

Consultation Conclusions

# Proposed Amendments to Listing Rules Relating to Treasury Shares

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## DEFINITIONS

TERM	DEFINITION
"A+H issuer"	A PRC issuer whose H shares and A shares are listed on the Exchange and a PRC stock exchange respectively
"CCASS"	The Central Clearing and Settlement System established and operated by the Hong Kong Securities Clearing Company Limited
"Codes"	The Takeovers Code and the Share Buy-backs Code
"Companies Ordinance"	The Companies Ordinance (Chapter 622 of the Laws of Hong Kong) as amended from time to time
"Consultation Paper"	Consultation Paper on Proposed Amendments to Listing Rules Relating to Treasury Shares
"CWUMPO"	The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32 of the Laws of Hong Kong) as amended from time to time
"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
"HKSCC Nominees"	HKSCC Nominees 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)
"Main Board"	The Main Board of the Exchange
"PRC"	For the purpose of the Rules, the People's Republic of China, other than the regions of Hong Kong, Macau and Taiwan
"REIT"	Real estate investment trust authorised by the SFC under the Code on Real Estate Investment Trusts
"SFC"	The Securities and Futures Commission
"SFO"	The Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) as amended from time to time

<b>TERM</b>	<b>DEFINITION</b>
<b>“Share Buy-backs Code”</b>	The Code on Share Buy-backs published by the SFC as amended from time to time
<b>“Takeovers Code”</b>	The Code on Takeovers and Mergers published by the SFC as amended from time to time

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## EXECUTIVE SUMMARY

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### Purpose

1. This paper sets out conclusions to the Exchange's consultation on the proposed amendments to the Listing Rules relating to treasury shares.

### Background

2. On 27 October 2023, the Exchange published its Consultation Paper to seek views on the proposed amendments to the Listing Rules to remove the requirement to cancel repurchased shares and to adopt a framework in the Rules to govern the resale of treasury shares.
3. The consultation period ended on 27 December 2023.

### Market feedback

4. The Exchange received 56 non-duplicate responses to the Consultation Paper from a broad range of respondents. A full list of respondents is set out in **Appendix I**.
5. All our proposals received support from a majority of respondents. A quantitative analysis of all the responses is set out in **Appendix II**.

### Proposals adopted

6. We will implement the proposals outlined in the Consultation Paper, with minor modifications in response to market comments as discussed in Chapters 2 and 3. Major amendments to the Rules include:

<b>Key changes</b>	<b>Way forward (corresponding sections in this paper)</b>
<b><i>Proposal to remove the requirement to cancel repurchased shares</i></b>	
<ul style="list-style-type: none"><li>• Remove the requirement to cancel repurchased shares</li></ul>	Adopt (Chapter 2)
<b><i>Proposal to treat a resale of treasury shares as new shares</i></b>	
<ul style="list-style-type: none"><li>• Govern resale of treasury shares by an issuer in the same manner as the Listing Rules that currently apply to an issue of new shares</li></ul>	Adopt, with modifications to require additional disclosure for on-market resale of treasury shares (Proposal (1) in Chapter 3)

<b>Key changes</b>	<b>Way forward (corresponding sections in this paper)</b>
<b><i>Proposals relating to mitigation of risks of market manipulation and insider dealing</i></b>	
<ul style="list-style-type: none"> <li>• Impose a 30-day moratorium period to restrict               <ul style="list-style-type: none"> <li>(i) a resale of treasury shares (whether on or off-market) after a share repurchase; and</li> <li>(ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares</li> </ul> </li> </ul>	<p>Adopt, with modifications to exclude capitalisation issues, share grants under a share scheme that complies with Chapter 17 of the Listing Rules and any issue of new shares or transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme <i>(Proposal (2)(a) in Chapter 3)</i></p>
<ul style="list-style-type: none"> <li>• Prohibit a resale of treasury shares on the Exchange (i) when there is undisclosed inside information; (ii) during the one-month period preceding the results announcement; or (iii) if it is knowingly made with a core connected person</li> </ul>	<p>Adopt, with a modification to adjust the restricted period for on-Exchange share repurchases and on-Exchange resales of treasury shares from one month to 30 days preceding results announcement <i>(Proposal (2)(b) in Chapter 3)</i></p>
<ul style="list-style-type: none"> <li>• Allow new listing applicants to retain their treasury shares upon listing, with any resale of these shares subject to the same lock-up requirement as an issue of new shares</li> </ul>	<p>Adopt <i>(Proposal (3) in Chapter 3)</i></p>
<b><i>Consequential amendments</i></b>	
<ul style="list-style-type: none"> <li>• Require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules</li> </ul>	<p>Adopt <i>(Proposal (4)(a) in Chapter 3)</i></p>
<ul style="list-style-type: none"> <li>• Exclude treasury shares from an issuer's issued or voting shares under various parts of the Listing Rules (e.g. public float and size test calculations)</li> </ul>	<p>Adopt <i>(Proposal (4)(b) in Chapter 3)</i></p>

Key changes	Way forward (corresponding sections in this paper)
<ul style="list-style-type: none"> <li>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</li> </ul>	Adopt, with modifications to require an issuer to disclose in the next day disclosure return after each share repurchase (a) whether repurchased shares are to be cancelled or held in treasury; and (b) where applicable, the reasons for any deviation from the intention statement previously disclosed by the issuer in the explanatory statement <i>(Proposal (4)(c) in Chapter 3)</i>
<ul style="list-style-type: none"> <li>Clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees</li> </ul>	Adopt <i>(Proposal (4)(d) in Chapter 3)</i>

**Implementation**

- The amended Rules have been approved by the Board of the Exchange and the SFC. They will become effective on 11 June 2024.
- 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. Transitional arrangements will be provided to these issuers to comply with the new Listing Rule requirements by their second annual general meeting after the effective date of the proposed Rule amendments.

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## CHAPTER 1: INTRODUCTION

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### Background

9. On 27 October 2023, the Exchange published the Consultation Paper on the proposed amendments to the Rules to remove the requirement to cancel repurchased shares and to adopt a framework in the Rules to govern the resale of these treasury shares.
10. The consultation period ended on 27 December 2023.

### Number of responses and nature of respondents

11. We received 56 non-duplicate responses to the Consultation Paper from a broad range of respondents. Breakdowns of institutional respondents and individual respondents by category are set out in Table 1 and Table 2 below respectively<sup>1</sup>.

**Table 1: Institutional respondents by category**

<b>Category</b>	<b>Number</b>	<b>%</b>
Accounting Firm	1	2%
Corporate Finance Firm / Bank	1	2%
HKEX Participants	2	4%
Investment Managers	3	7%
Law Firms	10	22%
Listed Companies	19	41%
Professional Bodies / Industry Associations	10	22%
<b>Total</b>	<b>46</b>	<b>100%</b>

**Table 2: Individual respondents by category**

<b>Category</b>	<b>Number</b>	<b>%</b>
Corporate Finance Staff	1	10%
HKEX Participant Staff	2	20%
Lawyer	1	10%
Listed Company Staff	2	20%
Retail Investors	3	30%
Other individual	1	10%
<b>Total</b>	<b>10</b>	<b>100%</b>

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<sup>1</sup> Due to rounding, the total percentages in each table may not add up to 100%.

12. A list of the respondents (other than those who requested anonymity) is set out in **Appendix I**. Except for one respondent who requested the Exchange not to publish its submission, the full text of all the submissions is available on the HKEX website<sup>2</sup>.
13. The Exchange used its best judgment to categorise the respondents using the most appropriate descriptions.

## **Methodology**

### **Qualitative analysis**

14. We performed a qualitative analysis so that we could properly consider the broad spectrum of respondents and their views. A qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the underlying rationale for a respondent's position.

### **Quantitative analysis**

15. We also performed an analysis to determine the level of support, in purely numerical terms, for the proposals. The analysis is set out in **Appendix II**.
16. For the purpose of our quantitative analysis, we counted the number of responses received, not the number of respondents those submissions represented. For example, a submission by a professional body was counted as one response even though that body may represent many members.
17. In calculating the percentage of support for or against each proposal, we excluded those respondents who did not express any views or comments on that proposal.

## **Responses to our proposals**

18. All the proposals in the Consultation Paper received support from a majority of the respondents, with both general and specific comments. Key comments from respondents, our responses to them and our conclusions are summarised in Chapters 2 and 3.
19. 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>2</sup> Submissions received on the Consultation Paper can be accessed at: [https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses\\_Apr\\_2024?sc\\_lang=en](https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_Apr_2024?sc_lang=en)

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

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### Proposal

20. We proposed to amend the Listing Rules to remove the requirement to cancel repurchased shares so that issuers may hold these shares in treasury, 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. **(Question 1)**
21. Subject to the above proposal, we also proposed a framework to govern resale of treasury shares to ensure a fair and equal treatment of all shareholders on the resale of treasury shares and maintain a fair and orderly market in the trading of issuers' shares. Details of the proposals are set out in Chapter 3.

### Comments received

22. 93% of the respondents (52 respondents) supported the proposal to remove the requirement to cancel repurchased shares and 7% (four respondents) opposed it.
23. Respondents generally agreed that the proposal will give issuers additional flexibility in managing their capital structure and align Hong Kong with international market practice. Some respondents considered that although the proposal may increase the regulatory risks of market manipulation and insider dealing, such risks may be mitigated by an appropriate framework to govern resale of treasury shares.
24. Respondents who disagreed with the proposal expressed concerns about the implications of the proposal:
  - (a) The respondents were concerned that the proposal would weaken share repurchases as a way to return capital to shareholders as issuers may hold repurchased shares in treasury instead of cancelling them. Based on their experience in other markets, if repurchased shares are not cancelled and could be conveniently resold on the market, investors typically expect that these treasury shares would return to the market by including such treasury shares from earnings per share calculations in their modelling which may stop the market in reacting favourably to share repurchases. The lack of share price reaction from share repurchases may lead to shrinking market capitalisation if the issuer continues to repurchase its shares without cancellation which is contrary to the rationale of share repurchases.

- (b) The respondents also commented that the proposal may encourage imprudent capital management. The 30-day moratorium period for share repurchases and resales of treasury shares proposed in the Consultation Paper (see Proposal (2)(a) in Chapter 3) was too short to deter issuers from repeatedly repurchasing and reselling their own shares on the Exchange to make a trading profit. They also considered the proposed restricted period of one month preceding any results announcement (see Proposal (2)(b) in Chapter 3) inadequate to address the heightened risks of insider dealing associated with the resale of treasury shares on the Exchange.
  - (c) Some respondents noted the Exchange's proposal to require a resale of treasury shares to be subject to the same requirements as an issuance of new shares, including the general mandate limit (see Proposal (1) in Chapter 3). However, despite the number of shares being issued or resold is restricted under the general mandate, the dilution risk posed by market overhang is more significant for resale of treasury shares than issuance of new shares as issuers may conveniently resell their treasury shares on the market.
25. The opposing respondents suggested the Exchange to impose stricter requirements on the holding and resale of treasury shares if it is to proceed with the proposal. Apart from a longer moratorium or restricted period for the resale of treasury shares, there should be a limit on the maximum number of treasury shares that an issuer may hold and a sunset mechanism to require automatic cancellation of treasury shares if they remain in treasury after a specified period. Some respondents also considered that the Exchange should tighten the general mandate requirements, such as introducing a sub-limit on the use of general mandate for on-market resale of treasury shares, and enhance the disclosure requirements to alleviate the concern of market overhang.
26. Some respondents sought clarification on the definition or use of treasury shares:
- (a) whether an issuer's subsidiary, agent or nominee would be permitted to hold treasury shares on behalf of the issuer;
  - (b) for an issuer dually listed on the Exchange and an overseas stock exchange, whether the proposed Rules on treasury shares would apply to the underlying shares of any ADSs repurchased by the issuer if those shares do not constitute treasury shares under the laws of the issuer's place of incorporation. A respondent submitted that for issuers incorporated in the Cayman Islands, the underlying shares represented by the ADSs repurchased do not constitute treasury shares under the Cayman Islands law before the issuers convert the relevant ADSs into ordinary shares and hold the shares in their own names. The respondent considered this to be purely a

technical point and asked the Exchange to clarify that the issuers are not required to convert the ADSs repurchased into ordinary shares for so long as the underlying shares represented by the relevant ADSs are treated in the same way as treasury shares for the purposes of the Listing Rules; and

- (c) whether the Listing Rules impose any restrictions on the use of treasury shares, for example, whether they could be pledged by an issuer as security.
27. Some respondents suggested the Exchange to clarify the arrangements for holding treasury shares under the current clearing system and the new uncertificated securities market (**USM**) environment<sup>3</sup>.
28. A respondent agreed with the Exchange that issuers should ensure that treasury shares are appropriately identified and segregated as their shareholders' rights are suspended by laws. The respondent considered that as a best practice, an issuer should ensure that treasury shares are recorded in the register of members in the issuer's own name or otherwise in a nominee's name that clearly identifies the holding as treasury shares.

#### **Our responses and conclusion**

29. We welcome the majority support of our initiative to introduce a new treasury share regime under the Rules.
30. We note the respondents' comments and suggestions on our proposed framework governing resale of treasury shares in paragraphs 24 and 25. As explained in Chapter 3, we have made certain modifications to the proposed Rules after balancing the respondents' comments and the rationale of the proposals. We believe that there are adequate safeguards to manage potential market overhang and maintain a fair and orderly market.
31. In light of the majority support from the respondents, we will adopt the proposal to remove the requirement to cancel repurchased shares. Issuers should consider if their constitutional documents contain any restriction on the holding and use of treasury shares and amend their constitutional documents if necessary.

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<sup>3</sup> See the "Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong" issued by the SFC in March 2023

*Definition or use of treasury shares*

32. Regarding the issues raised by respondents in paragraph 26, we clarify that:

- (a) Whether treasury shares may be held by an issuer's subsidiary or an agent or nominee on behalf of the issuer or its subsidiary would be subject to the laws of the issuer's place of incorporation and its constitutional documents.

For example, for issuers incorporated in Bermuda and the Cayman Islands, shares repurchased by an issuer will need to be held in its own name in order to be classified as treasury shares under the relevant laws. On the other hand, PRC laws do not require treasury H shares to be held in the name of the issuer. Shareholders' rights attached to the shares will be suspended under the PRC laws once the shares have been repurchased by the issuer, irrespective of whether they are held in the name of the issuer or its nominee.<sup>4</sup>

- (b) The proposed Rules allow issuers to hold repurchased shares in treasury subject to the laws of their places of incorporation. In the circumstances described in paragraph 26(b), the issuer should conform to the Cayman Islands law by first converting the ADSs repurchased into ordinary shares and then hold them as treasury shares in its own name.
- (c) The Listing Rules do not restrict the use of treasury shares. An issuer must ensure its treasury shares are used for purposes permitted under the law of its place of incorporation and its constitutional documents. As regards whether an issuer could pledge its treasury shares as security, it should obtain legal advice based on its own circumstances to determine whether it is permitted under the applicable laws.

33. We will modify the definition of treasury shares in proposed Rule 1.01 to reflect the Exchange's position set out in paragraphs 32(a) and 36:

*"shares repurchased and held by an issuer in treasury, as authorised by the laws of the issuer's place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on the Exchange"*

*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.*

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<sup>4</sup> Over 90% of the issuers listed on the Exchange are incorporated in Bermuda, the Cayman Islands and the PRC.

- (2) *Treasury shares may be held by an issuer's subsidiary or an agent or nominee on behalf of the issuer or its subsidiary, if it is permitted by the laws of the issuer's place of incorporation and its articles of association or equivalent constitutional documents. 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."*

*Arrangements to hold or transfer treasury shares*

34. As the shareholders' rights attached to treasury shares are normally suspended by laws<sup>5</sup>, 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.
35. We note that in some jurisdictions such as Bermuda and the Cayman Islands, shares repurchased by an issuer will need to be held in its own name in order to be classified as treasury shares under the company laws, and the rights (such as voting, dividend and distribution) attached to those shares will be suspended. Therefore, we consider that an issuer wishing to hold repurchased shares in treasury should, upon completion of the share repurchase, withdraw the repurchased shares from CCASS and register the treasury shares in its own name.
36. We also note that when the issuer re-deposits the treasury shares into CCASS<sup>6</sup> for resale on the Exchange, the shares will cease to be classified as treasury shares under the laws of Bermuda or the Cayman Islands as the legal titles of the shares are transferred to HKSCC Nominees and the shareholders' rights attached to the shares would resume. For the purpose of the Listing Rules, we consider that these repurchased shares held in CCASS should continue to be treated in the same way as treasury shares registered in the issuer's own name as they are both beneficially owned by the issuer.
37. On the other hand, where the laws of an issuer's place of incorporation permits treasury shares to be held by nominees on behalf of the issuer, the issuer may continue to hold the repurchased shares as treasury shares in CCASS (registered under the name of HKSCC Nominees as a common nominee for securities held in CCASS) pending resale. In such case, the issuer shall, upon completion of the share repurchase, instruct its share registrar to update the record to clearly indicate the shares that are held in CCASS as treasury shares. For example, under the PRC

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<sup>5</sup> The exception is that under the company laws of some jurisdictions (e.g. Bermuda, the Cayman Islands, Singapore and the United Kingdom), treasury shares are entitled to distribution of bonus shares.

<sup>6</sup> Normally, the shares deposited by CCASS participants (other than investor participants) are credited immediately to their stock accounts in CCASS. With the immediate credit, the participants are able to continue settling their delivery obligations in CCASS, even when the share certificates have been submitted for registration into the name of the common nominee.

laws, treasury H shares are not required to be held in the name of the issuer. Repurchased H shares may continue to be held in CCASS as treasury shares, and the shareholders' rights attached to those shares will be suspended under the PRC laws.

38. We will also amend Rule 10.06(5) to make clear the issuers' obligations to ensure that treasury shares are appropriately identified and segregated. We will issue guidance to assist issuers in meeting their obligations when they hold or deposit treasury shares in CCASS under the current clearing system.
39. Where necessary, we will update the guidance on the arrangements for holding and transferring treasury shares under the new USM environment.

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

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### I. Proposals relating to the Listing Rules

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

40. We proposed to amend the Rules to apply the current requirements for an issuance of new shares to include a resale of treasury shares by a listed issuer. **(Question 2)**

(a) *Resale of treasury shares to be conducted on a pre-emptive basis or with a shareholder mandate*

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.

Under the proposed Rules, an on-market resale of treasury shares under 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 five trading days immediately prior to the resale. An off-market resale of treasury shares under general mandate for cash consideration shall be subject to the same 20% price discount limit as an issuance of new shares.

(b) *Share scheme*

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 Rules.

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

The following requirements will be extended to a resale of treasury shares by an issuer in addition to their current applications to an issuance of new shares:

- (i) the connected transaction requirements under Chapter 14A of the Rules;

- (ii) disclosure requirements for resale of treasury shares and movement in the number of treasury shares under Rule 13.28 (announcement), Rule 11.04 (listing document), Rule 13.25A (next day disclosure return), Rule 13.25B (monthly return) and Paragraphs 11 and 11A to Appendix D2 (annual report); and
- (iii) documentary requirements under Rules 9.18 to 9.23 for resale of treasury shares<sup>7</sup> (except for the requirement to submit a listing application for the treasury shares).

There would be dispensation on certain disclosure and documentary requirements for on-market resale of treasury shares (see Proposal (2)(c) below).

- 41. Under the proposal, a resale of treasury A shares by an A+H issuer would be carved out from the requirement to conduct with a shareholders' mandate as these treasury shares are not listed on the Exchange. Resales of treasury A shares are subject to their home jurisdiction listing requirements as in the case of repurchases of A shares under Rules 10.05 and 10.06.<sup>8</sup>

### **Comments received**

- 42. 78% of the respondents (42 respondents) supported the proposal and 18% (10 respondents) opposed it. 4% of the respondents (two respondents) commented but did not indicate a clear view on the proposal.
- 43. Most respondents agreed that a resale of treasury shares impacts existing shareholders in a similar manner as an issuance of new shares and should therefore be subject to the same requirements for shareholder protection.
- 44. As discussed in Chapter 2, some respondents considered that the Exchange should impose additional safeguards to alleviate the concern of market overhang as issuers could resell treasury shares conveniently on the market. They suggested that:
  - (a) there should be a limit on the maximum number of treasury shares that an issuer may hold and a sunset mechanism for any treasury shares which remain in treasury after a specified period;
  - (b) the Exchange should tighten the general mandate requirements, such as introducing a sub-limit for on-market resale of treasury shares (say 5% of the issuer's issued shares); and

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<sup>7</sup> These documents include, for example, working capital comfort letter in the case of a resale of treasury shares supported by a listing document or placee information in the case of a placing of treasury shares will be required.

<sup>8</sup> For PRC issuers, Rules 10.05 and 10.06 govern repurchases of shares listed on the Exchange only, so repurchases of A shares by A+H issuers are not subject to these Rule requirements (except for certain disclosure requirements under Rule 19A.24).

- (c) the Exchange should enhance the disclosure requirements by requiring an issuer to (i) announce its on-market resales of treasury shares if they exceed a specified threshold (say 5% of the issuer's issued shares) and the use of proceeds from these transactions (in addition to the proposed disclosure in the next day disclosure returns); and (ii) disclose details of its resales of treasury shares during the year in the annual report.
- 45. On the other hand, some opposing respondents considered that the proposed requirements should be simplified to give issuers greater flexibility to resell treasury shares and facilitate market liquidity.
- 46. Other opposing respondents made comments on specific proposals:
  - (a) Some respondents disagreed with the proposed 20% price discount limit on the selling price of an on-market resale of treasury shares under general mandate as the selling price should be determined by the market. The proposal would reduce issuers' flexibility in capital management in a volatile market.
  - (b) Some respondents disagreed with the proposal to treat share schemes funded by treasury shares as those funded by new shares of the issuer under Chapter 17 of the Rules. They considered that share schemes funded by treasury shares should be subject to the same requirements as those funded by existing shares purchased by the trustees in the market as there are no fundamental differences between an issuer repurchasing shares or the trustee purchasing shares on the market to fund share grants. In each scenario the source of funds is from the issuer and neither the issuer nor the trustee could exercise voting power of the shares.
- 47. Some respondents sought clarification on the application of Rule 13.36:
  - (a) Some respondents noted that the proposed Rule 13.36 would not apply to resale of treasury A shares by A+H issuers on the basis that A shares are not listed on the Exchange. The respondents asked the Exchange to clarify the application of Rule 13.36 to resale of treasury shares by issuers which are dually listed on the Exchange and overseas stock exchanges.
  - (b) Some respondents noted that Rule 13.36 allows an issuer to seek a general mandate from its shareholders to issue new shares (and resell treasury shares after the Rule amendments) up to 20% of its issued shares, plus the number of shares repurchased in the year under the repurchase mandate (up to 10% of its issued shares). The respondents asked the Exchange to clarify that shares repurchased by the issuer in other circumstances (e.g. off-market share buybacks from specific shareholders or employee share buybacks permitted under the Share Buy-backs Code) could also be

held as treasury shares. They also asked whether these repurchased shares could be added to the general mandate limit, and if not, whether any such repurchased shares held in treasury could be resold under the general mandate.

- (c) A respondent asked whether a transfer of shares out of treasury for the purpose of distributing scrip dividends or for satisfying share grants under share schemes could be exempt from the requirements to be treated as an issuance of new shares under Rule 13.36 as those actions do not involve capital raising for the issuer.
- (d) Some respondents asked the Exchange to clarify (i) whether the general mandate approved by the shareholders of an issuer must specifically authorise the resale of treasury shares in order for the issuer to resell its treasury shares under the general mandate; and (ii) whether an issuer should amend the rules of its existing share scheme in order to satisfy share grants using treasury shares, and if so, whether these amendments would be regarded as material amendments thereby requiring shareholders' approval under Chapter 17 of the Rules.

### **Our response and conclusion**

48. We note that respondents were generally supportive of our proposals. We address below the issues raised by respondents on specific requirements:

#### *Restrictions on holding of treasury shares and sub-limit for on-market resale of treasury shares*

49. We have considered, and decided not to adopt, the suggestions in paragraphs 44(a) and (b).
- (a) We do not consider it necessary to impose a limit on the number of treasury shares that an issuer may hold from time to time or a sunset mechanism as suggested by the respondents as they do not limit the dilution impact arising from resale of treasury shares. Instead, our proposal requires any resale of treasury shares to be conducted under a shareholders' mandate or an offer to shareholders on a pro rata basis. There is already adequate safeguard to protect the interests of shareholders of the issuer.
  - (b) We do not propose to add a sub-limit on the use of general mandate for on-market resale of treasury shares as it impacts existing shareholders in a similar manner as an issuance of new shares and should be subject to the same limit permitted under the general mandate Rules. We would monitor the on-market resale of treasury shares and, where there is potential abuse of the rule, we will revisit the efficacy of the measures.

50. We note the respondents' concerns that the proposal would enable issuers to resell treasury shares conveniently on the market and there should be greater transparency of these transactions. We will revise the proposal to require an issuer to:
- (a) include additional information of its on-market resales of treasury shares in the next day disclosure return, including the highest and lowest selling price, the amount of funds raised and the details of the general mandate used. These are in line with the disclosure required for on-market share repurchases;
  - (b) disclose its on-market resales of treasury shares by way of an announcement if they, individually or together with previous on-market resales of treasury shares in a 12-month period that have not yet been announced under this proposed Rule, amount to 5% or more of the issuer's issued shares, including the reasons for these transactions, the use of proceeds and other information (if applicable) required under Rule 13.28; and
  - (c) disclose in its annual report:
    - (i) a monthly breakdown of the on-market resales of treasury shares during the year, the total funds raised and the use of proceeds; and
    - (ii) any treasury shares held by the issuer as at the year end date and their intended use.

*Other requirements*

51. Regarding the respondents' comments on specific requirements in paragraph 46:
- (a) We consider that a price discount limit is necessary for on-market resale of treasury shares to protect shareholders from material value dilution. The 20% price discount limit referencing to the closing prices of the shares traded on the Exchange on the trading days prior to the transaction is in line with that applicable to general mandate placing of new shares under the existing Rules.
  - (b) We maintain our view that share schemes funded by treasury shares should be subject to the same requirements as share schemes funded by new shares under Chapter 17 of the Rules. This is consistent with our policy to treat any resale of treasury shares in the same manner as an issuance of new shares.

The proposal is intended to offer issuers an alternative means to fund their share schemes using treasury shares. As stated in the Consultation Paper, issuers may continue to use share schemes funded by existing shares purchased by trustees on the market, subject to the annual reporting requirements under Rule 17.12.

52. Regarding the issues raised by respondents on the application of Rule 13.36 in paragraph 47:

- (a) Rule 13.36 would also apply to the resale of treasury shares by a dually-listed issuer on an overseas exchange as its shares are fungible and listed on both the Exchange and the overseas exchange. The price discount limit for the resale of treasury shares under general mandate shall be referenced to the closing prices of its shares traded on the Exchange.
- (b) Under the current Rule 13.36, only shares repurchased by the issuer on the Exchange or other recognised stock exchanges under the repurchase mandate approved by its shareholders shall be added to the general mandate limit. We do not propose any change to the general mandate limit in this consultation.

Under the proposed Rules, an issuer may hold shares repurchased in other circumstances (e.g. off-market share buybacks from specific shareholders or employee share buybacks permitted under the Share Buy-backs Code) in treasury where authorised by the laws of its place of incorporation and its constitutional documents. Although these repurchased shares will not be added to the general mandate limit, the issuer may resell any such repurchased shares held in treasury under a general mandate, subject to the size and price discount limits.

- (c) Shareholders' approval is not required under the current / proposed Rule 13.36 for (i) scrip dividends or (ii) share schemes that comply with Chapter 17 of the Rules, irrespective of whether they are funded by new shares or treasury shares. Issuers should comply with the shareholders' approval requirements under the laws of their places of incorporation and their constitutional documents.
- (d) The general mandate must specifically authorise the resale of treasury shares in order for the issuer to resell its treasury shares under the general mandate. Similarly, the rules of the issuer's share scheme should specifically allow the use of treasury shares to satisfy share grants. However, we would normally not regard the amendments simply to allow the use of treasury shares to fund the share scheme as a material alteration to the scheme rules which would require shareholders' approval under Chapter 17.

53. In view of the majority support from respondents, we will adopt the proposal with the modifications described in paragraph 50.

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

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

54. We proposed that:

(a) the existing 30-day moratorium period for issuance of new shares by a listed issuer after any share repurchase will apply to resale of treasury shares, whether on or off-market. The moratorium period will not apply to an issue or resale of shares pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue or resell shares, which were outstanding prior to that share repurchase (the **carve-out**); **(Question 3)**

(b) a moratorium period also applies to any share repurchase on the Exchange subsequent to a resale of treasury shares on the Exchange. **(Question 4)**

55. We also sought the respondents' views on whether the moratorium periods (in either direction) should be shorter than 30 days. **(Question 5)**

**Comments received**

*Moratorium period for resale of treasury shares (whether on-market or off-market) after a share repurchase (Questions 3 and 5)*

56. 85% of the respondents to Question 3 (46 respondents) supported the proposal. 13% of the respondents (seven respondents) opposed it. 2% of the respondents (one respondent) commented but did not indicate a clear view on the proposal.

57. Respondents generally agreed that the proposal would mitigate the heightened risks of market manipulation associated with resale of treasury shares. This is consistent with the restriction on issuance of new shares after a share repurchase under the current Rules.

58. Amongst the 46 respondents who supported the proposal, 57% (26 respondents) suggested a moratorium period of 30 days or more while 41% (19 respondents) suggested a shorter period:

(a) 23 respondents considered that a moratorium period of 30 days is appropriate;

(b) three respondents considered that the moratorium period should be longer than 30 days. One of them supported a moratorium period of 30 days for off-market resale of treasury shares but suggested a longer moratorium period of 12 months for on-market resale of

treasury shares given the higher risks of market abuse. Of the other two respondents, one suggested a moratorium period of 90 days and the other did not indicate a period they considered appropriate;

- (c) 19 respondents considered that the moratorium period should be shorter than 30 days. Four respondents suggested a period ranging from less than five days to 21 days while others did not indicate a period they considered appropriate; and
  - (d) one respondent supported the proposal but did not comment on the duration of the moratorium period.
59. Some respondents suggested extending the carve-out to capitalisation issues and share grants under share schemes as they do not involve capital raising. This would provide more flexibility to issuers when offering shareholders an alternative to a cash dividend in the form of a scrip dividend distribution and to incentivise employees through share grants under share schemes. A respondent also suggested extending the carve-out to consideration issues.
60. A number of respondents considered that the proposed Rules should clearly carve out any issue of new shares or resale of treasury shares to satisfy share grants or conversion of convertible securities during the moratorium period if such share grants or convertible securities were outstanding prior to the repurchase.
61. A respondent asked the Exchange to clarify whether the moratorium period will apply to the resale of treasury shares (whether on-market or off-market) after a share repurchase if the issuer is dually listed on the Exchange and an overseas stock exchange.
62. Of the seven opposing respondents:
- (a) Only four disagreed with any moratorium period. One respondent considered that there are already adequate protections against market abuse under the SFO and it would not be necessary to impose further requirements under the Listing Rules. One respondent commented that imposing a moratorium period would adversely affect market liquidity. The other two opposing respondents did not provide reasons for their views.
  - (b) Three respondents agreed that resale of treasury shares should be subject to a moratorium period after a share repurchase, but they suggested a shorter moratorium period to give issuers greater flexibility and/or a carve-out for transfers of treasury shares under share schemes or as consideration for acquisitions. Two of them suggested a moratorium period of two weeks.

*Moratorium period for on-Exchange share repurchase subsequent to an on-Exchange resale of treasury shares (Questions 4 and 5)*

63. 71% of the respondents to Question 4 (39 respondents) supported the proposal and 27% (15 respondents) did not support it. 2% of the respondents (one respondent) commented but did not indicate a clear view on the proposal.
64. A majority of the respondents agreed to impose a moratorium period to deter issuers from repeatedly repurchasing and reselling their own shares on the Exchange.
65. Amongst the 39 respondents who supported the proposal, 62% (24 respondents) suggested a moratorium period of 30 days or more while 38% (15 respondents) suggested a shorter period:
  - (a) 21 respondents agreed that the moratorium period should be 30 days;
  - (b) three respondents considered that the moratorium period should be longer than 30 days. One respondent suggested 90 days and another respondent commented that investors generally do not consider a mandate to allow repurchase and reissue of shares within a year to be prudent capital management. The other respondent did not indicate a period they considered appropriate; and
  - (c) 15 respondents considered that it should be shorter than 30 days. Two of them suggested a period ranging from 10 days to 21 days while the remaining 13 respondents did not indicate a period they considered appropriate.
66. Of the 15 opposing respondents:
  - (a) 12 respondents disagreed with any moratorium period. Some respondents commented that share repurchases are often conducted by issuers based on market sentiment and imposing a moratorium period for share repurchase after a resale of treasury shares would impede management's ability to react to market conditions and discourage the use of on-Exchange resale mechanisms. Some respondents disagreed with the proposal to restrict share repurchases as the Listing Rules currently do not prescribe any moratorium period on a share repurchase after an issue of new shares and/or there are already adequate safeguards against market abuse under the SFO.
  - (b) Three respondents suggested a shorter moratorium period to give issuers greater flexibility to resell and repurchase their shares. Two of them suggested a moratorium period of two weeks, and the other did not indicate a period they considered appropriate. In addition, the respondents suggested that issuers should be allowed to

repurchase shares on the Exchange within 30 days after a transfer of treasury shares to satisfy share grants under a share scheme or the consideration for an acquisition.

### **Our response and conclusion**

67. As the proposal will give issuers greater flexibility to manage their capital through resale of treasury shares, respondents generally agreed with our proposals to impose moratorium periods on resales of treasury shares and share repurchases to mitigate the risks of market manipulation and maintain a fair and orderly market in the issuers' shares.

#### *The moratorium period*

68. In view of the majority support from respondents, we will adopt the proposals to impose a moratorium period on:
- (a) a resale of treasury shares (whether on-market or off-market) after a share repurchase, with a modification to the carve-out described in paragraph 71(a) below; and
  - (b) a share repurchase on the Exchange after a resale of treasury shares on the Exchange.
69. Regarding the duration of the moratorium period, we will adopt a 30-day period (in either direction) which is supported by a substantial number of respondents.

#### *Carve-out for issues or resales of shares under capitalisation issues or share schemes*

70. As explained in the Consultation Paper, the moratorium period seeks to ensure that an issue of new shares or resale of treasury shares does not take place at a price that has been affected by the issuer's previous share repurchase.
71. In response to the respondents' suggestions in paragraphs 59, 60 and 62(b):
- (a) we will extend the carve-out to include (i) capitalisation issues (e.g. bonus issues and scrip dividends) and (ii) grants of share awards or options under a share scheme that complies with Chapter 17 or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme. There should not be a material concern about price manipulation as the purposes of these issues of new shares or resales of treasury shares are to distribute shares to shareholders on a pro-rata basis or to incentivise employees, but not to raise funds for the issuer;

- (b) we will not extend the carve-out to consideration issues because the nature of consideration issues is different from capitalisation issues and grants of share awards or options under a share scheme. The moratorium period ensures that the consideration shares are not issued or transferred at a price that has been affected by the issuer's previous share repurchase; and
  - (c) we clarify that the carve-out in the current and proposed Rules apply to issuance of new shares and transfer of treasury shares by an issuer upon conversion of convertible securities, which were issued with subscription monies fully settled prior to the share repurchase.
72. Regarding the respondents' suggestion in paragraph 66(b), we would like to clarify that our proposal does not restrict share repurchases after an off-market resale of treasury shares (e.g. a transfer of treasury shares to satisfy share grants under a share scheme or the consideration for an acquisition).
73. Regarding the issue raised by a respondent in paragraph 61, we clarify that the moratorium period will apply to a resale of treasury shares after a share repurchase by an issuer dually listed on the Exchange and an overseas stock exchange, subject to the modification to the carve-out provision described in paragraph 71(a). For A+H issuers, as Rules 10.05 and 10.06 govern repurchases and resale of shares listed on the Exchange, the moratorium period does not apply to their resale of treasury A shares.

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

74. We proposed to extend the application of the dealing restrictions applicable to on-Exchange share repurchase to on-Exchange resale of treasury shares:
- (a) The restriction on undertaking share repurchases while there is undisclosed inside information or during the one-month period preceding any results announcement will also apply to resales of treasury shares.
  - (b) An issuer is prohibited 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. This will be extended to a resale of treasury shares on the Exchange.

We also proposed that on-market resale of treasury shares to a connected person without knowledge would be fully exempt from the connected transaction Rules. This is consistent with the exemption currently available for on-market share repurchase.

- (c) An issuer is required to procure its broker appointed to repurchase its shares to disclose to the Exchange information in respect of the purchase if so requested. This will be extended to a resale of treasury shares on the Exchange.

### **(Question 6)**

#### **Comments received**

- 75. 91% of the respondents (49 respondents) supported the proposal while 9% (five respondents) opposed it.
- 76. Opposing respondents either considered the proposal to be too relaxed or too strict:
  - (a) A few respondents considered that the proposed one-month restricted period preceding results announcement is inadequate as the proposal to allow issuers to trade their own shares would heighten the risks of insider dealing. The respondents also expressed concern about information asymmetry as most issuers only report their financial results twice a year. One of them suggested extending the restricted period to two or three months before the results announcement. Another respondent suggested that issuers should only be allowed to resell treasury shares on the Exchange within two months after the results announcement.
  - (b) One opposing respondent considered that it would be more appropriate to provide protection against market abuse under the relevant market abuse regulations or securities laws, rather than in the Listing Rules. Another respondent suggested that resales of treasury shares through agents who are not aware of any material non-public information should be exempt from the trading restrictions, consistent with the market practice in other jurisdictions.
- 77. One supporting respondent suggested adjusting the duration of the restricted period from one month preceding results announcement to 30 days preceding results announcement to align with the duration of the moratorium period for share repurchases and resales of treasury shares under Proposal 2(a) above.

#### **Our response and conclusion**

- 78. As set out in the Consultation Paper, the SFO provides the primary safeguards against stock market manipulation and insider dealing, while the Listing Rules impose restrictions to further mitigate the risks.

79. Respondents generally agreed that the dealing restrictions for on-Exchange resales of treasury shares should be in line with those currently applicable to on-Exchange share repurchases. As set out in Proposal (4)(d) below, we consider that the dealing restrictions should equally apply to resales by agents on behalf of an issuer, irrespective of whether the agents are aware of any material non-public information.
80. As regards the respondent's suggestion in paragraph 77, we will amend the Rules to adjust the restricted period for on-Exchange share repurchases and on-Exchange resales of treasury shares from one month preceding results announcement to 30 days preceding results announcement. This would ensure equal dealing restrictions for all issuers, regardless of their year-end date.
81. In light of the majority support from the respondents, we will adopt the proposal with modifications described in paragraph 80.

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

82. The proposed disclosure and documentary requirements for resale of treasury shares under Proposal (1) above would also apply to on-market resale of treasury shares, except that:
  - (a) an issuer shall not be required to publish an announcement for its on-market resale of treasury shares under Rule 13.28. The issuer must disclose its on-market resale of treasury shares through a next day disclosure return; and
  - (b) an issuer shall not be required to submit placee information to the Exchange under Rule 9.23(2).

**(Question 7)**

**Comments received**

83. 94% of the respondents (50 respondents) supported the proposal while 6% (three respondents) opposed it.
84. Some respondents noted that investors would rely on next day disclosure returns to be notified of the on-market resales of treasury shares. They were concerned whether these disclosure returns contain all essential information for investors to assess the impact of the transactions. Some respondents commented that the general public is more familiar with public disclosure by way of announcements. The proposal may result in possible confusion or misunderstanding on the part of investors given that it would necessitate them searching the next day disclosure return to assess the relevant information.

## **Our response and conclusion**

85. As explained in the Consultation Paper, our proposal would provide issuers with an additional means to raise funds through resale of treasury shares in small lots on the market. We proposed not to require an issuer to publish separate announcements for these transactions as it must disclose all on-market resales of treasury shares through next day disclosure returns.
86. We acknowledge the respondents' comments in paragraph 84. As discussed in Proposal (1) above, we have modified the proposal to require issuers to (i) include the key information about their on-market resales of treasury shares in next day disclosure returns; and (ii) issue separate announcements for on-market resales of treasury shares that are material in size (see paragraph 50).
87. We will also add a new headline category for the disclosure of on-market resales of treasury shares in next day disclosure returns to facilitate investors in locating these documents on the Exchange's website.
88. We will adopt the proposal with modifications described in paragraphs 86 and 87.

### **(3) Proposal relating to new listing applicants**

89. We proposed that:
  - (a) new listing applicants may retain their treasury shares after listing. They must disclose details of its treasury shares in their prospectuses; and
  - (b) Rule 10.08 (which restricts the issuance of new shares by a listed issuer within six months of its new listing) will be extended to a resale of treasury shares. Therefore, 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.

### **(Question 8)**

#### **Comments received**

90. 89% of the respondents (47 respondents) supported the proposal and 9% (five respondents) opposed it. 2% of the respondents (one respondent) commented but did not indicate a clear view on the proposal.

91. Respondents generally agreed that resales of treasury shares by a newly listed issuer should be subject to the six-month lock-up period under Rule 10.08, consistent with the treatment of an issue of new shares after listing. This aligns with the rationale behind Rule 10.08 to protect public investors by preventing dilution of their interests and changes in shareholding structure in the issuer's early stage of listing.
92. One opposing respondent was concerned that the policy intent of Rule 10.08 may not be achieved by solely extending the lock-up period to resale of treasury shares as a new applicant may obtain a repurchase mandate from shareholders in advance for repurchasing shares after listing and hold them in treasury for resale shortly after the lock-up period. This may also lead to the perception of speculative trading by the issuer in its own shares. The respondent suggested the Exchange to impose a cap on the number of shares which may be repurchased or resold within a specified period.
93. Another opposing respondent thought that it is not necessary to extend the lock-up period to a resale of treasury shares as a new listing applicant is required to disclose details of its treasury shares in the prospectus through which investors are forewarned of the risks.
94. A respondent asked the Exchange to extend Rule 10.08(5)<sup>9</sup> to cover resales of treasury shares by an issuer that has transferred its listing from GEM to the Main Board.
95. As new listing applicants would be allowed to retain treasury shares at the time of listing for future resale, one respondent asked the Exchange to clarify whether a new listing applicant could issue new shares to a trust before listing and use these shares to satisfy any future share grants under its share scheme after listing.

### **Our response and conclusion**

96. We note the respondent's comments that newly listed issuers may repurchase shares immediately after listing to hoard a material part of its shares in treasury for resale shortly after the expiry of the lock-up period. However, as the Listing Rules already impose a size limit on the general / repurchase mandate, we do not consider it necessary to introduce a separate cap for newly listed issuers as suggested in paragraph 92. Where a new listing applicant obtains a shareholders' mandate for repurchase of shares after listing, it must disclose in the prospectus whether it intends to cancel the repurchased shares or hold them as treasury shares (see Proposal (4)(c) below). If any new listing applicant

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<sup>9</sup> Rule 10.08(5) provides that the six-month restriction under Rule 10.08 does not apply to the issue of shares or securities to be traded on the Main Board by a listed issuer that has successfully transferred its listing from GEM to the Main Board pursuant to Chapter 9A or 9B, provided that any plan to raise funds within six months from the date of the transfer of the issuer's listing to the Main Board has been prominently disclosed in the listing document or the announcement required under rule 9B.08, as the case may be.

has a plan or intention to repurchase a material part of its shares shortly after listing, this must be adequately explained and disclosed in the applicant's prospectus and its cashflow forecasts submitted to the Exchange.<sup>10</sup>

97. As to the issue raised by a respondent in paragraph 94, we will amend Rule 10.08(5) to extend the carve-out to a resale of treasury shares by an issuer that has transferred its listing from GEM to the Main Board.
98. As to the issue raised by a respondent in paragraph 95, we have issued a FAQ 091-2022 following the Rule amendments relating to share schemes in 2022 to clarify that grants of new shares by an issuer to the trustee of a share scheme are allowed only if they are made for the benefits of specified participants. Accordingly, if a new applicant proposes to issue new shares to the trustee before listing and use them to satisfy any future share grants after listing, this will not comply with Chapter 17 as there are no specified participants when the new shares are issued to the trustee. The FAQ seeks to avoid new listing applicants from using trust arrangements to circumvent the requirements of Chapter 17 after listing. It will continue to apply after the implementation of the treasury share regime as any share schemes funded by treasury shares would be subject to the same requirements as share schemes funded by new shares under Chapter 17.
99. In view of the majority support from the respondents, we will adopt the proposal with the modification described in paragraph 97 above.

#### **(4) Consequential Rule amendments in other parts of the Rules**

##### **(a) Voting rights attached to treasury shares**

100. We proposed to amend the Rules to make it clear that issuers (being holders of treasury shares) should abstain from voting on matters that require shareholders' approval under the Listing Rules. **(Question 9)**

##### **Comments received**

101. 96% of the respondents (51 respondents) supported the proposal while 4% (two respondents) opposed it.
102. Two respondents suggested expanding the scope of this proposal to cover not just matters requiring shareholders' approval under the Listing Rules, but all matters submitted to voting by shareholders, so as to minimise the risk of abuse by directors of an issuer to influence shareholders' voting.

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<sup>10</sup> Under Rule 11.07, all listing document must, as an overriding principle, contain such particulars and information which, according to the particular nature of the issuer and the securities for which listing is sought, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights attaching to such securities.

103. As an example, one of these respondents submitted that under the Companies Ordinance, a Hong Kong incorporated issuer is required to seek authority from its members for an off-market buyback of shares other than via a general offer. The respondent considered that irrespective of the outcome of legislative changes, treasury shares should not be entitled to vote on such a resolution. The Codes have not clearly addressed the status of treasury shares with reference to “disinterested shareholders”.
104. A respondent noted that Rules 14.44 and 14A.37 allow an issuer to obtain a written shareholders’ approval in lieu of holding a general meeting for the approval of a major transaction and/or a connected transaction if, among others, no shareholder of the issuer is required to abstain from voting to approve the transaction. As a holder of treasury shares shall abstain from voting on matters that require shareholders’ approval under the proposed Rules, any issuer holding treasury shares will not be able to meet the condition under Rules 14.44 and 14A.37. The respondent suggested the Exchange to clarify that “shareholder” for the purpose of these Rules should refer to “shareholder other than holder of treasury shares”.

#### **Our response and conclusion**

105. As explained in the Consultation Paper, our proposal seeks to clarify that issuers themselves should not vote on matters that require shareholders’ approval under the Rules. We do not propose adopting the respondents’ suggestion in paragraph 102 as shareholders’ rights attached to treasury shares are governed by laws.
106. The definition of “voting rights” under the Codes excludes the voting rights attached to treasury shares (if any). Therefore, any votes cast by a listed issuer as a holder of treasury shares will not be counted under the Codes. Neither will the issuer be treated as a “disinterested shareholder” for the purpose of the Codes. For more details of the treatment of treasury shares under the Codes, please refer to paragraph 142.
107. In view of the majority support from the respondents, we will adopt the proposal and amend Rules 14.44 and 14A.37 as described in paragraph 104 above.

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

108. We proposed to amend the Rules to make it clear that treasury shares would be disregarded when calculating an issuer’s issued shares or voting shares under various parts of the Rules (e.g. public float, market capitalisation, mandate limits and size tests for transactions). **(Question 10)**

109. We also sought the market's view regarding the different treatment of treasury shares when calculating an issuer's issued voting shares under the Rules and Part XV of the SFO. **(Question 11)**

### **Comments received**

#### *Excluding treasury shares in the calculation of issued shares*

110. 96% of the respondents (51 respondents) supported the proposal and 4% (two respondents) opposed it without further elaboration.
111. A respondent asked the Exchange to clarify how the proposal will interact with Rule 8A.15 which requires WVR beneficiaries to reduce their weighted voting rights in the WVR issuer proportionately following a share repurchase if the repurchase would otherwise result in an increase in the proportion of their weighted voting rights. The respondent suggested that Rule 8A.15 should not apply where the WVR issuer repurchases non-WVR shares and holds them in treasury instead of cancelling them.
112. Another respondent suggested the Exchange to grant temporary waivers to issuers if they are unable to meet the minimum public float requirement as a result of repurchasing their own shares and holding them in treasury.

#### *Different treatment of treasury shares under the Rules and Part XV of the SFO*

113. 70% of the respondents who commented (28 respondents) indicated that they support or do not have a concern about the different treatment of treasury shares when calculating an issuer's voting shares under the Rules and Part XV of the SFO, and 25% (10 respondents) considered that the treatment of treasury shares under the SFO and the Rules should be aligned. 5% (two respondents) provided comments but did not indicate a clear view.
114. Respondents who supported the proposed different treatment of treasury shares under the Rules and Part XV of the SFO considered that the difference in treatment would not affect the current practices for disclosure of interests under Part XV of the SFO. One of the respondents also pointed out that the proposed treatment of treasury shares for the purposes of Part XV of the SFO is beneficial to shareholders in practice as they are not required to continuously monitor the shares being transferred in and out of the treasury.
115. For respondents who do not support the proposed different treatment of treasury shares under the Rules and Part XV of the SFO, a number of them considered that treasury shares should be excluded from the calculation of an issuer's issued voting shares for the purposes of Part XV of the SFO because the voting rights attached to treasury shares are suspended. There are also concerns about the possible confusion and uncertainty that may be caused to issuers when treasury shares are

treated differently under the Rules and Part XV of the SFO. Some respondents further suggested that the treasury shares be designated as a separate class of shares for the purposes of disclosure of interests under Part XV of the SFO.

## **Our response and conclusion**

### *Excluding treasury shares in the calculation of issued shares*

116. Regarding the respondents' comments in paragraphs 111 and 112, we clarify that:

- (a) Rule 8A.15 would apply if any repurchase of shares by a WVR issuer would result in an increase in the proportion of the weighted voting rights of the WVR beneficiaries in the WVR issuer, regardless of whether the repurchased shares are cancelled or held in treasury. We will update Rule 8A.15 to reflect the Exchange's position.
- (b) An issuer shall not repurchase its shares if such repurchase would result in the number of shares held by the public falling below the minimum requirement. This applies whether the repurchased shares are cancelled or held in treasury. Issuers should ensure compliance with the Listing Rules in planning their corporate actions.

117. In view of the majority support from the respondents, we will adopt the proposal and make drafting amendments to Rule 8A.15 as described in paragraph 116(a) above.

### *Different treatment of treasury shares under the Rules and Part XV of the SFO*

118. Having considered the respondents' comments and the existing practices for disclosure of interests under Part XV of the SFO, the SFC considers that treasury shares remain part of an issuer's issued voting shares when calculating the percentage figures of interests of shareholders for the purposes of Part XV of the SFO.

119. As explained in the Consultation Paper, treasury shares remain part of an issuer's issued voting shares<sup>11</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<sup>12</sup>. The SFC will update the Outline of Part XV of the SFO – Disclosure of Interests to provide further guidance on the treatment of treasury shares, including the calculation of percentage interests if treasury shares are involved.

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<sup>11</sup> "Issued voting shares" is defined in section 308(1) of the SFO.

<sup>12</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.

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

120. We proposed to amend Rule 10.06(1)(b) to require an issuer to disclose in the explanatory statement for its proposed repurchase mandate whether it intends to cancel the repurchased shares or hold them as treasury shares. **(Question 12)**

**Comments received**

121. 80% of the respondents (41 respondents) supported the proposal and 18% (9 respondents) opposed it. 2% of the respondents (one respondent) provided comments but did not indicate a clear view on the proposal.

122. Some respondents commented that it was unclear whether the disclosure is binding on the issuer or it is merely an expression of the issuer's intention. They sought the Exchange's clarification on the following:

(a) whether an issuer would be permitted to change its intention, and if so, whether any disclosure or other actions are required; and

(b) where an issuer disclosed its intention to hold repurchased shares as treasury shares, whether it can subsequently decide to cancel the treasury shares and whether such cancellation would be regarded as a change of intention and require immediate disclosure.

123. Opposing respondents also raised similar concerns. Some respondents commented that the proposal may limit an issuer's ability to adapt to any unforeseen circumstances given the time gap between the publication of the explanatory statement (which normally occurs one month before the annual general meeting) and the actual exercise of the repurchase mandate (which can be up to about one year thereafter). They considered that issuers should have the flexibility to decide whether to cancel or hold the repurchased shares based on the actual circumstances that prevail at the time of the repurchases. Some respondents suggested the Exchange to require issuers to disclose in their next day disclosure returns whether they will cancel or hold the repurchased shares after each share repurchase.

**Our response and conclusion**

124. Respondents generally agreed that the proposal would allow shareholders to understand the potential impact of the proposed repurchase mandate and decide how to vote.

125. We acknowledge that an issuer's intention regarding the treatment of repurchased shares may change due to evolving circumstances. To ensure transparency, we will amend the Rules to require an issuer to:

- (a) when reporting any share repurchases in a next day disclosure return, identify the number of repurchased shares that are to be held in treasury or cancelled upon settlement of such repurchases, and where applicable, disclose the reasons for any deviation from the intention statement previously disclosed by the issuer in the explanatory statement; and
  - (b) disclose in its annual report the number of treasury shares held as at the year end date and their intended use.
126. The disclosure of the intention statement would not preclude an issuer from subsequently cancelling any treasury shares. We will amend Rule 13.25A(2)(b) to clarify that an issuer is required to report cancellation of treasury shares through next day disclosure returns and when such disclosure obligation arises.
127. We will adopt the proposal with modifications described in paragraphs 125 and 126.

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

128. We proposed to amend the Rules to make it clear that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees. **(Question 13)**

**Comments received**

129. 96% of the respondents (49 respondents) supported the proposal and 2% (one respondent) opposed it. 2% of the respondents (one respondent) provided comments but did not indicate a clear view on the proposal.
130. Respondents generally agreed that the acts of an agent or nominee operating on behalf of an issuer or its subsidiary should be attributed to the issuer and be governed by the same framework.
131. One respondent disagreed with the proposal, stating that use of agents who are not aware of material non-public information should be exempt from the trading restrictions similar to the practice in other markets.
132. Another respondent suggested that the proposal should exclude the trustee of an issuer's share scheme as the trustee may sell the issuer's shares when share awards are cancelled or lapsed or upon the expiry of the share scheme.

## **Our response and conclusion**

133. As explained in the Consultation Paper, we consider that the proposed requirements and restrictions on resale of treasury shares should equally apply to resale by agents or nominees on behalf of the issuer or its subsidiary if permitted under the laws of the issuer's place of incorporation and its constitutional documents, irrespective of whether the agents or nominees are aware of any material non-public information. The proposal seeks to avoid any potential loophole in the Rules.
134. In light of the majority support from the respondents, we will adopt the proposal.
135. Regarding the respondent's comments in paragraph 132, we clarify that the proposal would not apply to a sale of shares by the trustee of an issuer's share scheme if those shares are not regarded as treasury shares under the laws of the issuer's place of incorporation and its constitutional documents (see the definition of treasury shares under proposed Rule 1.01 in paragraph 33).

### **(e) Other consequential Rule amendments**

136. We will amend Rule 19C.11 to exempt issuers with secondary listings on the Exchange from Rules 10.06A(1), 10.06A(3) and 10.06B. This is in line with the exemptions from the requirements of share repurchases currently applicable to these issuers.
137. As set out in paragraph 143, the SFC will issue guidance regarding treasury units of REITs authorised by the SFC under the Code on Real Estate Investment Trusts. We will amend the next day disclosure return and monthly return requirements under Paragraphs 7 and 8 of Appendix E3 to the Listing Rules to also cover any movement in the number of treasury units of REITs.

### **(5) Housekeeping Rule amendments**

138. We will also make housekeeping amendments to the following requirements as suggested by some respondents:
  - (a) We will amend Paragraphs 11, 11A and 41A of Appendix D2 to clarify that the reporting requirements for issues of securities for cash consideration under these rules do not apply to new shares issued or treasury shares resold under share schemes. There are separate reporting requirements relating to share schemes under Rules 17.07 to 17.09.

- (b) Under the Rules, issuers are required to (i) issue announcements upon any grants of share awards or options under share schemes (Rules 17.06A to 17.06C) and (ii) file next day disclosure returns to report the new shares issued (or treasury shares transferred after the Rule amendments) under the share schemes (Rule 13.25A).

We will amend Rule 13.25A to allow an issuer to file a next day disclosure return for the new shares issued or treasury shares transferred to grantees (other than directors) under its share scheme when the threshold<sup>13</sup> under Rule 13.25A(3) is reached (instead of filing a return for each such issue of new shares or transfer of treasury shares upon vesting of share awards). This would align the filing requirement for share awards with those applicable to new shares issued upon exercise of options under share schemes.

- (c) We will amend Rule 17.05 to adjust the restricted period for grants of options or awards under share schemes from one month preceding results announcement to 30 days preceding results announcement to align with the duration of the restricted period for on-Exchange share repurchases and on-Exchange resales of treasury shares (see paragraph 80).

## **II. Implementation and transitional arrangements**

139. The amended Rules have been approved by the Board of the Exchange and the SFC. They will become effective on 11 June 2024.
140. 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. Transitional arrangements will be provided to these issuers to comply with the new Listing Rule requirements by their second annual general meeting after the effective date of the proposed Rule amendments.

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<sup>13</sup> The event in Rule 13.25A(2)(b), either individually or when aggregated with any other events described in that rule which have occurred since the issuer published its last monthly return under Rule 13.25B or last return under Rule 13.25A (whichever is the later), results in a change of 5% or more of the issuer's issued shares (excluding treasury shares).

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## **CHAPTER 4: IMPLICATIONS OF THE PROPOSAL ON THE COMPANIES ORDINANCE AND OTHER LAWS AND REGULATIONS IN HONG KONG**

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### **Companies Ordinance**

141. For listed issuers incorporated in Hong Kong, the Government is proposing amendments to the Companies Ordinance to enable them to also benefit from the treasury share regime as other overseas issuers.

### **Takeovers Code and Share Buy-backs Code**

142. The definition of “voting rights” under the Codes specifically carves out the voting rights attached to treasury shares (if any). If a company has treasury shares, such shares will not be treated as disinterested shares or counted towards the various thresholds under the Codes (such as the 30% trigger, the 2% creeper or an acceptance threshold). In addition, an offer is not required to be made for treasury shares during a general offer or partial offer. The introduction of the treasury share regime under the Rules is not expected to result in significant changes to the existing practices for takeovers and share buy-backs. Neither will there be any overall practical effect on the operation of the Codes. The Takeovers Executive of the SFC will issue a practice note clarifying the treatment and implications of treasury shares in the context of a Codes-related transaction when the regime comes into effect.

### **Code on Real Estate Investment Trusts**

143. It has been the SFC’s long established policy to regulate REITs in the same manner as listed issuers in view of their similarities in terms of economic nature and investors’ interests. Accordingly, any resale of treasury units by REITs would be subject to the same limits and other requirements applicable to resale of treasury shares of listed issuers. The SFC will issue further guidance regarding treasury units of REITs.

### **Stamp Duty Ordinance**

144. As set out in the Consultation Paper, 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 (**SDO**). Therefore, it is considered that the transaction is subject to ad valorem stamp duty under the SDO.

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**APPENDIX I: LIST OF RESPONDENTS**

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<b>Accounting Firm (1 in total)</b>
1. KPMG
<b>Corporate Finance Firm/ Bank (1 in total)</b>
1. 1 corporate finance firm/ bank that requested anonymity
<b>HKEX Participants (2 in total)</b>
1. Futu Securities International (Hong Kong) Limited
2. 1 HKEX participant that requested anonymity
<b>Investment Managers (3 in total)</b>
1. BlackRock
2. Fidelity International
3. 1 investment manager that requested anonymity
<b>Law Firms (10 in total)</b>
1. Freshfields Bruckhaus Deringer
2. Kirkland & Ellis
3. Latham & Watkins LLP
4. LI & PARTNERS
5. Linklaters
6. Lo Lau Lawyers
7. O'Melveny & Myers
8. Skadden, Arps, Slate, Meagher & Flom
9-10. 2 law firms that requested anonymity
<b>Listed Companies (19 in total)</b>
1. Adicon Holdings Limited
2. AIA Group Limited
3. D&G Technology Holding Company Limited

4. The Bank of East Asia, Limited
5-19. 15 listed companies that requested anonymity
<b>Professional Bodies / Industry Associations (10 in total)</b>
1. Federation of Share Registrars Limited
2. Hong Kong REITS Association Limited (HKREITA)
3. Hong Kong Capital Market Practitioners Association (HKCMP)
4. Hong Kong Institute of Certified Public Accountants
5. Hong Kong Investment Funds Association
6. Hong Kong Professionals and Senior Executives Association
7. Hong Kong Securities & Futures Professionals Association
8. The Chamber of Hong Kong Listed Companies
9. The Hong Kong Chartered Governance Institute
10. The Law Society of Hong Kong
<b>Individuals (10 in total)</b>
1. Ms. Wong
2. Wang Lu
3-10. 8 individuals that requested anonymity

*Remarks:*

- 1. If the entire body of the response is identical, word-for-word, with the entire body of another response, it will be recorded as a “duplicate response” and will not be counted for the purpose of a quantitative and qualitative analysis of the responses.*
- 2. The total number of responses is calculated according to the number of submissions received and not the number of the underlying members that they represent.*

## APPENDIX II: QUANTITATIVE ANALYSIS OF RESPONSES

No.	Questions in the Consultation Paper	Feedback			
		Yes	No	No stance (with comments)	Number of respondents <sup>14</sup>
1	Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares?	52 (93%)	4 (7%)	0 (0%)	56 (100%)
2	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)?	42 (78%)	10 (18%)	2 (4%)	54 (96%)
3	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?	46 (85%)	7 (13%)	1 (2%)	54 (96%)
4	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?	39 (71%)	15 (27%)	1 (2%)	55 (98%)
5	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 of the Consultation Paper should be addressed.	<i>Note: Please refer to paragraphs 58, 62, 65 and 66 of this paper for the quantitative responses to this question.</i>			
6	Do you agree with the proposal that dealing restrictions described in paragraph 69 of the Consultation Paper under Proposal (2)(b) shall be imposed on a resale of treasury shares on the Exchange?	49 (91%)	5 (9%)	0 (0%)	54 (96%)

<sup>14</sup> Out of 56 non-duplicate responses. Respondents who did not express any views or comments were excluded.

No.	Questions in the Consultation Paper	Feedback			
		Yes	No	No stance (with comments)	Number of respondents <sup>14</sup>
7	Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 of the Consultation Paper under Proposal (2)(b)?	50 (94%)	3 (6%)	0 (0%)	53 (95%)
8	Do you agree with the proposal relating to new listing applicants as described in Proposal (3)?	47 (89%)	5 (9%)	1 (2%)	53 (95%)
9	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)?	51 (96%)	2 (4%)	0 (0%)	53 (95%)
10	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)?	51 (96%)	2 (4%)	0 (0%)	53 (95%)
11	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 of the Consultation Paper?	<i>Note: Please refer to paragraph 113 of this paper for the quantitative responses to this question.</i>			
12	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)?	41 (80%)	9 (18%)	1 (2%)	51 (91%)
13	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)?	49 (96%)	1 (2%)	1 (2%)	51 (91%)

## APPENDIX III: SUMMARY OF CHANGES ADOPTED

The Rule amendments to be adopted are summarised in the table below:

Rule amendments		Rule no.
<b>I. Rule amendments to remove the requirement to cancel repurchased shares (Chapter 2)</b>		
<b>(1)</b>	<p><b>Remove the requirement to cancel repurchased shares</b></p> <p>Remove the requirement to cancel repurchased shares</p> <p>Define “treasury shares” as shares repurchased and held by the issuer in treasury, as authorised by the laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on the Exchange</p> <p>Allow treasury shares to retain the listing status</p>	<p>MB Rules 10.06(5), 19.16 and 19A.24 / GEM Rules 13.14, 24.07 and 25.18</p> <p>MB Rule 1.01 / GEM Rule 1.01</p> <p>MB Rule 10.06(5) / GEM Rule 13.14</p>
<b>II. Rule amendments to regulate treasury shares and other consequential rule amendments (Chapter 3)</b>		
<b>(1)</b>	<p><b>Treat a resale of treasury shares as new shares</b></p> <p><b>(a) Resale of treasury shares to be conducted on a pre-emptive basis or with a shareholders’ mandate</b></p> <p>Require a resale of treasury shares listed on the Exchange to be subject to pre-emption similar to an issuance of new shares (i.e. 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)</p> <p>Set the price discount limit for an on-market resale of treasury shares under a general mandate at 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</p> <p>Require an off-market resale of treasury shares under a general mandate for cash consideration to be subject to the same price discount limit as an issuance of new shares</p>	<p>MB Rules 2.03(6), 13.36(1A) and 13.36(8) / GEM Rules 2.06(6), 17.39A and 17.42E</p> <p>MB Rule 13.36(5A) / GEM Rule 17.42BB</p> <p>MB Rules 13.36(1A) and 13.36(5) / GEM Rules 17.39A and 17.42B</p>

Rule amendments	Rule no.
<p><b>(b) Share scheme</b></p> <p>Require a share scheme using treasury shares to satisfy share grants to be subject to the same requirements as a share scheme funded by new shares under Chapter 17</p> <p>Add Rules in Chapter 19A to clarify that for a PRC issuer, a share scheme funded by its treasury H shares is subject to the same requirements as a share scheme funded by new shares under Chapter 17, and a share scheme funded by its treasury shares not listed on the Exchange is subject to rule 17.12</p> <p><b>(c) Other requirements relating to a resale of treasury shares</b></p> <p>Extend certain Rule requirements currently applicable to an issuance of new shares to a resale of treasury shares, including:</p> <ul style="list-style-type: none"> <li>(i) connected transaction requirements under Chapter 14A;</li> <li>(ii) disclosure requirements under Rule 13.28 (announcement), Rule 11.04 (listing document), Rule 13.25A (next day disclosure return), Rule 13.25B (monthly return) and Paragraphs 11 and 11A of Appendix D2 (annual report); and</li> <li>(iii) documentary requirements under Rules 9.18 to 9.23</li> </ul>	<p>MB Rules 17.01(4) and 17.02(2) / GEM Rules 23.01(4) and 23.02(2)</p> <p>MB Rules 19A.39D and 19A.39E / GEM Rules 25.34E and 25.34F</p> <p>MB Rules 1.01, 3A.23(2), 9.01, 9.17, 9.19A, 9.23, 11.03, 11.04, 11.05, 11.06, 13.25A, 13.25B, 13.25C, 13.27, 13.27A, 13.28, 13.52, 14.06, 14.07(5), Note to Rule 14.08, 14.18, Note 1 to Rule 14.33, 14.58, 14.59, 14.60, 14.67(2), 14A.24, 14A.73(3), 14A.76, 14A.92A, 15.02, 15.03, 18B.23, Paragraph 22(1A) of Appendix D1B, Paragraph 18(1A) of Appendix D1F and Paragraphs 11, 11A and 41A of Appendix D2 / GEM Rules 1.01, 6A.23(2), 12.01, 12.26A, 12.26BB, 12.27, 14.03, 14.06, 14.07, 14.09, 17.27A, 17.27B, 17.27C, 17.29A, 17.30, 17.53, 18.32, 18.32A, 18.55A, 19.06(1), 19.07(5), Note to Rule 19.08, 19.18, Note 1 to Rule 19.33, 19.58, 19.59, 19.60, 19.67, 20.22, 20.71(3), 20.74, 20.90A, 21.02, 21.03 and Paragraph 22(1A) of Appendix D1B</p>



	Rule amendments	Rule no.
	<p>awards or options under a share scheme that complies with Chapter 17 or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme</p> <p>Impose a moratorium period of 30 days on an on-Exchange share repurchase after an on-Exchange resale of treasury shares</p> <p><b>(b) Dealing restrictions for a resale of treasury shares on the Exchange</b></p> <p>Extend the dealing restrictions on on-Exchange share repurchases to on-Exchange resales of treasury shares and adjust the restricted period from one month preceding results announcement to 30 days preceding results announcement</p> <p>Require an issuer to procure its broker to disclose to the Exchange information concerning its resale of treasury shares on the Exchange</p> <p>Exempt an on-market resale of treasury shares to a connected person without knowledge from the connected transaction requirements under Chapter 14A</p> <p><b>(c) Other proposals relating to on-market resale of treasury shares</b></p> <p>Carve out an on-market resale of treasury shares from the disclosure requirement under Rule 13.28 (announcement) and the documentary requirement under Rule 9.23(2) (submission of placee information)</p>	<p>MB Rule 10.06(3)(b) / GEM Rule 13.12A</p> <p>MB Rules 10.06(2)(e) and 10.06A / GEM Rule 13.11(4) and 13.14A</p> <p>MB Rule 10.06A / GEM Rule 13.14A</p> <p>MB Rules 14A.73(3), 14A.92B and Note 1 to Rule 13.36(2)(b) / GEM Rules 20.71(3), 20.90B and Note 1 to Rule 17.41</p> <p>MB Rules 9.23(2) and 13.27A / GEM Rules 12.27(6) and 17.29A</p>
<b>(3)</b>	<p><b>New listing applicants</b></p> <p>Require new listing applicants to disclose details of treasury shares held in prospectus</p> <p>Restrict new listing applicants from reselling treasury shares within six months after listing as the Rules currently applicable to an issuance of new shares</p>	<p>MB Paragraph 23(1A) of Appendix D1A and Paragraph 23(1A) of Appendix D1E / GEM Paragraph 23(1A) of Appendix D1A</p> <p>MB Rule 10.08 / GEM Rule 17.29</p>

Rule amendments	Rule no.
<p><b>(4)</b></p>	<p><b>Consequential Rule amendments to address the treatment of treasury shares in other parts of the Rules</b></p> <p><b>(a) Voting rights attached to treasury shares</b></p> <p>Require a holder of treasury shares to abstain from voting on matters that require shareholders' approval under the Rules</p> <p>Require listed issuers to ensure that treasury shares are appropriately identified and segregated</p> <p><b>(b) Excluding treasury shares in the calculation of issued shares</b></p> <p>Require exclusion of treasury shares from an issuer's issued or voting shares under various parts of the Rules (e.g. public float and size test calculation)</p>
	<p>MB Rule 1.01 / GEM Rule 1.01</p> <p>MB Rule 10.06(5) / GEM Rule 13.14</p> <p>MB Rules 1.01, 3.13(1), 3A.07(1), 7.19A(1), 7.27B, 8.08(1), 8.09(2), 8.24, 8A.09, 8A.15, 8A.23, 10.06(1)(c), 13.25A(3) and (4), 13.36(2), 13.84, 14.07(5), 14.44, 14.81(3), 14A.37, 15.02, 17.03(3), 17.03B(1), 17.03C(2), 17.03D(1), 17.04(2) and (3), 17.06A(2)(c), 17.07, 17.09, 17.10, 18B.05, 18B.23, 18B.29(1), Note to Rule 18B.65, 19A.13A, 19A.14, 19A.25(3), Paragraphs 54(7) and 55(4) of Rule 19A.42, Paragraph 44(5) of Rule 19A.44, Paragraph 28(1)(b)(v) of Appendix D1A, Paragraph 26(1)(b)(v) of Appendix D1B, Paragraph 28(1)(b)(v) of Appendix D1E, Paragraph 22(1)(b)(v) of Appendix D1F, Paragraph 14(5) of Appendix A1, Paragraph 15 of Appendix A1, Paragraph 31(5) of Appendix D2 and Paragraphs 2(1)(c) and 4 of the Fees Rules / GEM Rules 1.01, 5.09(1), 6A.07(1), 10.29, 10.44A, 11.23, 13.09(1), 17.27A(3) and (4), 17.41, 17.96, 18.40, 19.44, 19.81(3), 20.35, 21.02, 23.03(3), 23.03B(1), 23.03C(2), 23.03D(1), 23.04(2) and (3), 23.06A(2)(c), 23.07, 23.09, 25.07A, 25.10, 25.19(3), Paragraphs 28(1)(b)(v), 57(7) and 58(4) of Appendix D1A, Paragraphs 26(1)(b)(v) and 44(5) of Appendix D1B and Paragraphs 14(5) and 15 of Appendix A1</p>

Rule amendments	Rule no.
<p><b>(c) Disclosure of issuers' intention to hold treasury shares</b></p> <p>Require an issuer to disclose in the explanatory statement for share repurchase mandate its intention as to whether the repurchased shares will be cancelled following settlement of any such repurchase or kept as treasury shares</p> <p>Require an issuer to disclose in the next day disclosure return after each share repurchase (i) whether repurchased shares are to be cancelled following settlement of any such repurchase or held as treasury shares; and (ii) where applicable, the reasons for any deviation from the intention statement previously disclosed by the issuer in the explanatory statement</p> <p>Require an issuer to report cancellation of treasury shares through next day disclosure returns and when such disclosure obligation arises</p> <p><b>(d) Resale of treasury shares through agents or nominees</b></p> <p>Clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees</p> <p><b>(e) Other consequential Rule amendments</b></p> <p>Amend Rule 19C.11 to exempt issuers with secondary listings on the Exchange from Rules 10.06A(1), 10.06A(3) and 10.06B</p> <p>Amend the next day disclosure return and monthly return requirements under Paragraphs 7 and 8 of Appendix E3 to the Listing Rules to also cover any movement in the number of treasury units of REITs</p>	<p>MB Rule 10.06(1)(b) / GEM Rule 13.08(12)</p> <p>MB Rule 10.06(4)(a) / GEM Rule 13.13(1)</p> <p>MB Rule 13.25A(2)(b)(vi) / GEM Rule 17.27A(2)(b)(vi)</p> <p>MB Rule 1.01 / GEM Rule 1.01</p> <p>MB Rule 19C.11 / (no corresponding GEM Rule)</p> <p>MB Paragraphs 7 and 8 of Appendix E3 / (no corresponding GEM Rule)</p>

Rule amendments	Rule no.
(5)	<p><b>Housekeeping Rule amendments</b></p> <p>Amend Paragraphs 11, 11A and 41A of Appendix D2 to clarify that the reporting requirements for issues of securities for cash consideration under these rules do not apply to new shares issued or treasury shares resold under share schemes</p> <p>Amend Rule 13.25A to allow an issuer to file a next day disclosure return for the new shares issued or treasury shares transferred to grantees (other than directors) under its share scheme when the threshold under Rule 13.25A(3) is reached (instead of filing a return for each such issue of new shares or transfer of treasury shares upon vesting of share awards)</p> <p>Amend Rule 17.05 to adjust the restricted period for grants of options or awards under share schemes from one month to 30 days preceding results announcement</p>
	<p>MB Paragraphs 11, 11A and 41A of Appendix D2 / GEM Rules 18.32, 18.32A and 18.55A</p> <p>MB Rule 13.25A(2)(b)(i) / GEM Rule 17.27A(2)(b)(i)</p> <p>MB Rule 17.05 / GEM Rule 23.05</p>

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## APPENDIX IV: AMENDMENTS TO THE MAIN BOARD LISTING RULES

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### 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

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

...

**“equity securities”**

...

shares (including preference shares, ~~and~~ and depositary receipts and treasury shares), convertible equity securities and options, warrants or similar rights to subscribe or purchase shares or convertible equity securities, but excluding interests in a Collective Investment Scheme

...

...

**“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 an 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)

...

...

**“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

*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 laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on the Exchange

*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.

(2) Treasury shares may be held by an issuer's subsidiary or an agent or nominee on behalf of the issuer or its subsidiary, if it is permitted by the laws of the issuer's place of incorporation and its articles of association or equivalent constitutional documents. 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.

...

**“treasury units”**

...

units repurchased and held by a REIT in treasury, as authorised by the constitutive documents or governing laws of the REIT which, for the purpose of the Rules, include units repurchased by a REIT and held or deposited in CCASS for sale on the Exchange

Notes: (1) For the purpose of the Rules, a holder of treasury units shall abstain from voting on matters that require holders' approval under the Rules or the Code on Real Estate Investment Trusts issued by the Commission.

(2) Treasury units may be held by a REIT's subsidiary or its trustee or an agent or nominee on behalf of the REIT or its subsidiary, if it is permitted by the constitutive documents or governing laws of the REIT. References to sales or transfers of treasury units include sales or transfers by agents or nominees on behalf of the REIT issuer or its trustee or its functional equivalents, 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.

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;

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## 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;

...

...

##### Compliance Adviser's obligations

...

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;

...

...

## Chapter 7

### EQUITY SECURITIES

#### METHODS OF LISTING

- 7.01 Equity securities may be brought to listing, or sold or transferred out of treasury by any one of the methods described below. The requirements set out in this Chapter shall apply, mutatis mutandis, to a sale or transfer of treasury shares.
- ...

#### 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).
- ...
- ...

#### 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 “benchmarked price” of shares.*

- (a) *The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (by reference to the “benchmarked price” and the number of issued shares (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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## 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.

...

...

...

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.

...

...

### **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 legal or beneficial interests in treasury shares.

## **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).

*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.*

...

### **Purchases of Own Shares**

8A.15 If a listed issuer with a WVR structure reduces the number of its shares in issue (after deducting treasury shares) (e.g. through a purchase of its own shares) the beneficiaries of weighted voting rights must reduce their weighted voting rights in the issuer proportionately (for example through conversion of a proportion of their shareholding with those rights into shares without those rights), if the reduction in the number of shares in issue (after deducting treasury shares) would otherwise result in an increase in the proportion of the listed issuer's shares that carry weighted voting rights.

...

## **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.

*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.

...

**Documentary Requirements – Applications for Listing, or Sales or Transfers of Treasury Shares 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 sales or transfers of treasury shares, by listed issuers.

**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 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 finalise the listing document for publication.

...

**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:-

...

(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)); and

...

...

## Chapter 10

### EQUITY SECURITIES

#### RESTRICTIONS ON PURCHASE AND SUBSCRIPTION

...

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

...

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 following settlement of any such repurchase or hold them as treasury shares; and

- (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 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

*Note: ...*

(ii) the dates on which the authority conferred by the resolution will commence and determine. Such authority may only continue in force until:—

(A) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the authority is renewed, either unconditionally or subject to conditions; or

(B) revoked or varied by ordinary resolution of the shareholders in general meeting,

whichever occurs first; and

(d) the issuer must report the outcome of the General Meeting called to consider the proposed purchases to the Exchange immediately following the meeting.

## (2) Dealing Restrictions

...

(e) an issuer shall not purchase its 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~~ 30 days 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 purchase its shares on the Exchange, unless the circumstances are exceptional;

...

(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 a sale or transfer of any treasury shares; or (ii) announce a proposed new issue of shares, or a 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 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)~~, without the prior approval of the Exchange.

Note: This rule will not apply to:

- (i) a new issue of shares, or a sale or transfer of treasury shares under a capitalisation issue;
- (ii) a grant of share awards or options under a share scheme that complies with Chapter 17 or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme that complies with Chapter 17; and
- (iii) a new issue of shares or a transfer of treasury shares pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue shares or transfer treasury shares, which were outstanding prior to that purchase of its own shares.

(b) Subsequent Purchase of its Own Shares

An issuer whose primary listing is on the Exchange may not purchase 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.

#### (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):

(i) the total number of shares purchased by the issuer the previous day, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and;

(ii) whether the purchased shares are cancelled following settlement of any such purchase or held as treasury shares, and where applicable, the reasons for any deviation from the intention statement previously disclosed by the issuer under rule 10.06(1)(b)(xii); and

(iii) shall a confirmation 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 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

(b) include in its annual report and accounts a monthly breakdown of purchases of shares made during the financial year under review showing the number of shares purchased each month (whether on the Exchange or otherwise) and the purchase price per share or the highest and lowest price paid for all such purchases, where relevant, and the aggregate price paid by the issuer for such purchases. The

directors' report shall contain reference to the purchases made during the year and the directors' reasons for making such purchases.

(5) Status of Purchased Sshares

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. The issuer shall ensure that treasury shares are appropriately identified and segregated.

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.

...

**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:

- (1) 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;
- (2) 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
- (3) 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 30 days immediately preceding the earlier of:
  - (a) 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
  - (b) 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.

10.06B 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 sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed ("on-market sale of treasury shares"):
  - (a) the total number of treasury shares sold by the issuer the previous day;
  - (b) the selling price per share or the highest and lowest prices received for such sales, where relevant;
  - (c) the total funds raised; and
  - (d) where the treasury shares are sold under a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b), details of the mandate.

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 treasury shares are sold 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;

- (2) announce any on-market sale of treasury shares if it, individually or together with previous on-market sales of treasury shares in a 12-month period that have not yet been announced under rule 10.06B(2), amounts to 5% or more of the issuer's number of issued shares (excluding treasury shares). The announcement must contain the following information relating to such sale(s) of treasury shares:
  - (a) the number, class and aggregate nominal value of the treasury shares sold;
  - (b) the total funds raised from such sale(s) with details of the use of proceeds;
  - (c) the selling price per share or the highest and lowest prices received for such sale(s), where relevant;
  - (d) the reasons for making such sale(s);

- (e) where the treasury shares are sold under a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b), details of the mandate; and
  - (f) the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities, and/or other sale or transfer of treasury shares in the 12 months immediately preceding the announcement, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and
- (3) include in its annual report and accounts a monthly breakdown of on-market sales of treasury shares during the financial year under review showing the number of treasury shares sold each month and the selling price per share or the highest and lowest prices received for all such sales, where relevant, and the aggregate proceeds received by the issuer for such sales. The directors' report shall contain reference to the on-market sales of treasury shares made during the year, the total funds raised from such sales with details of the use of proceeds and the directors' reasons for making such sales.

...

**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, or sale or transfer out of treasury within 6 months from the date on which securities of the listed issuer first commence dealing on the Exchange (whether or not such issue of shares or securities, or sale or transfer of treasury shares will be completed within 6 months from the commencement of dealing), except for:

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

...

- (4) the issue of shares or securities, or sale or transfer of treasury shares 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) the issue of shares or securities, or sale or transfer of treasury shares to be traded on the Main Board by a listed issuer that has successfully transferred its listing from GEM to the Main Board pursuant to Chapter 9A or 9B, provided that any plan to raise funds within six months from the

date of the transfer of the issuer's listing to the Main Board has been prominently disclosed in the listing document or the announcement required under rule 9B.08, as the case may be.

...

## **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 a 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.

#### **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 under Chapter 9A;
- (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.

- 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.

### **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.

...

...

## **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.
- (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) sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed;
  - (viii) repurchase of shares or other securities;
  - ~~(viii)~~ exercise of an option under the issuer's share option scheme by any of its directors issue of new shares or transfer of treasury shares in respect of share awards or options granted to a director of the issuer under a share scheme;
  - (ix) exercise of an option (other than under ~~the issuer's a share option scheme~~) by ~~any of its directors~~ a director of the issuer;
  - (xi) capital reorganisation; or
  - (xii) change in issued shares or treasury shares not falling within any of the categories referred to in rule 13.25A(2)(a)(i) to (xi) 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~~ issue of new shares or transfer of treasury shares in respect of share awards or options granted to a participant (who is not a director of the issuer) under a share scheme;
  - (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;
  - (vi) cancellation of repurchased or redeemed shares following settlement of any such repurchase or redemption; or

(vii) cancellation of treasury shares.

- (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) an event in rule 13.25A(2)(a) has occurred and the event in rule 13.25A(2)(b) has not yet been disclosed in either a monthly return published under rule 13.25B or a return published under this rule 13.25A.
- (4) For the purposes of rule 13.25A(3), the percentage change in the listed issuer's issued shares (excluding treasury 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.

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 (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, sold or transferred and which may be issued, sold or transferred 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):

- (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, purchase, or sale or transfer of treasury shares and, if not so practicable, as soon as possible thereafter.

### **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.

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.

...

...

### **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.

(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

...

(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

*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.*

...

- (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,

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.

...

(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.

...

## 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 a sale or transfer of treasury shares contains a profit forecast, the provisions of rules 14.60A and 14.61 will apply.*

...

...

### Independent financial advisers

...

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;

(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;

...

...

## Chapter 14

### EQUITY SECURITIES

#### NOTIFIABLE TRANSACTIONS

...

#### Classification

...

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%;

...

...

#### *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.

*Notes: 1. The numerator includes shares that may be issued or transferred out of treasury upon conversion or exercise of any convertible securities or subscription rights to be issued or granted by the listed issuer as consideration.*

...

...

- 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.*

...

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

...

- 14.18 The value of transactions, ~~or~~ issues of securities, or sales or transfers 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.

...

### **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. 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 of new shares or transfer of treasury shares ~~as 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 (Note 1):—

- (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 2) 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.

Notes:

1. References to shareholder(s) in this rule shall mean shareholder(s) other than a holder of treasury shares.

2. 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 and/or treasury shares, the listed issuer must also include the amounts and details of the securities being issued and/or transferred out of treasury;

...

...

#### *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 and/or transferred out of treasury including details of any restrictions which apply to the subsequent sale of such securities;

...

- (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.

*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:
  - (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;

...

...

*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;

...

...

*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:—

- 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 a sale or transfer of treasury shares;

...

...

### **Shareholders' approval**

...

14A.37 The Exchange may waive the general meeting requirement and accept a written shareholders' approval, subject to the conditions that (Note 1):

- (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 2).

Notes:

1. References to shareholder(s) in this rule shall mean shareholder(s) other than a holder of treasury shares.

2. Voting rights attaching to treasury shares are excluded.

...

### **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);

...

...

## **De minimis transactions**

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

- (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.

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.

...

## **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 (including treasury shares) if the following requirements are complied with:—

- (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;

...

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;

...

...

## **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.

...

#### **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

(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; ...

...

...

...

#### 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 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".

...

#### **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.

...

...

#### **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).

- (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).

...

...

#### **Restriction on the time of grant of options or awards**

17.05 An issuer may not grant any options or awards after inside information has come to its knowledge until (and including) the trading day after it has announced the information. In particular, it may not grant any options or awards during the period commencing ~~one month~~ 30 days immediately before the earlier of:

- (1) the date of the board meeting (as such date is first notified to the Exchange under the Listing Rules) for approving the issuer's results for any year, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and
- (2) 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.

*Note: No option or awards may be granted during any period of delay in publishing a results announcement.*

...

#### **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).

...

...

### **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 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.

...

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;

...

### **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).

...

## 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.*

...

#### 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.

...

#### 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.

*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.*

...

## **Chapter 19**

### **EQUITY SECURITIES**

## PRIMARY LISTINGS 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.

...

## **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.

...

- 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.

*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 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:

- (c) for the purposes of rules 10.05, 10.06 and 19A.24, “shares” shall mean shares of all classes listed on the Exchange and securities listed on the Exchange which carry a right to subscribe or purchase shares of the PRC issuer, provided that references to “shares” in rules 10.06(1)(b), ~~and 10.06(4)~~ and 10.06B shall also include shares of all classes listed on any stock exchange and securities that are listed on any stock exchange which carry a right to subscribe or purchase shares of such PRC issuer, and provided further that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the PRC issuer or subsidiary of the PRC issuer, as the case may be.

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”.

...

## Chapter 17 — Share Schemes

19A.39C ...

19A.39D For a PRC issuer, rule 17.01(4) is restated in its entirety as follows:

In this chapter 17, references to new shares or new securities of a PRC issuer include its treasury shares listed on the Exchange, and references to the issue of shares or securities include the transfer of treasury shares listed on the Exchange.

19A.39E For a PRC issuer, a share scheme funded by its treasury shares not listed on the Exchange is subject to rule 17.12. The transfer of treasury shares not listed on the Exchange to a connected person pursuant to such scheme may be exempt as a de minimis transaction under rule 14A.76.

...

## 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.

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.

...”

## **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.

...”

...

## **Chapter 19C**

### **EQUITY SECURITIES**

#### **SECONDARY LISTINGS OF OVERSEAS ISSUERS**

...

#### **Exceptions to the Rules**

19C.11 The following rules do not apply to an overseas issuer that has, or is seeking, a secondary listing on the Exchange: 3.17; 3.21 to 3.23; 3.25 to 3.27A; 3.28; 3.29; 4.06; 4.07; Chapter 7; 8.08 (prescribed percentage of public float only);

8.09(4) (exception limited to issues outside the Exchange's markets); 8.18 (exception limited to issues outside the Exchange's markets); 9.11(10)(b); 10.05; 10.06(2)(a) to (c); 10.06(2)(e); 10.06(4); 10.06(5); 10.06A(1); 10.06A(3); 10.06B; 10.07(1); 10.07(2) to (4); 10.08; 13.11 to 13.22; 13.23(1); 13.23(2); 13.25A; 13.27; 13.28; 13.29; 13.31(1); 13.35; 13.36; 13.37; 13.38; 13.39(1) to (5A); 13.39(6) to (7) (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.40 to 13.42; 13.44 to 13.45; 13.47; 13.48(2); 13.49; 13.51(1); 13.51(2) (except that each director or member of the overseas issuer's governing body must provide their contact information and personal particulars as soon as possible as required under rule 3.20); 13.51B; 13.51C; 13.52(1)(b) to (d); 13.52(1)(e)(i) to (ii); 13.52(1)(e)(iv) (exception limited to issues outside the Exchange's markets); 13.52(2); 13.67; 13.68; 13.74; 13.80 to 13.87 (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.88; 13.89; 13.91; Chapter 14; Chapter 14A; Chapter 15 (exception limited to issues outside the Exchange's markets); Chapter 16 (exception limited to issues outside the Exchange's markets); Chapter 17; Practice Note 4 (exception limited to issues outside the Exchange's markets); Practice Note 15 paragraphs 1 to 3(b) and 3(d) to 5 (exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Exchange's markets and the approval of shareholders of the parent is not required); Appendix C3; Appendix C1; Appendix D2; and Appendix C2.

...

## **A. Shareholder Protection and Constitutional Documents**

### **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 (excluding treasury 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 (excluding treasury shares) of the issuer.

*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 (excluding treasury 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.*

#### **As regards Amendment of Constitutional Documents**

16. That a super-majority vote of the issuer’s members in a general meeting shall be required to approve changes to an issuer’s constitutional documents, however framed.

Notes:

1. *A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. 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 total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.*
3. *Voting rights attaching to treasury shares are excluded.*

...

#### **As regards Voluntary Winding Up**

21. A super-majority vote of the issuer’s members in a general meeting shall be required to approve a voluntary winding up of an issuer.

Notes:

1. A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. 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 total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.
3. Voting rights attaching to treasury shares are excluded.

...

## **D. Document Content Requirements**

### **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**

...

#### **Information about the issuer’s capital**

23. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

#### **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;

...

...

...

## **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**

...

#### **Information about the issuer's capital**

22. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

#### **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;

...

...

...

## **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**

...

#### **Information about the issuer's capital**

- 23. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

#### **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;

...

...

...

## **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**

...

#### **Information about the issuer's capital**

- 18. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

#### **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;

...

...

...

## **Appendix D2**

### **DISCLOSURE OF FINANCIAL INFORMATION**

...

#### **Information in annual reports**

...

- 6. A listed issuer shall include the information as set out in paragraphs 8 to 34A in its annual report. Unless stated to the contrary the financial information specified in these paragraphs may be included outside the financial statements and will therefore be outside the scope of the auditors' report on the financial statements. Banking companies shall, in addition, comply with the Guideline on the Application of the Banking (Disclosure) Rules or other regulations in relation to the contents of annual report issued or specified from time to time by the Hong Kong Monetary Authority.

...

6.3 *An annual report shall contain the following information required under other parts of the Listing Rules:*

- (a) *competing business under rules 8.10(2)(b) and 8.10(2)(c);*
- (b) *a monthly breakdown of purchases of shares under rule 10.06(4)(b) and a monthly breakdown of sales of treasury shares on the Exchange or any other stock exchange on which the issuer is listed*

under rule 10.06B(3);

(c) *advance to an entity under rule 13.20;*

...

...

...

10. In relation to transactions in its securities, or securities of its subsidiaries during the financial year a listed issuer shall include:–

...

(4) particulars of any purchase, sale or redemption by the listed issuer, or any of its subsidiaries, of its listed securities (including sale of treasury shares) during the financial year, or an appropriate negative statement. Such statement must include the aggregate price paid or received by the listed issuer for such purchases, sales or redemptions and should distinguish between those securities purchased or sold:–

(a) on the Exchange;

(b) on another stock exchange;

(c) by private arrangement; and

(d) by way of a general offer.

Any such statement must also distinguish between those listed securities which are purchased by the listed issuer ~~(and, therefore, cancelled)~~ and those which are purchased by a subsidiary of the listed issuer; The listed issuer should also disclose the number of treasury shares (if any) held by the issuer as at the year end date and their intended use.

*10.1 In the case of a PRC issuer or a listed issuer with subsidiaries incorporated in the PRC, references to securities in sub-paragraphs 10(1) to 10(4) inclusive shall mean and refer to securities\*.*

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 (other than under a share scheme that complies with Chapter 17), a listed issuer shall disclose:–

(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, or the highest and lowest prices received, where relevant;
- (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\*.*

11.2 In the case of any sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed, the issuer may disclose the information required in this paragraph on a monthly basis. The information required in sub-paragraphs (5), (6) and (7) may be omitted.

- 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) (other than under a share scheme that complies with Chapter 17), 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).

...

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;

...

...

- 41A. A listed issuer shall include in its interim report the information in relation to any issue ~~for cash~~ of equity securities (including securities convertible into equity securities) or sale of treasury shares for cash (other than under a share scheme that complies with Chapter 17) during the interim period as set out in paragraph 11, and where applicable, the information required under paragraph 11A.

...

## **Appendix E3**

### **Continuing Obligations: CIS**

...

#### *Disclosure*

...

7. (1) Subject to paragraph 7(5) and in addition to any other applicable requirements in the Exchange Listing Rules, a CIS shall, whenever there is a change in the ~~number of issued units or treasury units~~ in the CIS as a result of or in connection with any of the events referred to in paragraph 7(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.

(2) The events referred to in paragraph 7(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) sale of treasury units on the Exchange or any other stock exchange on which the CIS is listed;

(viii) repurchase of units or other securities;

~~(viii)~~ exercise of an option under a unit option scheme by issue of new units or transfer of treasury units in respect of unit awards or options granted to a director of the collective investment scheme operator or the collective investment scheme operator itself under a unit scheme;

(ix) exercise of an option (other than under a unit option scheme) by a director of the collective investment scheme operator or the collective investment scheme operator itself; or

(xi) capital reorganisation; or

(xii) change in the number of issued units or treasury units in the CIS not falling within any of the categories referred to in paragraph 7(2)(a)(i) to (ix) or paragraph 7(2)(b); and

(b) subject to paragraph 7(3), any of the following:

(i) ~~exercise of an option under a unit option scheme other than by~~ issue of new units or transfer of treasury units in respect of unit awards or options granted to a participant (who is not a director of the collective investment scheme operator or the collective investment scheme operator itself) under a unit scheme;

(ii) exercise of an option (other than under a unit option scheme) not by a director of the collective investment scheme operator or the

collective investment scheme operator itself;

- (iii) exercise of a warrant;
- (iv) conversion of convertible securities; ~~or~~
- (v) redemption of units or other securities;
- (vi) cancellation of repurchased or redeemed units following settlement of any such repurchase or redemption; or
- (vii) cancellation of treasury units.

(3) The disclosure obligation for an event in paragraph 7(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 CIS published its last monthly return under paragraph 8 or last return under paragraph 7 (whichever is the later), results in a change of 5% or more of the number of issued units (excluding treasury units) in the CIS; or
- (b) an event in paragraph 7(2)(a) has occurred and the event in paragraph 7(2)(b) has not yet been disclosed in either a monthly return published under paragraph 8 or a return published under paragraph 7.

(4) For the purposes of paragraph 7(3), the percentage change in the number of issued units (excluding treasury units) in the CIS is to be calculated by reference to the number of issued units (excluding treasury units) in the CIS as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under paragraph 8 or a return published under paragraph 7.

(5) Paragraph 7 applies only to a collective investment scheme (including Real Estate Investment Trust) authorised by the Commission under its Code on Real Estate Investment Trusts listed under Chapter 20 of the Exchange Listing Rules with the exception of open-ended collective investment schemes.

8. The CIS 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 interests in the CIS' units (including treasury units), 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 the units (including treasury units) in the CIS, debt securities and any other securitised instruments, as applicable, issued, sold or transferred and which may be issued, sold or transferred

pursuant to options, warrants, convertible securities or any other agreements or arrangements.

...

## 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:—

Percentage of existing issued shares <u>(excluding treasury shares)</u> subject to warrants	Total funds which would be raised on full exercise of the warrants		
	Not exceeding HK\$100M	Not exceeding HK\$500M	HK\$500M & above
	(HK\$)	(HK\$)	(HK\$)
Not exceeding	10%	36,000	72,000
	50%	36,000	90,000
	100%	54,000	108,000
Over	100%	72,000	135,000

...

### 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.
- (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:—

<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

...

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## APPENDIX V: AMENDMENTS TO THE GEM LISTING RULES

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### 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

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

...

**“equity securities”**

...

shares (including preference shares and treasury shares), convertible equity securities and options, warrants or similar rights to subscribe or purchase shares or convertible equity securities

...

**“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 an issuer (where applicable)

...

...

**“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*)

*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 laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents which, for the purpose of the Rules, include shares repurchased by an issuer and held or deposited in CCASS for sale on GEM

*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.*

*(2) Treasury shares may be held by an issuer’s subsidiary or an agent or nominee on behalf of the issuer or its subsidiary, if it is permitted by the laws of the issuer’s place of incorporation and its articles of association or equivalent constitutional documents. 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.

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;

...

...

...

## Chapter 6A

## GENERAL

### 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;

...

...

#### Compliance Adviser's obligations

...

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;

...

...

## Chapter 10

# EQUITY SECURITIES

## METHODS OF LISTING

### General

10.01 A new applicant may bring securities to listing by any of the following methods:—

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing;
- (4) an introduction; or
- (5) such other method as may be accepted by the Exchange.

10.02 A listed issuer may bring equity securities (whether or not a class already listed) to listing, or sell or transfer treasury shares by any of the following methods:—

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing;
- (4) a rights issue;
- (5) an open offer;
- (6) a capitalisation issue;
- (7) a consideration issue;
- (8) an exchange, substitution or conversion of securities; or
- (9) such other method as may be accepted by the Exchange.

The requirements set out in this Chapter shall apply, mutatis mutandis, to a sale or transfer of treasury shares.

...

### 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 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.*

...

...

...

## **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;

(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;

...

(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;

...

(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 legal or beneficial interests in treasury shares.*

...

...

## 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.

...

##### **Documentary Requirements – Applications for Listing, or Sales or Transfers of Treasury Shares 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 sales or transfers of treasury shares, by listed issuers.

*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 finalise the listing document for publication.

...

*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:—

...

(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));

...

## 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 following settlement of any such repurchase 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.

...

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

...

...

13.10 The issuer must report the outcome of the general meeting called to consider the proposed purchases to the Exchange immediately following the meeting.

#### *Dealing restrictions*

13.11 The following dealing restrictions must be adhered to:—

...

- (4) an issuer shall not purchase its 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 ~~4 month~~ 30 days 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 quarterly~~ 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 or half-year under rule 18.49 or 18.78, or quarterly 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 purchase its shares on GEM, unless the circumstances are exceptional;

...

Subsequent issues, or sales or transfers of treasury shares

13.12 An issuer may not (i) make a new issue of shares, or a sale or transfer of any treasury shares; or (ii) announce a proposed new issue of shares, or a 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 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),~~ without the prior approval of the Exchange.

Note: This rule will not apply to:

- (i) a new issue of shares, or a sale or transfer of treasury shares under a capitalisation issue;
- (ii) a grant of share awards or options under a share scheme that complies with Chapter 23 or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme that complies with Chapter 23; and
- (iii) a new issue of shares or a transfer of treasury shares pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue shares or transfer treasury shares,

which were outstanding prior to that purchase of its own shares.

Subsequent purchase of its own shares

13.12A An issuer may not purchase 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);
  - (i) the total number of shares purchased by the issuer the previous day, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and;
  - (ii) whether the purchased shares are cancelled following settlement of any such purchase or held as treasury shares, and where applicable, the reasons for any deviation from the intention statement previously disclosed by the issuer under rule 13.08(12); and
  - (iii) shall a confirmation 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

- (2) include in its annual report and accounts a monthly breakdown of purchases of shares made during the financial year under review showing the number of shares purchased each month (whether on GEM or otherwise) and the purchase price per share or the highest and lowest price paid for all such purchases, where relevant, and the aggregate price paid by the issuer for such purchases. The directors' report shall contain reference to the purchases made during the year and the directors'

reasons for making such purchases.

### *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. The issuer shall ensure that treasury shares are appropriately identified and segregated.

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**

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:

- (1) 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;
- (2) 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
- (3) 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 30 days immediately preceding the earlier of:
  - (a) 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, quarterly or any other interim period (whether or not required under the GEM Listing Rules); and
  - (b) the deadline for the issuer to announce its results for any year or half-year under rule 18.49 or 18.78, or quarterly 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.

13.14B 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 sale of treasury shares on GEM or any other stock exchange on which the issuer is listed (“on-market sale of treasury shares”):
  - (a) the total number of treasury shares sold by the issuer the previous day;
  - (b) the selling price per share or the highest and lowest prices received for such sales, where relevant;
  - (c) the total funds raised; and
  - (d) where the treasury shares are sold under a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2), details of the mandate.

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 treasury shares are sold 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;

- (2) announce any on-market sale of treasury shares if it, individually or together with previous on-market sales of treasury shares in a 12-month period that have not yet been announced under rule 13.14B(2), amounts to 5% or more of the issuer’s number of issued shares (excluding treasury shares). The announcement must contain the following information relating to such sale(s) of treasury shares:
  - (a) the number, class and aggregate nominal value of the treasury shares sold;
  - (b) the total funds raised from such sale(s) with details of the use of proceeds;
  - (c) the selling price per share or the highest and lowest prices received for such sale(s), where relevant;
  - (d) the reasons for making such sale(s);

- (e) where the treasury shares are sold under a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2), details of the mandate; and
- (f) the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities, and/or other sale or transfer of treasury shares in the 12 months immediately preceding the announcement, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and
- (3) include in its annual report and accounts a monthly breakdown of on-market sales of treasury shares during the financial year under review showing the number of treasury shares sold each month and the selling price per share or the highest and lowest prices received for all such sales, where relevant, and the aggregate proceeds received by the issuer for such sales. The directors' report shall contain reference to the on-market sales of treasury shares made during the year, the total funds raised from such sales with details of the use of proceeds and the directors' reasons for making such sales.

...

## 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 a 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.

...

#### 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:—

- (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.

## 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:—
  - (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.
- (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) sale of treasury shares on GEM or any other stock exchange on which the issuer is listed;
  - (viii) repurchase of shares or other securities;
  - ~~(viii)~~ exercise of an option under the issuer's share option scheme by any of its directors issue of new shares or transfer of treasury shares in respect of share awards or options granted to a director of the issuer under a share scheme;
  - (ix) exercise of an option (other than under ~~the issuer's~~ a share

option scheme) ~~by any of its directors~~ a director of the issuer;

- (xi) capital reorganisation; or
- (xii) change in issued shares or treasury shares not falling within any of the categories referred to in rule 17.27A(2)(a)(i) to (xi) or rule 17.27A(2)(b); and

(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~~ issue of new shares or transfer of treasury shares in respect of share awards or options granted to a participant (who is not a director of the issuer) under a share scheme;
- (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; ~~;~~
- (vi) cancellation of repurchased or redeemed shares following settlement of any such repurchase or redemption; or
- (vii) cancellation of treasury shares.

(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
- (b) an event in rule 17.27A(2)(a) has occurred and the event in rule 17.27A(2)(b) has not yet been disclosed in either a monthly return published under rule 17.27B or a return published under this rule 17.27A.

(4) For the purposes of rule 17.27A(3), the percentage change in the listed issuer's issued shares (excluding treasury 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.

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, sold or transferred and which may be issued, sold or transferred pursuant to options, warrants, convertible securities or any other agreements or arrangements.

...

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):

- (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, or sale or transfer out of treasury within 6 months from the date on which securities of the listed issuer first commence dealing on GEM (whether or not such issue of shares or securities, or sale or transfer of treasury shares will be completed within 6 months from the commencement of dealing), except for:

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

...

- (4) the issue of shares or securities, or sale or transfer of treasury shares 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 of shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed), or sale or transfer of treasury shares 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 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.

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.*

...

...

#### *Pre-emptive rights*

...

17.39A References in rules 17.39 to 17.42E 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.

...

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

...

- (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

- (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.*

...

...

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,

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.

...

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.

...

## **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 a sale or transfer of treasury shares contains a profit forecast, the provisions of paragraph 29(2) of Appendix D1B will apply.*

...

### *Independent financial advisers*

...

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;
- (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;

...

...

## Chapter 18

### EQUITY SECURITIES

#### FINANCIAL INFORMATION

...

#### *Information to accompany directors' report and annual financial statements*

18.07 The listed issuer shall include the disclosures required under the relevant accounting standards adopted and the information set out in rules 18.07A to 18.47 in its directors' report and annual financial statements. Unless stated to the contrary the financial information specified in these rules may be included outside the financial statements and will therefore be outside the scope of the auditors' report on the financial statements. The statement of profit or loss and other comprehensive income and statement of financial position set out in the financial statements must include at least the information set out in rule 18.50B. Banking companies (meaning banks, restricted licence banks and deposit-taking companies as defined in the Banking Ordinance) shall, in addition, comply with the Guideline on the Application of the Banking (Disclosure) Rules as issued by the Hong Kong Monetary Authority.

*Notes:* ...

4 An annual report shall contain the following information required under other parts of the GEM Listing Rules:

...

- (i) share schemes under rules 23.07 and 23.09; ~~and~~
- (j) provision of information in respect of code provisions E.1.5 (remuneration payable to members of senior management by band) and A.1.2 (discussion and analysis of group's performance) in Part 2 of Appendix C1 or provide the Considered Reasons and Explanation in respect of any deviation; and
- (k) a monthly breakdown of purchases of shares under rule 13.13(2) and a monthly breakdown of sales of treasury shares on the Exchange or any other stock exchange on which the issuer is listed under rule 13.14B(3).

...

...

18.14 Particulars of any purchase, sale or redemption by the listed issuer, or any of its subsidiaries, of its listed securities (including sale of treasury shares) during the financial year (analysed on a monthly basis), or an appropriate negative statement. Such statement must include the aggregate price paid or received by the listed issuer for such purchases, sales or redemptions and should distinguish between those securities purchased or sold:—

- (1) on the Exchange;
- (2) on another stock exchange;
- (3) by private arrangement; and
- (4) by way of a general offer; and

any such statement must also distinguish between those listed securities which are purchased by the listed issuer (separately distinguishing those shares which are cancelled and those which are held as treasury ~~stock~~shares, if applicable) and those which are purchased by a subsidiary of the listed issuer. The directors' report shall contain references to the purchases made during the year and the directors' reasons for making such purchases (see rule 13.13(2)). The listed issuer should also disclose the number of treasury shares (if any) held by the issuer as at the year end date and their intended use.

...

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 (other than under a share scheme that complies with Chapter 23):—

- (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, or the highest and lowest prices received, where relevant;
- (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.

*Notes: 1 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.*

*2 In the case of any sale of treasury shares on GEM or any other stock exchange on which the issuer is listed, the issuer may disclose the information required in this rule on a monthly basis. The information required in sub-paragraphs (5), (6) and (7) may be omitted.*

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) (other than under a share scheme that complies with Chapter 23), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in rule 18.32.

...

18.40 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;

...

...

#### *Content of interim reports*

...

18.55A A listed issuer shall include in its interim report the information in relation to any issue ~~for cash~~ of equity securities (including securities convertible into equity securities) or sale of treasury shares for cash (other than under a share scheme that complies with Chapter 23) during the interim period as set out in rule 18.32, and where applicable, the information required under rule 18.32A.

...

## **Chapter 19**

### **EQUITY SECURITIES**

#### **NOTIFIABLE TRANSACTIONS**

...

#### **Classification**

...

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%;

...

...

#### *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.

*Notes: 1. The numerator includes shares that may be issued or transferred out of treasury upon conversion or exercise of any convertible securities or subscription rights to be issued or granted by the listed issuer as consideration.*

...

...

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.*

...

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

...

19.18 The value of transactions, ~~or~~ issues of securities, or sales or transfers 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.

...

### **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 of new shares or transfer of treasury shares as of the consideration shares.*

...

...

### *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 (Note 1):—

- (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 2) 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.

Notes:

1. References to shareholder(s) in this rule shall mean shareholder(s) other than a holder of treasury shares.

2. 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 and/or treasury shares, the listed issuer must also include the amounts and details of the securities being issued and/or transferred out of treasury;

...

...

#### *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 and/or transferred out of treasury including details of any restrictions which apply to the subsequent sale of such securities;

...

(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.

#### *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:

(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;

...

...

#### *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;

...

...

#### *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:—

- 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 a sale or transfer of treasury shares;

...

...

#### Shareholders’ approval

...

20.35 The Exchange may waive the general meeting requirement and accept a

written shareholders' approval, subject to the conditions that (Note 1):

- (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 2).

Notes:

1. References to shareholder(s) in this rule shall mean shareholder(s) other than a holder of treasury shares.
2. 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);

...

...

### **De minimis transactions**

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

- (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.

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.

...

## 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 (including treasury shares) if the following requirements are complied with:—

- (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.

...

...

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;

...

...

## **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 listed on GEM.

...

##### **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

(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; ...

...

...

...

### 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).

...

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".

...

### **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.

...

...

### **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).
- (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).

...

...

### **Restriction on the time of grant of options or awards**

23.05 An issuer may not grant any options or awards after inside information has come to its knowledge until (and including) the trading day after it has announced the information. In particular, it may not grant any options or awards during the period commencing ~~one month~~ 30 days immediately before the earlier of:

- (1) the date of the board meeting (as such date is first notified to the Exchange under rule 17.48) for approving the issuer's results for any year, half-year, ~~or quarterly year period~~ or any other interim period (whether or not required under the GEM Listing Rules); and
- (2) the deadline for the issuer to announce its results for any year or half-year under rule 18.49 or 18.78, or quarterly or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement.

*Note: No option or awards may be granted during any period of delay in publishing a results announcement.*

...

### **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).

...

...

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

23.07 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 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.

...

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;

...

...

## 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.~~

...

**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.

...

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.

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:

"For the purposes of rules 13.03 to 13.14, "shares" shall mean shares of all classes listed on GEM and securities listed on GEM which carry a right to subscribe or purchase shares of the PRC issuer, provided that references to "shares" in rules 13.08~~1~~ and 13.13 and 13.14B shall also include shares of all classes listed on any stock exchange and securities that are listed on any stock exchange which carry a right to subscribe or purchase shares of such PRC issuer, and provided further that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the PRC issuer or subsidiary of the PRC issuer, as the case may be."

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".

...

## Chapter 23 – Share Schemes

25.34D ...

25.34E For a PRC issuer, rule 23.01(4) is restated in its entirety as follows:

In this Chapter 23, references to new shares or new securities of a PRC issuer include its treasury shares listed on GEM, and references to the issue of shares or securities include the transfer of treasury shares listed on GEM.

25.34F For a PRC issuer, a share scheme funded by its treasury shares not listed on GEM is subject to rule 23.12. The transfer of treasury shares not listed on GEM to a connected person pursuant to such scheme may be exempt as a de minimis transaction under rule 20.74.

...

## A. Shareholder Protection and Constitutional Documents

### 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 (excluding treasury 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 (excluding treasury shares) of the issuer.

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 (excluding treasury 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.

#### As regards Amendment of Constitutional Documents

16. That a super-majority vote of the issuer's members in a general meeting shall be required to approve changes to an issuer's constitutional documents, however

framed.

Notes:

1. *A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. 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 total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.*
3. *Voting rights attaching to treasury shares are excluded.*

...

#### **As regards Voluntary Winding Up**

21. A super-majority vote of the issuer’s members in a general meeting shall be required to approve a voluntary winding up of an issuer.

Notes:

1. *A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. 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 total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.*
3. *Voting rights attaching to treasury shares are excluded.*

## **D. Document Content Requirements**

### **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**

...

**Information about the issuer's capital**

23. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

**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;

...

...

...

**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.

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.

...

## **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**

...

#### **Information about the issuer's capital**

22. (1) The authorised share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares.

(1A) Particulars of and the number of treasury shares held by the issuer or its subsidiary or through their agents or nominees.

...

...

#### **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;

...

...

...

#### **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.

...

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