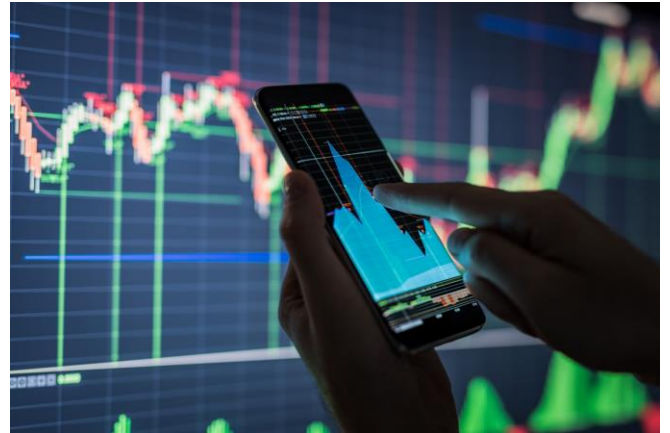


CONSULTATION CONCLUSIONS ON BACKDOOR LISTING, CONTINUING LISTING CRITERIA AND OTHER RULE AMENDMENTS

19 August 2019 | **Bonnie Yung**

On 29 June 2018, the Stock Exchange of Hong Kong Limited (“SEHK”) published the consultation paper on whether to amend the provisions of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“Listing Rules”) in relation to backdoor listing and continuing listing criteria. The consultation conclusions were published on 26 July 2019. The relevant amendments to the Listing Rules will take effect on 1 October 2019.



The key changes introduced by the revised Listing Rules include the following:

I. Backdoor Listing

(a) Definition of a Reverse Takeover Transaction

- **Principle based test:** codify the six assessment factors under the principle based test as set out in Guidance Letter GL78-14 (with modifications made to the last two factors).
- **Bright line tests:** retain and modify the bright line tests under the current Rule 14.06(6) and the current Rules 14.92 and 14.93 - (i) such that the relevant tests would apply to very substantial acquisitions from an issuer’s controlling shareholder that take place within 36 months after a change in control of the issuer; and (ii) restrict an issuer from proposing a disposal or distribution in specie of all or a material part of its existing business at the time of or within 36 months after a change in control of the issuer. The SEHK may also apply the restrictions to disposals or distributions in specie at the time of or within 36 months after a change in de facto

control (as set out in the principle based test) of the issuer.

- **Backdoor listing through large scale issue of securities:** codify Guidance Letter GL84-15 to disallow backdoor listing through large scale issue of securities for cash, where there is, or will result in, a change in control or de facto control of the issuer, and the proceeds will be applied to acquire and/or develop new a business that is expected to be substantially larger than the issuer’s existing principal business.

(b) Tighten the Compliance Requirements for Reverse Takeover Transactions and Extreme Transactions

- **Extreme transactions:** (i) codify the current “extreme very substantial acquisitions” requirements in Guidance Letter GL78-14 and rename this category of transactions as “extreme transactions”; and (ii) impose additional eligibility criteria on the issuer that may use this transaction category.
- **Additional requirements for reverse takeover transactions and extreme**

transactions: require that both the acquisition targets in a reverse takeover or extreme transaction and the enlarged group must be suitable for listing (Rule 8.04), and the acquisition targets must meet the requirements of Rule 8.05 (or Rule 8.05A or 8.05B). If an issuer fails to comply with Rule 13.24, each of the acquisition targets and the enlarged group must meet all the new listing requirements set out in Chapter 8 of the Listing Rules.

II. Continuing Listing Criteria for Listed Issuers

(a) Rule 13.24 (Sufficient Operations)

- Require an issuer to carry out a business with a sufficient level of operations and to have assets of sufficient value to support its operations to warrant its continued listing.
- Proprietary securities trading and/or investment activities by an issuer's group (other than a company listed under Chapter 21 of the Listing Rules) are normally excluded when considering whether the issuer can meet Rule 13.24 (except for those carried out by a member of the issuer's group that is a banking company, an insurance

company or a securities house that is mainly engaged in regulated activities under the Securities and Futures Ordinance).

(b) Rules 14.82 and 14.83 (Cash Companies)

- Extend the definition of "short-dated securities" in Rule 14.82 to cover investments that are easily convertible into cash and rename it as "short-term investments".
- Confine the exemption under Rule 14.83 to cash and short-term investments held by members of an issuer's group that are banking companies, insurance companies or securities houses.

(c) Transitional Arrangements

A transitional period of 12 months from the effective date of the amendments to the Listing Rules will apply to listed issuers that do not comply with the new Rule 13.24 or 14.82 strictly as a result of the amendments to the Listing Rules. However, the transitional arrangement will not apply to issuers that do not comply with the current requirements under Rule 13.24 or 14.82 or become non-compliant with the new Rule 13.24 or 14.82 after the effective date of the amendments to the Listing Rules.

The SEHK will also adopt other proposed amendments to the Listing Rules relating to issuers' securities trading and/or investments, significant distributions in specie, notifiable transactions and connected transactions as set out in the consultation paper with minor modifications.

The SEHK also published (i) three new guidance letters to provide guidance on the application of the amended provisions of the Listing Rules: Guidance on application of the reverse takeover rules (HKEX-GL104-19), Guidance on large scale issues of securities (HKEX-GL105-19), and Guidance on sufficiency of operations (HKEX-GL106-19), and (ii) a frequently asked question on the notifiable transaction requirements relating to securities transactions (FAQ Number 057-2019).

The consultation conclusions, respondents' submissions, amendments to the Main Board Listing Rules and amendments to the GEM Listing Rules are available on the website of Hong Kong Exchanges and Clearing Limited (www.hkex.com.hk).

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