING OBLIGATIONS**

...

**GENERAL MATTERS RELEVANT TO THE ISSUER'S SECURITIES**

**Changes in issued shares – next day disclosure return and monthly return**

13.25A (1) In addition and without prejudice to specific requirements contained elsewhere in the Exchange Listing Rules, an issuer must, whenever there is a change in its issued shares or treasury shares as a result of or in connection with any of the events referred to in rule 13.25A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.

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(2) The events referred to in rule 13.25A(1) are as follows:

(a) any of the following:

- (i) placing;
- (ii) consideration issue;
- (iii) open offer;
- (iv) rights issue;
- (v) bonus issue;
- (vi) scrip dividend;
- (vii) repurchase of shares or other securities;
- (viii) exercise of an option under the issuer's share option scheme by any of its directors;

- (ix) exercise of an option other than under the issuer's share option scheme by any of its directors;
  - (x) capital reorganisation; or
  - (xi) change in issued shares or treasury shares not falling within any of the categories referred to in rule 13.25A(2)(a)(i) to (x) or rule 13.25A(2)(b); and
- (b) subject to rule 13.25A(3), any of the following:
- (i) exercise of an option under a share option scheme other than by a director of the issuer;
  - (ii) exercise of an option other than under a share option scheme not by a director of the issuer;
  - (iii) exercise of a warrant;
  - (iv) conversion of convertible securities; or
  - (v) redemption of shares or other securities.
- (3) The disclosure obligation for an event in rule 13.25A(2)(b) only arises where:
- (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 13.25B or last return under this rule 13.25A (whichever is the later), results in a change of 5% or more of the listed issuer's issued shares (excluding treasury shares); or
  - (b) ...
- (4) For the purposes of rule 13.25A(3), the percentage change in the listed issuer's issued shares is to be calculated by reference to the listed issuer's total number of issued shares (excluding treasury shares) as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under rule 13.25B or a return published under this rule 13.25A.

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13.25B A listed issuer shall, by no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the fifth business day next following the end of each calendar month, submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website, a monthly return in relation to movements in the listed issuer's equity securities (including treasury shares), debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe

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(irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of equity securities (including treasury shares), debt securities and any other securitised instruments, as applicable, issued and which may be issued pursuant to options, warrants, convertible securities or any other agreements or arrangements.

...

13.25C A listed issuer shall, in relation to each new issue of securities or sale or transfer of treasury shares reported in the next day disclosure return under rule 13.25A and the monthly return under rule 13.25B, confirm that (where applicable):

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- (1) the issue of securities or sale or transfer of treasury shares has been duly authorised by its board of directors and carried out in compliance with all applicable listing rules, laws and other regulatory requirements;
- (2) all money due to the listed issuer in respect of the issue of securities or sale or transfer of treasury shares has been received by it;
- (3) all pre-conditions for listing imposed by the Rules under “Qualification of listing” have been fulfilled;
- (4) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- (5) all the securities of each class are in all respects identical;

*Note: “Identical” means in this context:*

- (a) *the securities are of the same nominal value with the same amount called up or paid up;*
  - (b) *they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and*
  - (c) *they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank pari passu in all other respects.*
- (6) all documents required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;
  - (7) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue, sale or transfer;

- (8) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied; and
- (9) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and particulars thereof, if so required by law, have been filed with the Registrar of Companies.

...

### Changes in the terms of convertible securities

- 13.27 An issuer shall, if the issue of new securities by it or the purchase by it of its listed securities or the sale or transfer of its treasury shares will result in a change in the terms of conversion of any of its convertible securities or in the terms of the exercise of any of its options, warrants or similar rights, publish an announcement in accordance with rule 2.07C as to the effect of any such change wherever practicable, prior to the new issue or sale or transfer of treasury shares and, if not so practicable, as soon as possible thereafter.

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### Issue of securities

- 13.27A References in rules 13.28, 13.29 and 13.30 to an allotment, issue, offer, placing or subscription of securities or shares shall include a sale or transfer of treasury shares and references to allottees shall include purchasers or transferees of treasury shares. Rule 13.28 does not apply to a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed.

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of Chapter 3

Proposal (2)  
of Chapter 3

- 13.28 Where the directors agree to issue securities for cash in accordance with rule 13.36(1)(a) or 13.36(2), an issuer shall publish an announcement in accordance with rule 2.07C as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day, containing the following information:—

...

- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

*Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:*

- (a) *the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; and*
- (b) *the maximum number of shares that could be issued upon exercise of the conversion/subscription rights; and*
- (c) *the issuer's intention, if any, to transfer treasury shares upon exercise of the conversion/subscription rights.*

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of Chapter 3

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...

### Pre-emptive rights

13.36 ...

(1A) References in this rule 13.36 to an allotment, issue, grant, offer, placing, subscription or disposal of securities or shares shall include a sale or transfer of treasury shares listed on the Exchange and references to allottees shall include purchasers or transferees of such treasury shares.

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of Chapter 3

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

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

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...

- (b) if , but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20%



of the number of issued shares (excluding treasury shares) of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares (excluding treasury shares) of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares (excluding treasury shares) of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate; or

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of Chapter 3

*Notes: 1. Other than where independent shareholders' approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 13.36(2)(b) is only permitted in the circumstances set out in rules 14A.92 and 14A.92B.*

Proposal (2)  
of Chapter 3

...

- (c) issue of shares under a share scheme that complies with Chapter 17.

...

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

- (a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (b) the average closing price in the 5 trading days immediately prior to the earlier of:
- (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
- (ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

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

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

(5A) In the case of a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed, the reference to the benchmarked price in Rule 13.36(5) shall be the higher of (a) the closing price on the trading day immediately prior to the sale; and (b) the average closing price in the 5 trading days immediately prior to the sale.

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of Chapter 3

...

(8) Where an issuer proposes to issue convertible securities or warrants, options or similar rights to subscribe for shares under Rule 13.36(1)(a), the circular to shareholders shall disclose the issuer's intention, if any, to use treasury shares to satisfy its obligation upon conversion or exercise of any of such convertible securities, warrants, options or similar rights.

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of Chapter 3

...

## ANNOUNCEMENTS, CIRCULARS AND OTHER DOCUMENTS

### Review of documents

13.52 Subject to rule 13.52A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the Exchange Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 13.52(1) or (2).

...

Notes: ...

4. *Where an announcement or advertisement of a new or further issue of securities or sale or transfer of treasury shares contains a profit forecast, the provisions of rules 14.60A and 14.61 will apply.*

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of Chapter 3

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### Independent financial advisers

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13.84 An independent financial adviser must be independent from any issuer for whom it acts. An independent financial adviser is not independent if any of the following circumstances exist as at the time (1) immediately after the independent financial adviser executes its engagement letter with the issuer; or (2) the independent financial adviser commences work as independent financial adviser to the issuer, whichever is earlier (“**IFA Obligation Commencement Time**”), and up to the end of its engagement:

(1) the IFA group and any director or close associate of a director of the independent financial adviser holds, directly or indirectly, in aggregate more than 5% of the number of issued shares (excluding treasury shares) of the issuer, another party to the transaction, or a close associate or core connected person of the issuer or another party to the transaction;

Proposal (4)  
of Chapter 3

(1A) in the case of a connected transaction, the independent financial adviser holds more than 5% of the number of issued shares (excluding treasury shares) of an associate of another party to the transaction;

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of Chapter 3

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## Chapter 14

### EQUITY SECURITIES

#### NOTIFIABLE TRANSACTIONS

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#### Classification

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14.06 The transaction classification is made by using the percentage ratios set out in rule 14.07. The classifications are:—

(1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and/or treasury shares to be transferred and where all percentage ratios are less than 5%;

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of Chapter 3

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...

#### *Percentage ratios*

14.07 The percentage ratios are the figures, expressed as percentages resulting from each of the following calculations:—

...

- (5) Equity capital ratio — the number of shares to be issued and/or treasury shares to be transferred by the listed issuer as consideration divided by the total number of the listed issuer's issued shares (excluding treasury shares) immediately before the transaction.

Proposal (1)  
of Chapter 3

Proposal (4)  
of Chapter 3

...

...

14.08 The table below summarises the classification and percentage ratios resulting from the calculations set out in rule 14.07. However, listed issuers should refer to the relevant rules for the specific requirements.

...

*Note: The equity capital ratio relates only to an acquisition (and not a disposal) by a listed issuer issuing new equity capital and/or transferring treasury shares.*

Proposal (1)  
of Chapter 3

...

*Figures used in total assets, profits and revenue calculations*

...

14.18 The value of transactions, ~~or~~ issues of securities or sales of treasury shares by the listed issuer in respect of which adequate information has already been published and made available to shareholders in accordance with the Exchange Listing Rules and which have been completed must be included in the total assets of the listed issuer.

Proposal (1)  
of Chapter 3

...

### **Notification, publication and shareholders' approval requirements**

14.33 The table below summarises the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

...

*Notes: 1 No shareholder approval is necessary if the consideration shares are issued or transferred out of treasury under a general mandate.*

Proposal (1)  
of Chapter 3

*However, if the shares are not issued or transferred out of treasury under a general mandate, the listed issuer is required, pursuant to rule 13.36(1)(a), to obtain shareholders' approval in general meeting prior to the issue or transfer out of treasury of the consideration shares.*

...

...

### *Methods of approval*

14.44 Shareholders' approval for a major transaction shall be given by a majority vote at a general meeting of the shareholders of the issuer unless all the following conditions are met, in which case written shareholders' approval may, subject to rule 14.86, be accepted in lieu of holding a general meeting:—

- (1) no shareholder is required to abstain from voting if the issuer were to convene a general meeting for the approval of the transaction; and
- (2) the written shareholders' approval has been obtained from a shareholder or a closely allied group of shareholders who together hold more than 50% of the voting rights at that general meeting (Note) to approve the transaction. Where a listed issuer discloses inside information to any shareholder in confidence to solicit the written shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.

Proposal (4)  
of Chapter 3

Note: Voting rights attaching to treasury shares are excluded.

...

### **Contents of announcements**

#### *All transactions*

14.58 The announcement of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover must contain at least the following information:-

...

- (4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought or treasury shares to be transferred, the listed issuer must also include the amounts and details of the securities being issued or transferred out of treasury;

Proposal (1)  
of Chapter 3

...

...

### *Share transaction announcements*

14.59 In addition to the information set out in rule 14.58, the announcement for a share transaction must contain at least the following information:—

- (1) the amount and details of the securities being issued or transferred out of treasury including details of any restrictions which apply to the subsequent sale of such securities;

Proposal (1)  
of Chapter 3

...

- (5) in the case where securities will be issued, a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities.

Proposal (1)  
of Chapter 3

### *Discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction and reverse takeover announcements*

14.60 In addition to the information set out in rule 14.58, the announcement of a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover must contain at least brief details of the following:—

...

- (4) if the transaction involves an issue of securities for which listing will be sought or a transfer of treasury shares, the announcement must also include:

Proposal (1)  
of Chapter 3

- (a) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and

- (b) in the case where securities will be issued, a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities;

Proposal (1)  
of Chapter 3

...

...

### *Major transaction circulars*

...

14.67 In addition to the requirements set out in rule 14.66, a circular issued in relation

to an acquisition constituting a major transaction must contain:—

- (1) the information required under paragraphs 9 and 10 of Appendix D1B, if the acquisition involves securities for which listing will be sought;
- (2) the information required under paragraph 22(1) of Appendix D1B, if ~~new~~ shares are to be issued or transferred out of treasury as consideration;

Proposal (1)  
of Chapter 3

...

...

### *Contents of offer document*

14.81 The offer document must contain:—

...

- (3) a prominent and legible statement in the following form:

“The Stock Exchange of Hong Kong Limited (the “Exchange”) has stated that if, at the close of the offer, less than the minimum prescribed percentage applicable to the listed issuer, being [ ]% of the issued shares (excluding treasury shares), are held by the public, or if the Exchange believes that:—

Proposal (4)  
of Chapter 3

— a false market exists or may exist in the trading of the shares; or

— that there are insufficient shares in public hands to maintain an orderly market;

it will consider exercising its discretion to suspend dealings in the shares.

[[*The Offeror*] intends [the listed issuer] to remain listed on the Exchange. The directors of [*the Offeror*] and the new directors to be appointed to the Board of [the listed issuer] will jointly and severally undertake to the Exchange to take appropriate steps to ensure that sufficient public float exists in [*the listed issuer*]’s shares.]”

...

...

## **Chapter 14A**

### **EQUITY SECURITIES**

### **CONNECTED TRANSACTIONS**

...

### What are connected transactions

...

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

...

- (6) issuing new securities, or selling or transferring treasury shares, of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities or sale or transfer of treasury shares;

Proposal (1) of Chapter 3

...

...

### Shareholders' approval

...

14A.37 The Exchange may waive the general meeting requirement and accept a written shareholders' approval, subject to the conditions that:

- (1) no shareholder of the listed issuer is required to abstain from voting if a general meeting is held to approve the transaction; and
- (2) the approval is given by a shareholder or a closely allied group of shareholders who (together) hold more than 50% of the voting rights in the general meeting (Note).

Note: Voting rights attaching to treasury shares are excluded.

Proposal (4) of Chapter 3

...

### Exemptions

14A.73 Exemptions from the connected transaction requirements are available for the following types of transactions:

...

- (3) issues of new securities or sales or transfers of treasury shares by the listed issuer or its subsidiary (rules 14A.92 and 14A.92B);

Proposal (1) of Chapter 3  
Proposal (2) of Chapter 3

...



...

### **De minimis transactions**

14A.76 This exemption applies to a connected transaction (other than an issue of new securities or sale or transfer of treasury shares by the listed issuer) conducted on normal commercial terms or better as follows:

Proposal (1)  
of Chapter 3

- (1) The transaction is fully exempt if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 0.1%;
  - (b) less than 1% and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level;  
or
  - (c) less than 5% and the total consideration (or in the case of any financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$3,000,000.
- (2) The transaction is exempt from the circular (including independent financial advice) and shareholders' approval requirements if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 5%; or
  - (b) less than 25% and the total consideration (or in the case of any financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$10,000,000.

...

### **Issues of new securities or sales or transfers of treasury shares by the listed issuer or its subsidiary**

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

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
  - (a) through excess application (see rule 7.21(1) or 7.26A(1)); or
  - (b) [Repealed 3 July 2018]

- (3) the securities are issued to the connected person under:
- (a) a share scheme that complies with Chapter 17; or
  - (b) a share scheme adopted by the listed issuer before its securities first start dealing on the Exchange, and where the Exchange has approved the listing of the securities to be issued under the scheme; or
- (4) the securities are issued under a “top-up placing and subscription” that meets the following conditions:
- (a) the new securities are issued to the connected person:
    - (i) after it has reduced its holding in the same class of securities by placing them to third parties who are not its associates under a placing agreement; and
    - (ii) within 14 days from the date of the placing agreement;
  - (b) the number of new securities issued to the connected person does not exceed the number of securities placed by it; and
  - (c) the new securities are issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.

*Note: An issue of new securities by a subsidiary of the listed issuer may be exempt as a de minimis transaction.*

14A.92A References in rule 14A.92 to an issue, offer, placing or subscription of securities shall include a sale or transfer of treasury shares.

Proposal (1)  
of Chapter 3

14A.92B A sale of treasury shares by a listed issuer to a connected person is fully exempt if it is made on the Exchange or any other stock exchange on which the issuer is listed, except where the connected person knowingly purchases the treasury shares from the listed issuer.

Proposal (2)  
of Chapter 3

...

## Chapter 15

### EQUITY SECURITIES

#### OPTIONS, WARRANTS AND SIMILAR RIGHTS

...

15.02 All warrants must, prior to the issue or grant thereof, be approved by the Exchange and in addition, where they are warrants to subscribe for equity securities (including treasury shares), by the shareholders in general meeting (unless they are issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 13.36(2)). In the absence of exceptional circumstances which would include, by way of example, a rescue reorganisation, the Exchange will only grant approval to the issue or grant of warrants to subscribe securities if the following requirements are complied with:—

Proposal (1)  
of Chapter 3

- (1) the securities to be issued or transferred out of treasury by the issuer on exercise of the warrants must not, when aggregated with all other equity securities which remain to be issued or transferred out of treasury by the issuer on exercise of any other subscription rights, if all such rights were immediately exercised, whether or not such exercise is permissible, exceed twenty per cent. of the number of issued shares (excluding treasury shares) of the issuer at the time such warrants are issued. Options granted under employee or executive share schemes which comply with Chapter 17 are excluded for the purpose of this limit;

Proposal (1)  
of Chapter 3

Proposal (4)  
of Chapter 3

...

15.03 The circular or notice to be sent to shareholders convening the requisite meeting under rule 15.02 must include at least the following information:—

- (1) the maximum number of securities which could be issued or transferred out of treasury on exercise of the warrants;

Proposal (1)  
of Chapter 3

...

...

## Chapter 17

### EQUITY SECURITIES

#### SHARE SCHEMES

#### Application of chapter 17

17.01 ...

- (4) In this chapter 17, references to new shares or new securities include treasury shares, and references to the issue of shares or securities include the transfer of treasury shares.

Proposal (1)  
of Chapter 3

...

#### Share schemes involving issue of new shares by listed issuers

## Adoption of a new scheme

17.02 ...

- (2) The scheme document itself does not need to be circulated to shareholders of the listed issuer. However, if the scheme document is not so circulated, it must be published on the Exchange's website and the issuer's own website for a period of not less than 14 days before the date of the general meeting and made available for inspection at the general meeting and the terms of the shareholders' resolution must approve the scheme as described in the circular to the shareholders of the listed issuer. The circular must include the following information:

...

(d) a statement in the form set out in paragraph 2 of Appendix D1B; and

(e) a statement of the issuer's intention to use treasury shares for the scheme, where applicable; and

Proposal (1)  
of Chapter 3

(ef) any additional information requested by the Exchange.

...

...

## Terms of the scheme

17.03 The scheme document must include the following provisions and/or provisions as to the following (as the case may be):

...

- (3) the total number of shares which may be issued in respect of all options and awards to be granted under the scheme and any other schemes (the **scheme mandate limit**), together with the percentage of the issued shares (excluding treasury shares) that it represents at the date of approval of the scheme; ...

Proposal (4)  
of Chapter 3

...

...

...

## Scheme mandate limit and service provider sublimit

17.03B (1) The scheme mandate limit must not exceed 10% of the relevant class of shares of the listed issuer in issue (excluding treasury shares) as at the

Proposal (4)  
of Chapter 3

date of approval of the scheme (alternatively, in respect of a scheme of a new applicant that will become effective only upon its separate listing, the 10% limit may be calculated by reference to the relevant class of shares of the applicant in issue (excluding treasury shares) as at the date of its listing).

...

17.03C ...

- (2) The total number of shares which may be issued in respect of all options and awards to be granted under all of the schemes of the listed issuer under the scheme mandate as "refreshed" must not exceed 10% of the relevant class of shares in issue (excluding treasury shares) as at the date of approval of the refreshed scheme mandate. The listed issuer must send a circular to its shareholders containing the number of options and awards that were already granted under the existing scheme mandate limit and the existing service provider sublimit (if any), and the reason for the "refreshment".

Proposal (4)  
of Chapter 3

...

#### **Limit on granting options or awards to individual participants**

- 17.03D (1) Where any grant of options or awards to a participant would result in the shares issued and to be issued in respect of all options and awards granted to such person (excluding any options and awards lapsed in accordance with the terms of the scheme) in the 12-month period up to and including the date of such grant representing in aggregate over 1% of the relevant class of shares of the listed issuer in issue (excluding treasury shares) (the **1% individual limit**), such grant must be separately approved by shareholders of the listed issuer in general meeting with such participant and his/her close associates (or associates if the participant is a connected person) abstaining from voting. The listed issuer must send a circular to the shareholders.

Proposal (4)  
of Chapter 3

...

...

#### **Granting options or awards to a director, chief executive or substantial shareholder of a listed issuer, or any of their respective associates**

17.04 ...

- (2) Where any grant of awards (excluding grant of options) to a director (other than an independent non-executive director) or chief executive of the issuer, or any of their associates would result in the shares issued and to be issued in respect of all awards granted (excluding any awards lapsed in accordance with the terms of the scheme) to such person in the 12-

month period up to and including the date of such grant, representing in aggregate over 0.1% of the relevant class of shares in issue (excluding treasury shares), such further grant of awards must be approved by shareholders of the listed issuer in general meeting in the manner set out in rule 17.04(4).

Proposal (4)  
of Chapter 3

- (3) Where any grant of options or awards to an independent non-executive director or a substantial shareholder of the listed issuer, or any of their respective associates, would result in the shares issued and to be issued in respect of all options and awards granted (excluding any options and awards lapsed in accordance with the terms of the scheme) to such person in the 12-month period up to and including the date of such grant representing in aggregate over 0.1% of the relevant class of shares in issue (excluding treasury shares), such further grant of options or awards must be approved by shareholders of the listed issuer in general meeting in the manner set out in rule 17.04(4).

Proposal (4)  
of Chapter 3

...

...

...

#### **Announcement on grant of options or awards**

17.06A ...

- (2) The disclosure must be made, on an individual basis, if the grantee is:

...

- (c) a related entity participant or service provider with options and awards granted and to be granted in any 12-month period exceeding 0.1% of the relevant class of shares in issue (excluding treasury shares).

Proposal (4)  
of Chapter 3

...

...

#### **Disclosure in annual report and interim report**

- 17.07 The listed issuer must disclose in its annual report and interim report the following information in relation to options and awards granted and to be granted under its share scheme(s) to: (i) each of the directors, chief executive or substantial shareholders of the listed issuer, or their respective associates; (ii) each participant with options and awards granted and to be granted in excess of the 1% individual limit; (iii) each related entity participant or service provider with options and awards granted and to be granted in any 12-month period exceeding 0.1% of the relevant class of shares in issue (excluding treasury shares); and (iv) other employee participants, related entity

Proposal (4)  
of Chapter 3

participants and service providers by category:

...

- (3) the number of shares that may be issued in respect of options and awards granted under all schemes of the issuer during the financial year/period divided by the weighted average number of shares of the relevant class in issue (excluding treasury shares) for the year/period.

Proposal (4)  
of Chapter 3

...

- 17.09 The listed issuer must include in its annual report a summary of each share scheme setting out:

...

- (3) the total number of shares available for issue under the scheme together with the percentage of the issued shares (excluding treasury shares) that it represents as at the date of the annual report;

Proposal (4)  
of Chapter 3

...

### **Other requirements**

- 17.10 In respect of share schemes of a listed issuer with a WVR structure, the scheme mandate limit, the service provider sublimit, the 1% individual limit, the limits on grants to the issuer's directors, chief executive and substantial shareholders (and their respective associates) under rule 17.04 and the limit on grants to service providers and related entity participants under rule 17.06A(1)(c) are to be calculated with reference to the total number of issued shares of the issuer (including ordinary shares and shares that carry weighted voting rights but excluding treasury shares).

Proposal (4)  
of Chapter 3

...

## **Chapter 18B**

### **EQUITY SECURITIES**

#### **SPECIAL PURPOSE ACQUISITION COMPANIES**

...

### **Open Market Requirements**

- 18B.05 Rule 8.08(2) is modified to require that, for each class of securities new to listing by a SPAC, at the time of listing, there must be an adequate spread of holders of the securities to be listed which must, in all cases, be at least 75 Professional Investors, of whom at least 20 must be Institutional Professional Investors and

such Institutional Professional Investors must hold at least 75% of the securities to be listed.

*Note: A SPAC must meet all other open market requirements applicable to a new listing, including the requirements of rule 8.08(1) that at least 25% of its total number of issued shares (excluding treasury shares) (and 25% of its total number of issued warrants) are at all times held by the public (see rule 8.24) and rule 8.08(3) that not more than 50% of the securities in public hands (see rule 8.24) at the time of listing can be beneficially owned by the three largest public shareholders.*

Proposal (4)  
of Chapter 3

...

## Warrants

...

18B.23 The number of shares to be issued or transferred out of treasury by the SPAC upon exercise of all outstanding warrants issued or granted by a SPAC must not, if all such rights were immediately exercised, whether or not such exercise is permissible, exceed 50% of the number of shares in issue (excluding treasury shares) at the time such warrants are issued.

Proposal (1)  
of Chapter 3

Proposal (4)  
of Chapter 3

...

## Promoter Shares and Promoter Warrants

...

18B.29 (1) A SPAC must not allot, issue or grant any Promoter Shares to SPAC Promoters that represent more than 20% of the total number of shares the SPAC has in issue (excluding treasury shares) as at the date of its listing.

Proposal (4)  
of Chapter 3

*Note 1: The Exchange is willing to consider, on a case by case basis, requests to issue rights to a SPAC Promoter entitling it to receive additional ordinary shares of the Successor Company after completion of the De-SPAC Transaction ("earn-out rights") on the following conditions:*

- (a) *the total number of ordinary shares of the Successor Company to be issued under (i) such earn-out rights ("earn-out shares") and (ii) all Promoter Shares must, altogether, represent an amount not more than 30% of the total number of shares that the SPAC had in issue (excluding treasury shares) as at the date of its listing;*

...

...



...

...

## SUCCESSOR COMPANY

### Open Market in Successor Company's Securities

...

18B.65 The minimum number of 300 shareholders of rule 8.08(2) is modified to 100 Professional Investors at the time of listing of a Successor Company.

*Note: A Successor Company must meet all other open market requirements applicable to a new listing, including the requirements of rule 8.08(1) that at least 25% of its total number of issued shares (excluding treasury shares) are at all times held by the public (subject to the Exchange's discretion to accept a lower percentage as provided for by rule 8.08(1)(d)) and rule 8.08(3) that not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.*

Proposal (4)  
of Chapter 3

...

## Chapter 19

### EQUITY SECURITIES

#### PRIMARY LISTING OF OVERSEAS ISSUERS

...

#### Restrictions and Notification Requirements on Overseas Issuers Purchasing their own Shares on a Stock Exchange

19.16 An overseas issuer may purchase its own shares on the Exchange and hold them as treasury shares in accordance with the provisions of rules 10.05 and 10.06.

Proposal of  
Chapter 2

...

## Chapter 19A

### EQUITY SECURITIES

**ISSUERS INCORPORATED  
IN THE PEOPLE’S REPUBLIC OF CHINA**

...

**Chapter 8 – Qualifications for Listing**

...

19A.13A Rule 8.08 is amended by adding the following provision to sub-paragraph (1)(b):

Where a PRC issuer has shares apart from the H shares for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer’s total number of issued shares (excluding treasury shares). However, the issuer’s H shares (for which listing is sought) must represent at least 15% of its total number of issued shares (excluding treasury shares), having an expected market capitalisation at the time of listing of not less than HK\$125,000,000.

Proposal (4)  
of Chapter 3

...

19A.14 Under rule 8.10, the Exchange requires a new applicant to make disclosure where it has a controlling shareholder or a director with an interest in a business apart from the new applicant’s business which competes or is likely to compete, either directly or indirectly, with the new applicant’s business. In this connection, in the case of a new applicant which is a PRC issuer, “controlling shareholder” means any shareholder or other person or group of persons together entitled to exercise, or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings of the new applicant (Note) or who is in a position to control the composition of a majority of the board of directors of the new applicant. For the purposes of this rule, the Exchange will normally not consider a PRC Governmental Body (see definition in rule 19A.04) as a “controlling shareholder” of a PRC issuer.

Proposal (4)  
of Chapter 3

Note: Voting rights attaching to treasury shares are excluded.

...

**Chapter 10 — Restrictions on Purchase and Subscription**

19A.24 A PRC issuer may purchase its own shares on the Exchange and hold them as treasury shares in accordance with the provisions of this rule and rules 10.05 and 10.06. Although the share repurchase provisions of rules 10.05 and 10.06 normally apply to a PRC issuer’s equity securities which are listed on the Exchange and which are or are proposed to be purchased on the Exchange, when seeking shareholders’ approval to make purchases of such securities on

Proposal of  
Chapter 2

the Exchange or when reporting such purchases, a PRC issuer should provide information on the proposed or actual purchases of any or all of its equity securities, whether or not listed or traded on the Exchange. Therefore, in the case of a PRC issuer, rule 10.06(6)(c) is amended and restated in its entirety to read as follows:

...

19A.25 ...

- (3) For a PRC issuer, the reference to “10 per cent. of the number of issued shares (excluding treasury shares) of the issuer” in rule 10.06(1)(c)(i) shall mean “10 per cent. of the total number of issued H shares (excluding treasury shares) of the PRC issuer”.

Proposal (4)  
of Chapter 3

...

## Appendix D1A

### Contents of Listing Documents where listing is sought for equity securities of a PRC issuer no part of whose share capital is already listed on the Exchange

19A.42 Appendix D1A is further supplemented by adding below paragraph 53 thereof, but before the Notes thereto, the following new caption heading and new paragraphs 54 to 65:

#### “Additional information on PRC issuers

54. Where a public or private issue or placing of securities of the PRC issuer other than H shares is being made simultaneously with the issue of H shares in Hong Kong or is proposed to be made as part of such issuer’s share issue plan which was approved at the inaugural meeting or any shareholders’ meeting of the issuer:—

...

- (7) information concerning each legal person or individual expected to hold shares other than H shares constituting 10% or more of the existing issued share capital (excluding treasury shares) of the PRC issuer upon the completion of such issue or placing of shares other than H shares, and the number of shares other than H shares to be held by each such legal person or individual.

Proposal (4)  
of Chapter 3

55. Where any securities of the PRC issuer are already issued and outstanding:—

...

- (4) information concerning each legal person or individual holding such

securities constituting 10% or more of the existing issued share capital (excluding treasury shares) of the PRC issuer, and the number of shares held by each such legal person or individual.

Proposal (4)  
of Chapter 3

...”

## **Appendix D1B**

### **Contents of Listing Documents where listing is sought for equity securities of a PRC issuer some part of whose share capital is already listed on the Exchange**

...

19A.44 Appendix D1B is further supplemented by adding below paragraph 43 thereof, but before the Notes thereto, the following new caption heading and new paragraphs 44 and 47:

#### **“Additional information on PRC issuers**

44. Where a public or private issue or placing of securities of the PRC issuer other than H shares is being made simultaneously with the issue of H shares in Hong Kong or is proposed to be made prior to the end of three months after the issue of the listing document in Hong Kong:—

...

(5) information concerning each legal person or individual expected to hold shares other than H shares constituting 10% or more of the existing issued share capital (excluding treasury shares) of the PRC issuer upon the completion of such issue or placing of shares other than H shares, and the number of shares other than H shares to be held by each such legal person or individual.

Proposal (4)  
of Chapter 3

...”

...

## **Appendix D1A**

### **Contents of Listing Documents**

#### **Equity Securities**

**In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed**

...

## General information about the group's activities

28. (1) ...

- (b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

- (v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5% of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

## Appendix D1B

### Contents of Listing Documents

#### Equity Securities

**In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed**

...

## General information about the group's activities

26. (1) ...

- (b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

- (v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5% of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

## Appendix D1E

### Contents of Listing Documents

#### Depository receipts

#### In the case where listing is sought for depository receipts of an issuer no part of whose share capital is already listed

...

#### General information about the group's activities

28. (1) ...

- (b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:–

...

- (v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5% of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

## Appendix D1F

### Contents of Listing Documents

#### Depository receipts

**In the case where listing is sought for depository receipts of an issuer where depository receipts representing some part of its share capital are already listed**

...

#### General information about the group's activities

22. (1) ...

- (b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

- (v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5% of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

## Appendix A1

### Core Shareholder Protection Standards

...

#### As regards Proceedings at General Meetings

14. ...

- (5) That members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights (Note), on a one vote per share basis, in the share capital of the issuer.

Proposal (4)  
of Chapter 3

Note: Voting rights attaching to treasury shares are excluded.

### As regards Variation of Rights

15. That a super-majority vote of the issuer's members of the class to which the rights are attached shall be required to approve a change to those rights.

Notes:

1. A "super-majority vote" means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a "supermajority vote" is deemed to be achieved.
2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the voting rights of the members who are present at the classified members' meeting and have voting rights to amend class rights as satisfying the threshold of a "super-majority".
3. Voting rights attaching to treasury shares are excluded.

Proposal (4)  
of Chapter 3

...

### Regulatory Forms

...

### Sponsor's/ Overall coordinator's# Declaration

#### Form E

...

To: The Head of the Listing Division, ..... 20.....  
The Listing Division,  
The Stock Exchange of Hong Kong Limited.

Dear Sir,



...

- (3) 25% of the total number of issued shares (excluding treasury shares) of the Issuer [have been placed/will be held] in the hands of the public in accordance with rule 8.08 of The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“the Listing Rules”) at the time of the Issuer’s listing; and

Proposal (4)  
of Chapter 3

...

## FEES RULES

...

### 2. Annual Listing Fee

- (1) In addition to the initial listing fee, an annual listing fee (payable in advance in one installment), which shall be calculated by reference to the nominal value of the securities which are or are to be listed on the Exchange, shall be payable on each class of securities as follows:—

...

- (c) in the case of listed warrants, in accordance with the following scale:—

Total funds which would be raised on  
full exercise of the warrants

Percentage of existing issued shares ( <u>excluding treasury shares</u> ) subject to warrants	Not exceeding HK\$100M	Not exceeding HK\$500M	HK\$500M & above
	(HK\$)	(HK\$)	(HK\$)
Not exceeding 10%	36,000	54,000	72,000
Not exceeding 50%	36,000	54,000	90,000
Not exceeding 100%	54,000	72,000	108,000
Over 100%	72,000	90,000	135,000

Proposal (4)  
of Chapter 3

...

### 4. Subsequent Issue Fee

- (1) Where a listed issuer makes a subsequent issue of equity securities which

is less than 20 per cent. of its issued shares (excluding treasury shares) and does not issue a listing document, there shall be a fixed fee payable of HK\$4,000.

Proposal (4)  
of Chapter 3

- (2) Where a listed issuer makes a subsequent issue of equity securities which is 20 per cent. or more of its issued shares (excluding treasury shares) or in circumstances where a listing document is issued in connection with the issue, a subsequent issue fee shall be charged on the following scale:—

Proposal (4)  
of Chapter 3

<u>Monetary value of the securities issued</u>		<u>Subsequent issue fee</u>
(HK\$M)		(HK\$)
Not exceeding	100	25,000
	500	50,000
	1,000	80,000
	2,000	120,000
	3,000	160,000
	4,000	200,000
Over	4,000	240,000

...

## Appendix D2

### DISCLOSURE OF FINANCIAL INFORMATION

...

#### Information in annual reports

...

11. In the case of any issue ~~for cash~~ of equity securities (including securities convertible into equity securities) or sale of treasury shares for cash, a listed issuer shall disclose:-

Proposal (1)  
of Chapter 3

- (1) the reasons for making the issue or sale;
- (2) the classes of equity securities issued or treasury shares sold;
- (3) as respect each class of equity securities, the number issued, and their aggregate nominal value, if any, and/or the number of treasury shares sold;
- (4) the issue price or selling price of each security;
- (5) the net price to the listed issuer of each security;

- (6) the names of the allottees (or transferees), if less than six in number, and, in the case of six or more allottees (or transferees), a brief generic description of them;
- (7) the market price of the securities concerned on a named date, being the date on which the terms of the issue or sale were fixed; and
- (8) the total funds raised from the issue or sale and details of the use of proceeds including:
  - (a) a detailed breakdown and description of the proceeds for each issue or sale and the purposes for which they are used during the financial year;
  - (b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for each issue or sale and the purposes for which they are used and the expected timeline; and
  - (c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

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

*11.1 In the case of a PRC issuer, references to securities in this paragraph shall mean and refer to securities\*.*

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

Proposal (1) of Chapter 3
------------------------------

...

31. A listed issuer shall include information in respect of its major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesale or retailer as the case may be) and its major suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:–

...

- (5) a statement of the interests of any of the directors; their close associates;

or any shareholder (which to the knowledge of the directors own more than 5% of the number of issued shares (excluding treasury shares) of the listed issuer) in the suppliers or customers disclosed under (1) to (4) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

**B. Draft Amendments to the GEM Rules<sup>2</sup>**

**Chapter 1**

**GENERAL**

**INTERPRETATION**

...

1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

...

**“controlling shareholder”**

...

any person who is or group of persons who are together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer (*Note*) or who is or are in a position to control the composition of a majority of the board of directors of the issuer; or in the case of a PRC issuer, the meaning ascribed to that phrase by rule 25.10

Proposal (4)  
of Chapter 3

*Note: Voting rights attaching to treasury shares are excluded.*

...

**“listing document”**

...

a prospectus, circular or any equivalent document (including the composite document in relation to a scheme of arrangement and/or an introduction document) issued or proposed to be issued in connection with an application for listing or a sale or transfer of treasury shares by a listed issuer (where applicable)

Proposal (1)  
of Chapter 3

...

**“substantial shareholder”**

...

in relation to a company means a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company (*Note 2*)

Proposal (4)  
of Chapter 3

<sup>2</sup> The GEM Rules reflect the rule changes set out in the Consultation Conclusions on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments.

Notes: (1) This definition is qualified in the case of connected transactions falling within rule 20.27.

(2) Voting rights attaching to treasury shares are excluded.

...

**“treasury shares”**

...

shares repurchased and held by an issuer in treasury, as authorised by the law of the issuer’s place of incorporation and its articles of association or equivalent constitutional document

Notes: (1) For the purpose of the Rules, a holder of treasury shares shall abstain from voting on matters that require shareholders’ approval under the Rules.

Proposal (4)  
of Chapter 3

(2) References to sales or transfers of treasury shares include sales or transfers by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.

...

**Chapter 2**

**GENERAL**

**INTRODUCTION**

...

**General principles**

2.06 The GEM Listing Rules are designed to ensure that investors have and can maintain confidence in the market and in particular that:—

...

(6) all new issues of equity securities, or sales or transfers of treasury shares, by a listed issuer are first offered to the existing shareholders by way of rights unless they have agreed otherwise.

Proposal (1)  
of Chapter 3

In these last 4 respects, the GEM Listing Rules seek to secure for holders of

securities, other than controlling interests, certain assurances and equality of treatment which their legal position might not otherwise provide.

...

## **Chapter 5**

### **GENERAL**

#### **DIRECTORS, COMPANY SECRETARY, BOARD COMMITTEES, AUTHORISED REPRESENTATIVES AND CORPORATE GOVERNANCE MATTERS**

##### **Directors**

...

##### *Independent non-executive directors*

...

5.09 In assessing the independence of non-executive directors, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—

- (1) holds more than 1% of the number of issued shares (excluding treasury shares) of the issuer;

Proposal (4)  
of Chapter 3

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...

...

## **Chapter 6A**

### **SPONSORS, COMPLIANCE ADVISERS, OVERALL COORDINATORS AND OTHER CAPITAL MARKET INTERMEDIARIES**

...

#### **Impartiality and independence of Sponsors**

...

6A.07 At least one Sponsor of a new applicant must be independent of it. The Sponsor is required to demonstrate to the Exchange its independence or lack of independence and give a statement as to independence to the Exchange as set out in Form A (published in Regulatory Forms).

A Sponsor is not independent if any of the following circumstances exist at any time from the date of submission of an application for listing on Form 5A up to the date of listing:-

- (1) the Sponsor group and any director or close associate of a director of the Sponsor collectively holds or will hold, directly or indirectly, more than 5% of the number of issued shares (excluding treasury shares) of the new applicant, except where that holding arises as a result of an underwriting obligation;

Proposal (4)  
of Chapter 3

...

...

### **Compliance Adviser's undertaking to the Exchange**

...

6A.23 During the Fixed Period, a listed issuer must consult with and, if necessary, seek advice from its Compliance Adviser on a timely basis in the following circumstances:

...

- (2) where a transaction, which might be a notifiable or connected transaction, is contemplated including share issues, sales or transfers of treasury shares and share repurchases;

Proposal (1)  
of Chapter 3

...

...

## **Chapter 10**

### **EQUITY SECURITIES**

#### **METHODS OF LISTING**

...

#### **Rights Issue**

...

10.29 If the proposed rights issue would increase either the number of issued shares (excluding treasury shares) or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately

Proposal (4)  
of Chapter 3



preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—

...

...

### **Restrictions on rights issues, open offers and specific mandate placings**

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

*Notes: 1. Theoretical dilution effect of an issue refers to the discount of the “theoretical diluted price” to the “benchmark price” of shares.*

*(a) The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (by reference to the “benchmark price” and the number of issued shares (excluding treasury shares) immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares (excluding treasury shares) as enlarged by the issue.*

Proposal (4)  
of Chapter 3

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...

## **Chapter 11**

### **EQUITY SECURITIES**

#### **QUALIFICATIONS FOR LISTING**

...

## Conditions relevant to the securities for which listing is sought

...

11.23 There must be an open market in the securities for which listing is sought. This will normally mean that:—

...

(6) the expected total market capitalisation of a new applicant at the time of listing must be at least HK\$150,000,000 which shall be calculated on the basis of all issued shares (including the class of securities for which listing is sought and such other class(es) of securities, if any, that are either unlisted or listed on other regulated market(s), but excluding treasury shares) of the new applicant at the time of listing;

Proposal (4)  
of Chapter 3

(7) subject to rule 11.23(10) below, at least 25% of the issuer's total number of issued shares (excluding treasury shares) must at all times be held by the public;

Proposal (4)  
of Chapter 3

...

(9) where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total number of issued shares (excluding treasury shares). However, the class of securities for which listing is sought must not be less than 15% of the issuer's total number of issued shares (excluding treasury shares), having an expected market capitalisation at the time of listing of not less than HK\$45,000,000;

Proposal (4)  
of Chapter 3

...

(11) notwithstanding the requirement that the minimum prescribed percentage of securities must at all times remain in public hands, the Exchange may consider granting a temporary waiver to an issuer which is the subject of a general offer under the Takeovers Code (including a privatisation offer), for a reasonable period after the close of the general offer to restore the percentage. The issuer must restore the minimum percentage of securities in public hands immediately after the expiration of the waiver, if granted.

Notes: ...

3 *The Exchange will also not recognise as a member of "the public":—*

- (a) any person whose acquisition of securities has been financed directly or indirectly by a person referred to in note 2 above; ~~or~~
- (b) any person who is accustomed to taking instructions from a person referred to in note 2 above in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him; and
- (c) the issuer as the holder of treasury shares.

Proposal (4)  
of Chapter 3

...

...

**Chapter 12**  
**EQUITY SECURITIES**  
**APPLICATION PROCEDURES AND REQUIREMENTS**

**Introduction**

12.01 This Chapter sets out the procedures and requirements for applications for the listing of equity securities by new applicants and listed issuers, and the documentary requirements for selling or transferring treasury shares by listed issuers. The procedures and requirements are applicable to both new applicants and listed issuers except where otherwise stated.

Proposal (1)  
of Chapter 3

...

**Documentary Requirements – Applications by Listed Issuers**

12.26A Rules 12.26B to 12.27 set out the documentary requirements for applications for the listing of equity securities, or sale or transfer of treasury shares, by listed issuers.

Proposal (1)  
of Chapter 3

~~*At the time of application for listing*~~ *Submission of listing application and/or draft listing document*

...

12.26BB In the case of a sale or transfer of treasury shares which is required to be supported by a listing document, the documents required under rule 12.26B, as applicable, must be lodged with the Exchange at least 10 clear business days before the date on which the issuer proposes to bulk print the listing document.

Proposal (1)  
of Chapter 3

...

Before dealings commence, or completion of the sale or transfer of treasury shares

12.27 The following documents must be submitted to the Exchange before dealings commence, or in the case of a sale or transfer of treasury shares, before completion of the sale or transfer:—

Proposal (1)  
of Chapter 3

...

(6) in the case of the placing by a listed issuer of a class of equity securities new to listing:

...

In the case of the placing ~~by a listed issuer~~ of a class of securities already listed and/or treasury shares by a listed issuer (other than a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed), the Exchange may require the issuer to submit information on the placees for the purpose of establishing their independence (see also rule 17.30(7));

Proposal (1)  
of Chapter 3

Proposal (2)  
of Chapter 3

...

## Chapter 13

### EQUITY SECURITIES

#### RESTRICTIONS ON PURCHASE, DISPOSAL AND SUBSCRIPTION

...

#### **Restrictions and notification requirements on issuers purchasing their own shares on a stock exchange**

...

#### *Procedures to be complied with*

...

13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

...

- (10) a statement giving the highest and lowest prices at which the relevant shares have traded on GEM during each of the previous twelve months;
- ~~(11) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19; and~~
- ~~(11<sub>2</sub>) a statement that neither the Explanatory Statement nor the proposed share repurchase has any unusual features;~~
- (12) a statement of whether the issuer intends to cancel the repurchased shares or hold them as treasury shares; and
- (13) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19.

Proposal (4)  
of Chapter 3

...

13.09 The ordinary resolution proposed to shareholders to give the directors of the issuer a specific approval or general mandate to purchase shares must include the following:—

- (1) the total number and description of the shares which the issuer is authorised to purchase, provided that the number of shares which the issuer is authorised to purchase on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange under the Code on Share Buy-backs, may not exceed 10 per cent of the number of issued shares (excluding treasury shares) of the issuer and the total number of warrants to subscribe for or purchase shares (or other relevant class of securities) authorised to be so purchased may not exceed 10 per cent of the warrants of the issuer (or such other relevant class of securities, as the case may be), in each case as at the date of the resolution granting the general mandate; and

Proposal (4)  
of Chapter 3

...

...

...

*Subsequent issues or sales or transfers of treasury shares*

13.12 An issuer may not (i) make a new issue of shares or sale or transfer of any treasury shares; or (ii) announce a proposed new issue of shares or sale or transfer of any treasury shares, for a period of 30 days after any purchase by it of shares, whether on GEM or otherwise (other than an issue of securities or transfer of treasury shares pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities or transfer treasury shares, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

Proposal (2)  
of Chapter 3

Subsequent purchase of its own shares

Proposal (2)  
of Chapter 3

13.12A An issuer may not repurchase any of its own shares on GEM for a period of 30 days after any sale or transfer of any treasury shares on GEM, without the prior approval of the Exchange.

*Reporting requirements*

13.13 An issuer shall:—

- (1) submit for publication to the Exchange through HKEx-EPS not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following any day on which the issuer makes a purchase of shares (whether on GEM or otherwise), the total number of shares purchased by the issuer the previous day and whether they are cancelled or held as treasury shares, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and shall confirm that those purchases which were made on GEM were made in accordance with the GEM Listing Rules and that there have been no material changes to the particulars contained in the Explanatory Statement. In respect of purchases made on another stock exchange, the issuer's report must confirm that those purchases were made in accordance with the domestic rules applying to purchases on that other stock exchange. Such reports shall be made on a return in such form and containing such information as the Exchange may from time to time prescribe. In the event that no shares are purchased on any particular day then no return need be made to the Exchange. The issuer should make arrangements with its brokers to ensure that they provide to the issuer in a timely fashion the necessary information to enable the issuer to make the report to the Exchange; and

Proposal (1)  
of Chapter 3

...

*Status of purchased shares*

13.14 The shares repurchased by an issuer shall be held as treasury shares or cancelled. The listing of all shares which are held as treasury shares shall be retained.

Proposal of  
Chapter 2

The listing of all shares which are purchased by an issuer (whether on GEM or otherwise) but not held as treasury shares shall, subject to applicable law, be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of these purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

~~Note: Overseas issuers with a dual listing are referred to rule 24.07 which may be relevant in this regard.~~

## **Treasury shares**

Proposal (2)  
of Chapter 3

13.14A An issuer may sell treasury shares on GEM under a general mandate approved by shareholders in accordance with rule 17.41(2), subject to the following:

- (a) it shall not knowingly sell the shares to a core connected person and a core connected person shall not knowingly purchase the shares from the issuer, on GEM;
- (b) it shall procure that any broker appointed by the issuer to effect the sale of the shares shall disclose to the Exchange such information with respect to the sales made on behalf of the issuer as the Exchange may request; and
- (c) it shall not sell the shares on GEM at any time after inside information has come to its knowledge until the information is made publicly available. In particular, during the period of one month immediately preceding the earlier of:
  - (i) the date of the board meeting (as such date is first notified to the Exchange in accordance with rule 17.48) for the approval of the issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and
  - (ii) the deadline for the issuer to announce its results for any year, half-year or quarter-year period under rules 18.49, 18.78 or 18.79 or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement, the issuer may not sell treasury shares on GEM, unless the circumstances are exceptional.

...

## **Chapter 14**

### **EQUITY SECURITIES**

### **LISTING DOCUMENTS**

...

#### **Definition**

14.03 A listing document is defined in rule 1.01 as a prospectus, circular or any equivalent document (including the composite document in relation to a scheme of arrangement and/or an introduction document) issued or proposed to be issued in connection with an application for listing or sale or transfer of treasury

Proposal (1)  
of Chapter 3

shares by a listed issuer. Issuers are recommended to consult the Exchange at the earliest opportunity if they are in any doubt as to whether a particular document constitutes a listing document as so defined.

...

### When required

14.06 The methods of listing or sale or transfer of treasury shares required by the GEM Listing Rules to be supported by a listing document are:—

Proposal (1)  
of Chapter 3

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing of securities of a class new to listing;
- (4) an introduction;
- (5) a rights issue;
- (6) an open offer;
- (7) a capitalisation issue (including in the form of a scrip dividend) or a bonus issue of warrants;
- (8) an exchange or substitution of securities (arising from consolidation or sub-division of shares or a reduction of share capital or otherwise but excluding a conversion of securities into securities of a class already listed); and
- (9) any deemed new listing under the GEM Listing Rules.

14.07 Other methods of listing or sale or transfer of treasury shares are not, save as the Exchange may otherwise direct, required by the GEM Listing Rules to be supported by a listing document, but if a listing document is otherwise required or proposed to be issued it must comply with the relevant requirements of this Chapter.

Proposal (1)  
of Chapter 3

### Contents

...

14.09 In the case of an issuer some part of whose share capital is already listed on GEM, the listing document is required to include the following:—

...

- (5) subject to rule 14.13 and to the extent not included by virtue of the above, such particulars and information which, according to the particular nature



of the issuer and the securities to be issued or sold or transferred out of treasury for which listing is sought, is necessary to enable an investor to make an informed assessment of:—

Proposal (1)  
of Chapter 3

- (a) the activities, profits and losses, assets and liabilities, financial position, management and prospects of the issuer; and
- (b) the rights and trading arrangements attaching to such securities.

...

## Chapter 17

### EQUITY SECURITIES

#### CONTINUING OBLIGATIONS

...

#### General matters relevant to the issuer's securities

##### *Changes in issued shares – Next day disclosure return and monthly return*

17.27A (1) In addition and without prejudice to specific requirements contained elsewhere in the GEM Listing Rules, an issuer must, whenever there is a change in its issued shares or treasury shares as a result of or in connection with any of the events referred to in rule 17.27A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.

Proposal (1)  
of Chapter 3

(2) The events referred to in rule 17.27A(1) are as follows:

(a) any of the following:

- (i) placing;
- (ii) consideration issue;
- (iii) open offer;
- (iv) rights issue;
- (v) bonus issue;
- (vi) scrip dividend;

- (vii) repurchase of shares or other securities;
- (viii) exercise of an option under the issuer's share option scheme by any of its directors;
- (ix) exercise of an option other than under the issuer's share option scheme by any of its directors;
- (x) capital reorganisation; or
- (xi) change in issued shares or treasury shares not falling within any of the categories referred to in rule 17.27A(2)(a)(i) to (x) or rule 17.27A(2)(b); and

Proposal (1)  
of Chapter 3

(b) subject to rule 17.27A(3), any of the following:

- (i) exercise of an option under a share option scheme other than by a director of the issuer;
- (ii) exercise of an option other than under a share option scheme not by a director of the issuer;
- (iii) exercise of a warrant;
- (iv) conversion of convertible securities; or
- (v) redemption of shares or other securities.

(3) The disclosure obligation for an event in rule 17.27A(2)(b) only arises where:

- (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 17.27B or last return under this rule 17.27A (whichever is the later), results in a change of 5% or more of the listed issuer's issued shares (excluding treasury shares); or

Proposal (4)  
of Chapter 3

...

- (4) For the purposes of rule 17.27A(3), the percentage change in the listed issuer's issued shares is to be calculated by reference to the listed issuer's total number of issued shares (excluding treasury shares) as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under rule 17.27B or a return published under this rule 17.27A.

Proposal (4)  
of Chapter 3

17.27B A listed issuer shall, by no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the fifth business day next following the end of each calendar month, submit

through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a monthly return in relation to movements in the listed issuer's equity securities (including treasury shares), debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe (irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of equity securities (including treasury shares), debt securities and any other securitised instruments, as applicable, issued and which may be issued pursuant to options, warrants, convertible securities or any other agreements or arrangements.

Proposal (1)  
of Chapter 3

...

17.27C An issuer shall, in relation to each new issue of securities or sale or transfer of treasury shares reported in the next day disclosure return under rule 17.27A and the monthly return under rule 17.27B, confirm that (where applicable):

Proposal (1)  
of Chapter 3

- (1) the issue of securities or sale or transfer of treasury shares has been duly authorised by its board of directors and carried out in compliance with all applicable listing rules, laws and other regulatory requirements;
- (2) all money due to the listed issuer in respect of the issue of securities or sale or transfer of treasury shares has been received by it;
- (3) all pre-conditions for listing imposed by the Rules under "Qualification of listing" have been fulfilled;
- (4) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- (5) all the securities of each class are in all respects identical;

*Note: "Identical" means in this context:*

- (a) *the securities are of the same nominal value with the same amount called up or paid up;*
  - (b) *they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and*
  - (c) *they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank pari passu in all other respects.*
- (6) all documents required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal

requirements;

- (7) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue, sale or transfer;
- (8) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied; and
- (9) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and particulars thereof, if so required by law, have been filed with the Registrar of Companies.

...

*No further issues of securities or sales or transfers of treasury shares within 6 months of listing*

17.29 No further shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed) may be issued or sold or transferred out of treasury or form the subject of any agreement to such an issue, sale or transfer within 6 months from the date on which securities of the listed issuer first commence dealing on GEM (whether or not such issue, sale or transfer of shares or securities will be completed within 6 months from the commencement of dealing), except for:

Proposal (3)  
of Chapter 3

- (1) the issue of shares, (the listing of which has been approved by the Exchange,) or transfer of shares out of treasury pursuant to a share scheme under Chapter 23;

...

- (4) the issue, sale or transfer out of treasury of shares or securities pursuant to an agreement entered into before the commencement of dealing, the material terms of which have been disclosed in the listing document issued in connection with the initial public offering; and

- (5) any issue, sale or transfer out of treasury of shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed) which satisfies the following requirements:

- (a) the issue, sale or transfer is for the purpose of an acquisition of assets which would complement the listed issuer's business described in the listed issuer's initial listing document, and the acquisition does not constitute a major transaction, very substantial acquisition, reverse takeover or extreme transaction pursuant to rules 19.06(3), 19.06(5), 19.06B and 19.06C respectively;

- (b) the issue, sale or transfer does not result in a controlling shareholder of the listed issuer ceasing to be a controlling shareholder after the issue, sale or transfer and, in any event, must not result in a change in control of the listed issuer within the meaning of the Takeovers Code;
- (c) the issue, sale or transfer and any transaction related to it is made subject to the approval of shareholders with the following persons abstaining from voting: -
  - (i) any core connected person and its close associates; and
  - (ii) any shareholder who has a material interest in the issue, sale or transfer and/or the related transaction, other than an interest arising solely by virtue of a shareholding in the listed issuer; and
- (d) the circular in respect of the issue, sale or transfer and the related transaction which is despatched to the shareholders of the listed issuer must comply with the requirements of a circular as specified in Chapter 19 and contain such information as is necessary for the independent shareholders to make an informed judgement on the issue, sale or transfer and related transaction.

*Note: The circular must include:*

- (i) an opinion from an independent financial adviser acceptable to the Exchange stating whether, in the financial adviser's opinion, the terms of the proposed issue, sale or transfer and related transaction are fair and reasonable so far as the shareholders of the listed issuer (excluding any of the shareholders described in rule 17.29(5)(c)) are concerned;*
- (ii) a statement as to whether or not the listed issuer and its directors had any plan or intention to acquire the assets concerned before or at the time of the issue of the listed issuer's initial listing document;*
- (iii) the circumstances under which the opportunity to acquire the assets has arisen;*
- (iv) the number of ~~new~~ shares or securities to be issued, sold or transferred out of treasury and the dilution effect on shareholders;*
- (v) information on the assets to be acquired including their value;*

- (vi) *an explanation as to how the issue or selling price for the ~~new~~ shares or securities was fixed;*
- (vii) *reasons for the acquisition and why it is important for the listed issuer to acquire the assets within six months of its listing;*
- (viii) *the effect of the acquisition on the listed issuer's business and prospects and on the statement of business objectives set out in the listed issuer's initial listing document;*
- (ix) *how the acquired assets would complement the listed issuer's business; and*
- (x) *details of the persons who would receive the ~~new~~ shares or securities and their connection, if any, with any core connected persons of the listed issuer.*
- (xi) *[Repealed 1 October 2013]*

*Notes: In exceptional circumstances, the Exchange may be prepared to waive the requirements of this rule, for example where the listed issuer raised, at the time of its initial public offering, less than the maximum amount stated in its listing document and so as to enable the listed issuer to raise the shortfall of such maximum amount.*

#### *Announcement of issues of securities*

17.29A References in rules 17.30, 17.30A and 17.31 to an allotment, issue, offer, placing or subscription of securities or shares shall include a sale or transfer of treasury shares and references to allottees shall include purchasers or transferees of treasury shares. Rule 17.30 does not apply to a sale of treasury shares on GEM or any other stock exchange on which the issuer is listed.

Proposal (1)  
of Chapter 3

Proposal (2)  
of Chapter 3

17.30 Where the directors agree to issue any securities for cash in accordance with rule 17.39 or 17.41, an issuer shall publish an announcement as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day, containing the following information:—

...

- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

*Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:*

- (a) *the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; ~~and~~*
- (b) *the maximum number of shares that could be issued upon exercise of the conversion/subscription rights; and*
- (c) *the issuer's intention, if any, to transfer treasury shares upon exercise of the conversion/subscription rights.*

Proposal (1)  
of Chapter 3

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### *Pre-emptive rights*

...

17.39A References in rules 17.39 to 17.42D to an allotment, issue, grant, offer, placing, subscription or disposal of securities or shares shall include a sale or transfer of treasury shares listed on GEM and references to allottees shall include purchasers or transferees of such treasury shares.

Proposal (1)  
of Chapter 3

...

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

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

Proposal (4)  
of Chapter 3

...

- (2) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a

restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares (excluding treasury shares) of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 10.18(3), 20% of the number of issued shares (excluding treasury shares) of the issuer following implementation of the scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares (excluding treasury shares) of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate; or

Proposal (4)  
of Chapter 3

- (3) issue of shares under a share scheme that complies with Chapter 23.

*Notes: 1. Other than where independent shareholders' approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rules 20.90 and 20.90B.*

Proposal (2)  
of Chapter 3

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

- (1) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (2) the average closing price in the 5 trading days immediately prior to the earlier of:
  - (a) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
  - (b) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
  - (c) the date on which the placing or subscription or selling price is fixed,

Proposal (1)  
of Chapter 3



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

17.42BB In the case of a sale of treasury shares on GEM or any other stock exchange on which the issuer is listed, the reference to the benchmarked price in rule 17.42B shall be the higher of (a) the closing price on the trading day immediately prior to the sale; and (b) the average closing price in the 5 trading days immediately prior to the sale.

Proposal (1)  
of Chapter 3

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17.42E Where an issuer proposes to issue convertible securities or warrants, options or similar rights to subscribe for shares under rule 17.39, the circular to shareholders shall disclose the issuer's intention, if any, to use treasury shares to satisfy its obligation upon conversion or exercise of any of such convertible securities, warrants, options or similar rights.

Proposal (1)  
of Chapter 3

...

## **Announcements, circulars and other documents**

### *Review of documents*

17.53 Subject to rule 17.53A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the GEM Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 17.53(1) or (2).

...

Notes: ...

5. *Where an announcement or advertisement of a new or further issue of securities or sale or transfer of treasury shares contains a profit forecast, the provisions of paragraph 29(2) of Appendix D1B will apply.*

Proposal (1)  
of Chapter 3

...

### *Independent financial advisers*

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17.96 An independent financial adviser must be independent from any issuer for whom it acts. An independent financial adviser is not independent if any of the following circumstances exist as at the time (1) immediately after the

independent financial adviser executes its engagement letter with the issuer; or  
(2) the independent financial adviser commences work as independent financial adviser to the issuer, whichever is earlier (“**IFA Obligation Commencement Time**”), and up to the end of its engagement:

(1) the IFA group and any director or close associate of a director of the independent financial adviser holds, directly or indirectly, in aggregate more than 5% of the number of issued shares (excluding treasury shares) of the issuer, another party to the transaction, or a close associate or core connected person of the issuer or another party to the transaction;

Proposal (4)  
of Chapter 3

(1A) in the case of a connected transaction, the independent financial adviser holds more than 5% of the number of issued shares (excluding treasury shares) of an associate of another party to the transaction;

Proposal (4)  
of Chapter 3

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## Chapter 18

### EQUITY SECURITIES

#### FINANCIAL INFORMATION

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18.32 In the case of any issue ~~for cash~~ of equity securities (including securities convertible into equity securities) or sale of treasury shares for cash:—

Proposal (1)  
of Chapter 3

- (1) the reasons for making the issue or sale;
- (2) the classes of equity securities issued or treasury shares sold;
- (3) as regards each class of equity securities, the number issued, and their aggregate nominal value, if any, and/or the number of treasury shares sold;
- (4) the issue price or selling price of each security;
- (5) the net price to the listed issuer of each security;
- (6) the names of the allottees (or transferees), if less than 6 in number, and, in the case of 6 or more allottees (or transferees), details of such allottees (or transferees) in accordance with rule 10.12(4);
- (7) the market price of the securities concerned on a named date, being the date on which the terms of the issue or sale were fixed; and
- (8) the total funds raised from the issue or sale and details of the use of

proceeds including:

- (a) a detailed breakdown and description of the proceeds for each issue or sale and the purposes for which they are used during the financial year;
- (b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for each issue or sale and the purposes for which they are used and the expected timeline; and
- (c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

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

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

Proposal (1)  
of Chapter 3

...

18.40 Additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

- (5) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors own more than 5% of the number of issued shares (excluding treasury shares) of the listed issuer) in the suppliers or customers disclosed under (1) to (4) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

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## Chapter 19

### EQUITY SECURITIES

## NOTIFIABLE TRANSACTIONS

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### Classification

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19.06 The transaction classification is made by using the percentage ratios set out in rule 19.07. The classifications are:—

- (1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and/or treasury shares to be transferred and where all percentage ratios are less than 5%;

Proposal (1)  
of Chapter 3

...

...

### Percentage ratios

19.07 The percentage ratios are the figures, expressed as percentages resulting from each of the following calculations:—

- (5) Equity capital ratio — the number of shares to be issued and/or treasury shares to be transferred by the listed issuer as consideration divided by the total number of the listed issuer's issued shares (excluding treasury shares) immediately before the transaction.

Proposal (1)  
of Chapter 3

Proposal (4)  
of Chapter 3

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...

19.08 The table below summarises the classification and percentage ratios resulting from the calculations set out in rule 19.07. However, listed issuers should refer to the relevant rules for the specific requirements.

...

*Note: The equity capital ratio relates only to an acquisition (and not a disposal) by a listed issuer issuing new equity capital and/or transferring treasury shares.*

Proposal (1)  
of Chapter 3

...

*Figures used in total assets, profits and revenue calculations*

...

19.18 The value of transactions, ~~or~~ issues of securities or sales of treasury shares by the listed issuer in respect of which adequate information has already been published and made available to shareholders in accordance with the GEM Listing Rules and which have been completed must be included in the total assets of the listed issuer.

Proposal (1)  
of Chapter 3

...

### Notification, publication and shareholders' approval requirements

19.33 The table below summarises the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

...

*Notes: 1 No shareholder approval is necessary if the consideration shares are issued or transferred out of treasury under a general mandate. However, if the shares are not issued or transferred out of treasury under a general mandate, the listed issuer is required, pursuant to rule 17.39, to obtain shareholders' approval in general meeting prior to the issue or transfer out of treasury of the consideration shares.*

Proposal (1)  
of Chapter 3

...

...

### Methods of approval

19.44 Shareholders' approval for a major transaction shall be given by a majority vote at a general meeting of the shareholders of the issuer unless all the following conditions are met, in which case written shareholders' approval may, subject to rule 19.86, be accepted in lieu of holding a general meeting:—

- (1) no shareholder is required to abstain from voting if the issuer were to convene a general meeting for the approval of the transaction; and
- (2) the written shareholders' approval has been obtained from a shareholder or a closely allied group of shareholders who together hold more than 50% of the voting rights at that general meeting (Note) to approve the transaction. Where a listed issuer discloses inside information to any shareholder in confidence to solicit the written shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.

Proposal (4)  
of Chapter 3

Note: Voting rights attaching to treasury shares are excluded.

...

## Contents of announcements

### *All transactions*

19.58 The announcement of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover must contain at least the following information:—

...

- (5) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought or treasury shares to be transferred, the listed issuer must also include the amounts and details of the securities being issued or transferred out of treasury;

Proposal (1)  
of Chapter 3

...

...

### *Share transaction announcements*

19.59 In addition to the information set out in rule 19.58, the announcement for a share transaction must contain at least the following information:—

- (1) the amount and details of the securities being issued or transferred out of treasury including details of any restrictions which apply to the subsequent sale of such securities;

Proposal (1)  
of Chapter 3

...

- (5) in the case where securities will be issued, a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities.

Proposal (1)  
of Chapter 3

### *Discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction and reverse takeover announcements*

19.60 In addition to the information set out in rule 19.58, the announcement of a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover must contain at least brief details of the following:—

...

(4) if the transaction involves an issue of securities for which listing will be sought or a transfer of treasury shares, the announcement must also include:

Proposal (1)  
of Chapter 3

(a) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and

(b) in the case where securities will be issued, a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities;

Proposal (1)  
of Chapter 3

...

...

### *Major transaction circulars*

...

19.67 In addition to the requirements set out in rule 19.66, a circular issued in relation to an acquisition constituting a major transaction must contain:—

(1) the information required under paragraphs 9 and 10 of Appendix D1B, if the acquisition involves securities for which listing will be sought;

(2) the information required under paragraph 22(1) of Appendix D1B, if ~~new~~ shares are to be issued or transferred out of treasury as consideration;

Proposal (1)  
of Chapter 3

...

...

### *Contents of offer document*

19.81 The offer document must normally contain:—

...

(3) a prominent and legible statement in the following form:

“The Stock Exchange of Hong Kong Limited (the “Exchange”) has stated that if, at the close of the offer, less than the minimum prescribed percentage applicable to the listed issuer, being [ ]% of the issued shares (excluding treasury shares), are held by the public, or if the Exchange believes that:—

Proposal (4)  
of Chapter 3

— a false market exists or may exist in the trading of the shares; or

— that there are insufficient shares in public hands to maintain an orderly market;

it will consider exercising its discretion to suspend dealings in the shares.

[[*The Offeror*] intends [*the listed issuer*] to remain listed on the Exchange. The directors of [*the Offeror*] and the new directors to be appointed to the Board of [*the listed issuer*] will jointly and severally undertake to the Exchange to take appropriate steps to ensure that sufficient public float exists in [*the listed issuer*]'s shares.]”

...

...

## Chapter 20

### EQUITY SECURITIES

#### CONNECTED TRANSACTIONS

...

#### What are connected transactions

...

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

...

- (6) issuing new securities, or selling or transferring treasury shares, of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities or sale or transfer of treasury shares;

Proposal (1)  
of Chapter 3

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...

#### Shareholders’ approval

...

20.35 The Exchange may waive the general meeting requirement and accept a written shareholders’ approval, subject to the conditions that:

- (1) no shareholder of the listed issuer is required to abstain from voting if a



general meeting is held to approve the transaction; and

- (2) the approval is given by a shareholder or a closely allied group of shareholders who (together) hold more than 50% of the voting rights in the general meeting (*Note*).

Proposal (4)  
of Chapter 3

Note: Voting rights attaching to treasury shares are excluded.

...

### Exemptions

20.71 Exemptions from the connected transaction requirements are available for the following types of transactions:

...

- (3) issues of new securities or sales or transfers of treasury shares by the listed issuer or its subsidiary (rules 20.90 and 20.90B);

Proposal (1)  
of Chapter 3

Proposal (2)  
of Chapter 3

...

...

### De minimis transactions

20.74 This exemption applies to a connected transaction (other than an issue of new securities or sale or transfer of treasury shares by the listed issuer) conducted on normal commercial terms or better as follows:

Proposal (1)  
of Chapter 3

- (1) The transaction is fully exempt if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 0.1%;
  - (b) less than 1% and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level; or
  - (c) less than 5% and the total consideration (or in the case of any financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$3,000,000.
- (2) The transaction is exempt from the circular (including independent financial advice) and shareholders' approval requirements if all the percentage ratios (other than the profits ratio) are:
  - (a) less than 5%; or
  - (b) less than 25% and the total consideration (or in the case of any

financial assistance, the total value of the financial assistance plus any monetary advantage to the connected person or commonly held entity) is less than HK\$10,000,000.

...

**Issues of new securities or sales or transfers of treasury shares by the listed issuer or its subsidiary**

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

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
  - (a) through excess application (see rule 10.31(1) or 10.42(1)); or
  - (b) [Repealed 3 July 2018]
- (3) the securities are issued to the connected person under:
  - (a) a share scheme that complies with Chapter 23; or
  - (b) a share scheme adopted by the listed issuer before its securities first start dealing on the Exchange, and where the Exchange has approved the listing of the securities to be issued under the scheme; or
- (4) the securities are issued under a “top-up placing and subscription” that meets the following conditions:
  - (a) the new securities are issued to the connected person:
    - (i) after it has reduced its holding in the same class of securities by placing them to third parties who are not its associates under a placing agreement; and
    - (ii) within 14 days from the date of the placing agreement;
  - (b) the number of new securities issued to the connected person does not exceed the number of securities placed by it; and
  - (c) the new securities are issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.

*Note: An issue of new securities by a subsidiary of the listed issuer may*

*be exempt as a de minimis transaction.*

20.90A References in rule 20.90 to an issue, offer, placing or subscription of securities shall include a sale or transfer of treasury shares.

Proposal (1)  
of Chapter 3

20.90B A sale of treasury shares by a listed issuer to a connected person is fully exempt if it is made on GEM or any other stock exchange on which the issuer is listed, except where the connected person knowingly purchases the treasury shares from the listed issuer.

Proposal (2)  
of Chapter 3

...

## Chapter 21

### EQUITY SECURITIES

#### OPTIONS, WARRANTS AND SIMILAR RIGHTS

...

21.02 All warrants must, prior to the issue or grant thereof, be approved by the Exchange, and in addition, where they are warrants to subscribe for equity securities (including treasury shares), by the shareholders in general meeting (unless they are issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 17.41(2)). In the absence of exceptional circumstances which would include, by way of example, a rescue reorganisation, the Exchange will only grant approval to the issue or grant of warrants to subscribe securities if the following requirements are complied with:—

Proposal (1)  
of Chapter 3

- (1) the securities to be issued or transferred out of treasury by the issuer on exercise of the warrants must not, when aggregated with all other equity securities which remain to be issued or transferred out of treasury by the issuer on exercise of any other subscription rights, if all such rights were immediately exercised, whether or not such exercise is permissible, exceed 20 per cent of the number of issued shares (excluding treasury shares) of the issuer at the time such warrants are issued. Options granted under share option schemes which comply with Chapter 23 are excluded for the purpose of this limit.

Proposal (1)  
of Chapter 3

Proposal (4)  
of Chapter 3

...

...

21.03 The circular or notice to be sent to shareholders convening the requisite meeting under rule 21.02 must include at least the following information:—

- (1) the maximum number of securities which could be issued or transferred out of treasury on exercise of the warrants;

Proposal (1)  
of Chapter 3

...

...

**Chapter 23**  
**EQUITY SECURITIES**  
**SHARE SCHEMES**

**Application of Chapter 23**

23.01 ...

(4) In this Chapter 23, references to new shares or new securities include treasury shares, and references to the issue of shares or securities include the transfer of treasury shares.

Proposal (1) of Chapter 3
------------------------------

...

**Share schemes involving issue of new shares by listed issuers**

**Adoption of a new scheme**

23.02 ...

(2) The scheme document itself does not need to be circulated to shareholders of the listed issuer. However, if the scheme document is not so circulated, it must be published on the Exchange's website and the issuer's own website for a period of not less than 14 days before the date of the general meeting and made available for inspection at the general meeting and the terms of the shareholders' resolution must approve the scheme as described in the circular to the shareholders of the listed issuer. The circular must include the following information:

(d) a statement in the form set out in paragraph 2 of Appendix D1B; and

(e) a statement of the issuer's intention to use treasury shares for the scheme, where applicable; and

Proposal (1) of Chapter 3
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(ef) any additional information requested by the Exchange.

...

...

## Terms of the scheme

23.03 The scheme document must include the following provisions and/or provisions as to the following (as the case may be):—

...

- (3) the total number of shares which may be issued in respect of all options and awards to be granted under the scheme and any other schemes (the **scheme mandate limit**), together with the percentage of the issued shares (excluding treasury shares) that it represents at the date of approval of the scheme; ...

Proposal (4)  
of Chapter 3

...

...

...

### Scheme mandate limit and service provider sublimit

23.03B (1) The scheme mandate limit must not exceed 10% of the relevant class of shares of the listed issuer in issue (excluding treasury shares) as at the date of approval of the scheme (alternatively, in respect of a scheme of a new applicant that will become effective only upon its separate listing, the 10% limit may be calculated by reference to the relevant class of shares of the applicant in issue (excluding treasury shares) as at the date of its listing).

Proposal (4)  
of Chapter 3

...

23.03C...

- (2) The total number of shares which may be issued in respect of all options and awards to be granted under all of the schemes of the listed issuer under the scheme mandate as "refreshed" must not exceed 10% of the relevant class of shares in issue (excluding treasury shares) as at the date of approval of the refreshed scheme mandate. The listed issuer must send a circular to its shareholders containing the number of options and awards that were already granted under the existing scheme mandate limit and the existing service provider sublimit (if any), and the reason for the "refreshment".

Proposal (4)  
of Chapter 3

...

### Limit on granting options or awards to individual participants

23.03D (1) Where any grant of options or awards to a participant would result in the shares issued and to be issued in respect of all options and awards granted to such person (excluding any options and awards lapsed in

accordance with the terms of the scheme) in the 12-month period up to and including the date of such grant representing in aggregate over 1% of the relevant class of shares of the listed issuer in issue (excluding treasury shares) (the **1% individual limit**), such grant must be separately approved by shareholders of the listed issuer in general meeting with such participant and his/her close associates (or associates if the participant is a connected person) abstaining from voting. The listed issuer must send a circular to the shareholders.

Proposal (4)  
of Chapter 3

...

...

### **Granting options or awards to a director, chief executive or substantial shareholder of a listed issuer, or any of their respective associates**

23.04 ...

(2) Where any grant of awards (excluding grant of options) to a director (other than an independent non-executive director) or chief executive of the issuer, or any of their associates would result in the shares issued and to be issued in respect of all awards granted (excluding any awards lapsed in accordance with the terms of the scheme) to such person in the 12-month period up to and including the date of such grant, representing in aggregate over 0.1% of the relevant class of shares in issue (excluding treasury shares), such further grant of awards must be approved by shareholders of the listed issuer in general meeting in the manner set out in rule 23.04(4).

Proposal (4)  
of Chapter 3

(3) Where any grant of options or awards to an independent non-executive director or a substantial shareholder of the listed issuer, or any of their respective associates, would result in the shares issued and to be issued in respect of all options and awards granted (excluding any options and awards lapsed in accordance with the terms of the scheme) to such person in the 12-month period up to and including the date of such grant representing in aggregate over 0.1% of the relevant class of shares in issue (excluding treasury shares), such further grant of options or awards must be approved by shareholders of the listed issuer in general meeting in the manner set out in rule 23.04(4).

Proposal (4)  
of Chapter 3

...

...

...

### **Announcement on grant of options or awards**

23.06A ...

(2) The disclosure must be made, on an individual basis, if the grantee is:

...

(c) a related entity participant or service provider with options and awards granted and to be granted in any 12-month period exceeding 0.1% of the relevant class of shares in issue (excluding treasury shares).

Proposal (4)  
of Chapter 3

...

...

### Disclosure in annual report and interim report

23.07 The listed issuer must disclose in its annual report and half-year report the following information in relation to options and awards granted and to be granted under its share scheme(s) to: (i) each of the directors, chief executive or substantial shareholders of the listed issuer, or their respective associates; (ii) each participant with options and awards granted and to be granted in excess of the 1% individual limit; (iii) each related entity participant or service provider with options and awards granted and to be granted in any 12-month period exceeding 0.1% of the relevant class of shares in issue (excluding treasury shares); and (iv) other employee participants, related entity participants and service providers by category :—

Proposal (4)  
of Chapter 3

...

(3) the number of shares that may be issued in respect of options and awards granted under all schemes of the issuer during the financial year/period divided by the weighted average number of shares of the relevant class in issue (excluding treasury shares) for the year/period.

Proposal (4)  
of Chapter 3

...

23.09 The listed issuer must include in its annual report a summary of each share scheme setting out:

...

(3) the total number of shares available for issue under the scheme together with the percentage of the issued shares (excluding treasury shares) that it represents as at the date of the annual report;

Proposal (4)  
of Chapter 3

...

...

**Chapter 24**  
**EQUITY SECURITIES**  
**OVERSEAS ISSUERS**

...

**Chapter 13 – Restrictions on Purchase**

24.07 An overseas issuer may purchase its own shares (as defined in rule 13.06) on GEM and hold them as treasury shares in accordance with rules 13.03 to 13.14. ~~With regard to rule 13.14 concerning the status of shares purchased by an issuer, where the overseas issuer in question has a listing on another stock exchange the rules of (or laws in relation to) which permit treasury stock, the Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares, provided that the overseas issuer must apply for the relisting of any such shares which are re-issued, as if it were a new issue of those shares.~~

Proposal of  
Chapter 2

...

**Chapter 25**  
**EQUITY SECURITIES**  
**ISSUERS INCORPORATED**  
**IN THE PEOPLE'S REPUBLIC OF CHINA**

...

**Chapter 11 – Qualifications for Listing**

...

25.07A Rule 11.23 is amended by adding the following provision to sub-paragraph (9):

Where a PRC issuer has shares apart from the H shares for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total number of issued shares (excluding treasury shares). However, the issuer's H shares (for which listing is sought) must represent at least 15% of its total number of issued shares (excluding treasury shares), having an expected market capitalisation at the time of listing of not less than HK\$45,000,000.

Proposal (4)  
of Chapter 3

...

25.10 Under rule 11.04, the Exchange requires a new applicant to make disclosure



where it has a director, or controlling shareholder and, in relation only to the initial listing document, substantial shareholder (including the respective close associates of each) with a business or interest which competes or may compete with the business of the group. In this connection, in the case of a new applicant which is a PRC issuer, “controlling shareholder” means any shareholder or other person or group of persons together entitled to exercise, or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings of the new applicant (*Note*) or who is in a position to control the composition of the majority of the board of directors of the new applicant. For the purposes of this rule, the Exchange will normally not consider a PRC Governmental Body (as defined in rule 25.04) as a controlling shareholder of a PRC issuer.

Proposal (4)  
of Chapter 3

*Note: Voting rights attaching to treasury shares are excluded.*

...

### **Chapter 13 — Restrictions on Purchase, Disposal and Subscription**

25.18 A PRC issuer may purchase its own shares on GEM and hold them as treasury shares in accordance with the provisions of this rule and rules 13.03 to 13.14. Although such provisions normally apply to a PRC issuer’s equity securities which are listed on GEM and which are or are proposed to be purchased on GEM, when seeking shareholders’ approval to make purchases of such securities on GEM or when reporting such purchases, a PRC issuer should provide information on the proposed or actual purchases of any or all of its equity securities, whether or not listed or traded on GEM. Therefore, in the case of a PRC issuer, rule 13.06 is amended and restated in its entirety to read as follows:

Proposal of  
Chapter 2

...

25.19 ...

(3) For a PRC issuer, the reference to “10 per cent of the number of issued shares (excluding treasury shares) of the issuer” in rule 13.09(1) shall mean “10 per cent of the total number of issued H shares (excluding treasury shares) of the PRC issuer”.

Proposal (4)  
of Chapter 3

...

## **Appendix D1A**

### **CONTENTS OF LISTING DOCUMENTS**

#### **Equity Securities**

**In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed**

...

**General information about the group's activities**

28. (1) ...

(b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

(v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5 per cent of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

**Additional information on PRC issuers**

*(Paragraphs 57 to 68 apply to PRC issuers only)*

57. Where a public or private issue or placing of securities of the PRC issuer other than H shares is being made simultaneously with the issue of H shares in Hong Kong or is proposed to be made as part of such PRC issuer's share issue plan which was approved at the inaugural meeting or any shareholders' meeting of the PRC issuer:—

...

(7) information concerning each legal person or individual expected to hold shares other than H shares constituting 10 per cent or more of the issued share capital (excluding treasury shares) of the PRC issuer upon the completion of such issue or placing of shares other than H shares, and the number of shares other than H shares to be held by each such legal person or individual.

Proposal (4)  
of Chapter 3

58. Where any securities of the PRC issuer are already issued and outstanding:—

...

- (4) information concerning each legal person or individual holding such securities constituting 10 per cent or more of the existing issued share capital (excluding treasury shares) of the PRC issuer, and the number of shares held by each such legal person or individual.

Proposal (4)  
of Chapter 3

...

## Appendix D1B

### CONTENTS OF LISTING DOCUMENTS

#### Equity Securities

#### In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed

...

#### General information about the group's activities

26. (1) ...

- (b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:—

...

- (v) a statement of the interests of any of the directors; their close associates; or any shareholder (which to the knowledge of the directors owns more than 5 per cent of the number of issued shares (excluding treasury shares) of the issuer) in the suppliers or customers disclosed under (i) to (iv) above or if there are no such interests a statement to that effect;

Proposal (4)  
of Chapter 3

...

...

...

#### Additional information on PRC issuers

*(Paragraphs 44 and 47 apply to PRC issuers only)*

44. Where a public or private issue or placing of securities of the PRC issuer other than H shares is being made simultaneously with the issue of H shares in Hong Kong or is proposed to be made prior to the end of 3 months after the issue of the listing document in Hong Kong:—

...

- (5) information concerning each legal person or individual expected to hold shares other than H shares constituting 10 per cent or more of the issued share capital (excluding treasury shares) of the PRC issuer upon the completion of such issue or placing of shares other than H shares, and the number of shares other than H shares to be held by each such legal person or individual.

Proposal (4)  
of Chapter 3

...

## **Appendix A1**

### **CORE SHAREHOLDER PROTECTION STANDARDS**

...

#### **As regards Proceedings at General Meetings**

14. ...

- (5) That members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights (Note), on a one vote per share basis, in the share capital of the issuer.

Proposal (4)  
of Chapter 3

*Note: Voting rights attaching to treasury shares are excluded.*

#### **As regards Variation of Rights**

15. That a super-majority vote of the issuer's members of the class to which the rights are attached shall be required to approve a change to those rights.

*Notes:*

1. *A "super-majority vote" means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in*

*favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.*

2. *For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the voting rights of the members who are present at the classified members’ meeting and have voting rights to amend class rights as satisfying the threshold of a “super-majority”.*

3. *Voting rights attaching to treasury shares are excluded.*

Proposal (4)  
of Chapter 3

...

## Regulatory Forms

### SPONSOR/OVERALL COORDINATOR’S FORMS

#### FORM E

#### Sponsor’s/Overall coordinator’s\* Declaration of Compliance concerning a New Applicant

...

To: The Listing Division  
The Stock Exchange of Hong Kong Limited

.../.../...

Dear Sirs,

...

(4) [ ]% of the securities (excluding treasury shares) are in the hands of the public in accordance with rule 11.23 of the GEM Listing Rules; and

Proposal (4)  
of Chapter 3

...

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## **APPENDIX II: PRIVACY POLICY STATEMENT**

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### **Privacy Policy Statement**

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### **Purpose**

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;

2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognized exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

### **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

### **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

### **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

## **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilize or activate certain functions available on the HKEX website.

## **Compliance with laws and regulations**

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights,



property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

### **Corporate reorganisation**

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganization.

### **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link

<https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

### **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

### **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

## **Contact us**

By Post:  
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Hong Kong Exchanges and Clearing Limited  
8/F., Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

By Email: [DataPrivacy@hkex.com.hk](mailto:DataPrivacy@hkex.com.hk)

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