



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Consultation Conclusions on

Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules

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**Consultation Conclusions on Proposed Amendments to the Securities and Futures
(Stock Market Listing) Rules**

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EXECUTIVE SUMMARY

1. The Government set out various initiatives to improve the regulation of listing in its policy conclusions of March 2004 (“2004 Government Conclusions”¹). These initiatives aimed to strengthen Hong Kong’s position as a leading international financial centre, and to enhance investor confidence in the Hong Kong market and increase its competitiveness. In order to address (i) the lack of teeth and the limited sanctions available under the Listing Rules (“Red Book” or “Listing Rules”) of The Stock Exchange of Hong Kong Limited (“SEHK” or “Stock Exchange”), and (ii) the insufficient investigation powers of SEHK, it was decided to introduce statutory obligations for listed issuers to comply with important listing requirements, thereby invoking the statutory investigation powers of the Securities and Futures Commission (“SFC”), and the sanctions available under the Securities and Futures Ordinance (“SFO”).
2. The Government accordingly consulted the public in January 2005 (“2005 Government Consultation”²) on extending the market misconduct regime to cover breaches of the statutory listing requirements and to provide for proportionate sanctions for such breaches. With a view to implementing the Government’s policy initiative, the SFC also published a Consultation Paper (“Consultation Paper”) in January 2005, proposing for consultation amendments (“SMLR Amendments”) to the Securities and Futures (Stock Market Listing) Rules to codify certain important requirements in the Red Book as subsidiary legislation. Three areas of important requirements were proposed for codification, namely (i) periodic financial reporting; (ii) disclosure of price sensitive information; and (iii) certain notifiable transactions and connected transactions which require shareholders approval.
3. The Government and the SFC received general market support for these proposals. However, there were comments that the proposed statutory rules were unduly detailed and concerns that breaches of minor detailed requirements in the rules might attract statutory sanctions which are more severe than the non-statutory sanctions. These issues gave rise to extensive further discussions among the Government, the SFC, the SEHK and also a focus group of organisations representing market participants, with a view to reassessing the various stakeholders’ interests in the context of Hong Kong’s development as an international financial centre, and ensuring that the correct balance is struck. As a result of these deliberations, the Government and the SFC propose to adopt a revised approach (“Revised Approach”).
4. Under the Revised Approach, a set of general principles (and safe harbours that disapply them in specified circumstances) will be enshrined in the SFO, and supplemented by ancillary provisions in a new Schedule, and the more detailed and technical provisions will be set out in a non-statutory Listing Code to be issued by the SFC. The general principles, to be set out in a new Part IIIA of the SFO, are essentially statements of standards expected by the market and the spirit behind the current Red Book requirements. They represent the SMLR Amendments (and therefore the equivalent provisions in the Red Book) expressed in broad general terms. The new Schedule to the SFO will elaborate the general principles by setting

¹ See the Consultation Conclusions on Proposals to Enhance the Regulation of Listing issued by the Financial Services and Treasury Bureau in March 2004.

² See the Consultation Paper on Proposed Amendments to the SFO to give Statutory Backing to Major Listing Requirements issued by the Financial Services and the Treasury Bureau in January 2005.

out the relevant definitions and the more important listing provisions. The non-statutory Listing Code containing the more detailed and technical provisions will be aimed at providing guidance to assist listed issuers to comply with the general principles in the SFO.

5. The Revised Approach strikes a balance between certainty and flexibility. It will enable the SFC to address cases where an issuer's behaviour contravenes a fundamental obligation and poses real risks or harm, yet minimises the risk of issuers incurring statutory liability due to minor or technical breaches that cause no significant damage to investors or the market. The Revised Approach allows the SFC to maintain a high degree of flexibility in the modification and interpretation of the detailed provisions in response to market changes.
6. Non-compliance with the general principles in the SFO will be regarded as market misconduct. Non-compliance with the provisions of the Schedule or the Listing Code, cumulatively or otherwise, may constitute a contravention of the general principles in the SFO. In such cases the SFC may if appropriate take action in accordance with the proportionality principle, i.e. in a manner that is proportionate and reasonable in relation to the contravention, taking into account (among other factors):
 - the seriousness of the conduct;
 - whether the conduct was intentional, reckless or negligent; and
 - whether the conduct may have damaged the interest of investors or the investing public.

Serious cases would potentially be subject to one of the three types of sanction (i.e. SFC disciplinary action, Market Misconduct Tribunal ("MMT") proceedings or criminal prosecution³) proposed by the 2005 Government Consultation. Again, any such sanctions will be subject to the application of the proportionality principle.

7. The new Schedule to the SFO will set out the definitions and the more important listing disciplines in relation to the three selected important areas of the existing Red Book. These disciplines will operate as factors for consideration in determining compliance with the general principles in the SFO. The definitions will specify clearly the scope of the general principles.
8. Non-compliance with the relatively detailed and technical provisions in the Listing Code would not of itself render a person liable to enforcement action, but may be of evidential value in any enforcement proceedings commenced in respect of a breach of the general principles in the SFO.
9. We envisage that the general principles in the new Part IIIA of the SFO, the Schedule thereto and the Listing Code will be transplanted from the SMLR Amendments as set out in the Consultation Paper to the extent appropriate, subject to adjustments to take account of comments received during the consultation exercise. The relevant areas to be covered by the general principles, the new Schedule and the Listing Code will fully cover the scope of the SMLR Amendments and accordingly the three selected areas of

³ It is envisaged that there would be provisions preventing double jeopardy such that no further SFC disciplinary action may be taken after initiating MMT proceedings in respect of the same conduct; in addition, no further MMT proceedings may be taken after SFC disciplinary action or criminal proceedings have been instituted regarding the same matter.

the current Red Book. These three areas are (i) periodic financial reporting (Chapter 4, Appendices 15 and 16); (ii) disclosure of price sensitive information (Chapter 13); and (iii) certain notifiable transactions and connected transactions which require shareholder approval (Chapters 14 and 14A). These requirements to be covered by the revised regime will be deleted from the Red Book to avoid any duplication of regulation between it and the new provisions.

10. The SFC will be responsible for policy review of the new SFO provisions and the non-statutory Listing Code, and any amendments to either of these would require public consultation. As regards the administration of the new regime, the market participants' organisations consulted on the Revised Approach generally favoured a move to administration by the SFC, and accordingly it is proposed to pursue implementation of the Revised Approach on this basis. The SFC will seek to work out with the Government and the Stock Exchange the best transitional arrangement, including the frontline interface with market participants during the introduction of the new system, with a view to assisting compliance and smoothing the move to the new regime. The SFC will endeavour to ensure consistency and continuity of interpretation of the statutory provisions and the Listing Code in (i) the grant of statutory waivers under the SFO; (ii) the issue of rulings on interpretation which will be binding on the SFC; and (iii) the provision of informal consultation on a non-binding basis in order to assist compliance.
11. Pre-vetting of announcements and circulars will be on a voluntary basis and be a part of the consultation service to assist listed issuers to comply. Unusual price and volume movements will continue to be monitored. Close and regular liaison will be maintained between the SFC and the Stock Exchange before and during the transition to ensure consistency of decisions and practices, and that any issues arising are resolved in a timely manner. The administrative arrangements will aim to provide certainty and clarity to the market in the three selected areas of listing requirements, and ensure timely and coordinated decisions in administration and subsequent enforcement action. The arrangements will be designed to provide continuity in the administration of the relevant listing provisions transferred from the Red Book to the SFO and the non-statutory Listing Code, and to minimise disruption to the market.
12. The SFC will be responsible for investigations and enforcement action in respect of breaches of the general principles. Our overall approach will be to encourage and assist compliance by way of education, policy, guidance, rulings and other practical assistance. The SFC will publish guidance regarding the criteria to be applied by it in assessing the significance and seriousness of breaches as well as clear guidelines on the factors to be considered in making decisions as to which enforcement prong will be employed. The SFO will set out factors to be taken into account before a civil fine can be levied from a director.
13. The Government aims to introduce a Securities and Futures (Amendment) Bill ("Amendment Bill") into the Legislative Council as soon as practicable to implement the proposals detailed in the 2005 Government Consultation as modified by the Revised Approach. An indicative summary of the general principles proposed to be provided for in the new Part IIIA is set out in **Appendix 1**.
14. The SFC will issue the non-statutory Listing Code under section 399 of the SFO regarding the more detailed and technical listing provisions. We envisage that the

provisions to be set out in the Listing Code will to the extent appropriate be substantially derived from the relevant SMLR Amendments (and hence the equivalent Red Book provisions), but with revisions as appropriate to take into account market comments received. In accordance with the SFC's established policy, we will formally publish the Listing Code in draft form for public consultation in due course, so the public will have an opportunity to comment on them before they are finalised.

INTRODUCTION

1. In January 2005, the SFC published the Consultation Paper inviting public comments on the SMLR Amendments, which the SFC proposed to make under an amended section 36(1) of the SFO. The consultation period ended on 31 March 2005.
2. The SFC received 32 written submissions in response to the Consultation Paper, including a joint submission by lawyers on behalf of nine financial institutions. The respondents included banks, corporate finance advisers, issuers, lawyers, accountants and professional investors. In addition, the SFC met with a number of stakeholders, including various organisations representing particular types of market participant, to gain a deeper understanding of their views on the Consultation Paper and subsequently on the Revised Approach. The SFC is grateful to all those who responded for their helpful comments. All comments have been considered carefully and many accepted. A list of respondents who agreed to their submissions being published on the SFC's website is set out in **Appendix 2**.
3. This paper summarises the key issues raised in the responses received and sets out a number of policy decisions taken by the Government in conjunction with the SFC in light of these comments.
4. This paper should be read together with the Consultation Paper, a copy of which is available together with the responses on the SFC's website at www.sfc.hk.

OBJECTIVE

5. The Consultation Paper was issued in conjunction with the 2005 Government Consultation to implement the proposals to give statutory backing to major listing requirements. The Government's proposals, broadly speaking, would amend the SFO to set out the liability for breaches of the statutory listing requirements and to provide for proportionate sanctions for such breaches. The Consultation Paper proposed the SMLR Amendments in order to codify major listing requirements contained in the Red Book into subsidiary legislation.
6. The objective of the proposals is to introduce statutory obligations to comply with the more important listing requirements, thereby allowing more effective investigation of any breach of these requirements and the imposition of a variety of statutory sanctions which would be commensurate with the seriousness of the breach. This will bring the listing regulatory regime in Hong Kong further into line with international standards and practices, enhance investor confidence in the Hong Kong market, and increase its competitiveness.

STATUTORY REGIME

General approach and scope

7. The Consultation Paper proposed to set out the detailed listing requirements in the SMLR Amendments by replicating the existing provisions of the Listing Rules, with minimal adjustments consequential on the transposition into statutory form. This

approach followed the policy direction set out in the 2004 Government Conclusions⁴ that the SFC should prepare rules which “would give the market sufficient details as to the clarity and certainty of the nature of the relevant listing requirements.”

8. There was widespread support for the statutory backing exercise. Some respondents noted that the SMLR Amendments were much clearer and easier to read than the existing Listing Rules. However, some respondents had reservations about incorporating detailed Listing Rules into subsidiary legislation as it might reduce flexibility and potentially hinder expeditious administration of the rules in response to market needs. There were concerns that an unintentional breach of the detailed requirements might be subject to severe statutory sanctions.
9. Some of the respondents, while generally supportive of the proposals, suggested an alternative approach of including the general obligations or high level principles in the legislation, with the majority of the minor or technical requirements to be embodied in non-statutory codes and guidelines. These codes and guidelines could serve as non-statutory guidance to issuers and their management on the manner in which they should discharge their general statutory obligations. It was submitted that such an approach would result in a more flexible and market friendly approach to the application of the rules.
10. The SFC would like to explain that the approach adopted in the Consultation Paper was to ensure that the provisions were sufficiently detailed so that they would be as unambiguous as possible for those who would be bound by them and for those administering them. This approach was in turn expected to facilitate compliance and enable enforcement actions to be carried out effectively.
11. In light of the market comments, the Government, the SFC and the SEHK have carefully considered other possible options. In determining the most suitable approach, we have kept in mind the importance of balancing the legal certainty of the statutory obligations against considerations of flexibility, and addressing market concerns that a breach of minor detailed requirements might attract statutory sanctions that are more severe than the non-statutory sanctions. These issues gave rise to extensive further discussions among the Government, the SFC, the SEHK and also a focus group of organisations representing market participants, with a view to reassessing the various stakeholders’ interests in the context of Hong Kong’s development as an international financial centre, and ensuring that the correct balance is struck. As a result of these deliberations, the Government and the SFC propose to adopt the Revised Approach.
12. Under the Revised Approach, the statutory listing requirements will comprise a set of general principles which represent fundamental obligations of listed issuers, to be enshrined in the SFO and supplemented by ancillary provisions in a new Schedule. The more detailed and technical provisions will be set out in a non-statutory Listing Code to be issued by the SFC.
13. To implement the Revised Approach, the Government will propose legislative amendments to prescribe the set of general principles (and safe harbours which disapply them in specified circumstances) in a new Part IIIA of the SFO, which will be supplemented by ancillary provisions to be set out in a Schedule relating thereto.

⁴ See paragraph 3.15 of the Consultation Conclusions on Proposals to Enhance The Regulation of Listing issued by the Financial Services and the Treasury Bureau in March 2004.

14. The SFC will promulgate the non-statutory Listing Code under section 399 of the SFO regarding the more detailed and technical provisions, and it will be substantially similar to the relevant provisions of the SMLR Amendments as set out in the Consultation Paper (and to the existing Listing Rules), but with revisions as appropriate to take into account market comments received. In addition, the SFC may, if needed, issue additional guidelines to supplement the interpretation and application of the provisions in the Listing Code in future.
15. The Revised Approach strikes a balance between certainty and flexibility. By enshrining the general principles and other important provisions in primary legislation (including the new Schedule to the SFO), and the more detailed and technical provisions in a non-statutory code, it aims to facilitate a more proportionate and calibrated approach toward enforcement. It will enable the SFC to address cases where an issuer's behaviour contravenes a fundamental obligation and poses real risks or harm, yet minimises the risk of issuers incurring statutory liability due to minor or technical breaches that cause no significant damage to investors or the market. The Revised Approach allows the SFC to maintain a high degree of flexibility in the modification and interpretation of the detailed and technical provisions in response to market changes.
16. Non-compliance with the general principles in the SFO will be regarded as market misconduct. Non-compliance with the provisions of the Schedule or the Listing Code, cumulatively or otherwise, may constitute a contravention of the general principles in the SFO. In such cases the SFC may if appropriate take action in accordance with the proportionality principle, i.e. in a manner that is proportionate and reasonable in relation to the contravention, taking into account (among other factors):
 - the seriousness of the conduct;
 - whether the conduct was intentional, reckless or negligent; and
 - whether the conduct may have damaged the interest of investors or the investing public.

Serious cases would potentially be subject to one of the three types of sanction (i.e. SFC disciplinary action, MMT proceedings or criminal prosecution⁵) proposed by the 2005 Government Consultation. Again, any application of such sanctions will be subject to the proportionality principle.

17. The new Schedule to the SFO will set out the definitions and the more important listing disciplines derived from the relevant provisions of the existing Red Book. These disciplines will be factors for consideration which are to be assessed in determining compliance with the general principles in the SFO. The definitions will specify clearly the scope of the general principles. Conduct which does not conform with the "factors for consideration" in the Schedule would not of itself be regarded as a breach of the statutory listing requirements, but would be a factor in determining compliance with the general principles in the SFO.

⁵ It is envisaged that there would be provisions preventing double jeopardy such that no further SFC disciplinary action may be taken after initiating MMT proceedings in respect of the same conduct; in addition, no further MMT proceedings may be taken after SFC disciplinary action or criminal proceedings have been instituted regarding the same matter.

18. Non-compliance with the relatively detailed and technical provisions in the Listing Code would not of itself render a person liable to enforcement action, but may be of evidential value in any enforcement proceedings commenced in respect of a breach of the general principles in the SFO.

Statutory listing requirements

Areas to be given statutory backing

19. The Consultation Paper proposed codification of certain major requirements of the Listing Rules covering three areas, namely -
- disclosure of price sensitive information and specific events;
 - disclosure of periodic financial reports;
 - disclosure and shareholders' approval for notifiable transactions and connected transactions.
20. The SFC received broad support for giving statutory backing to the listing requirements in these three areas, as these areas are considered to be of most concern to minority shareholders and from a public interest perspective.
21. As explained above, it has been decided to adopt the Revised Approach in implementing such statutory backing. The Government will propose the insertion into the SFO of the statutory listing requirements, i.e. general principles to be complied with by listed issuers, and supplementary provisions in a new Schedule. Subject to enactment of those provisions, the SFC will issue a non-statutory Listing Code regarding the more detailed and technical provisions.
22. The following is a summary of the statutory listing requirements currently proposed to be included in the Amendment Bill –

(a) A new Part IIIA

A new Part IIIA will be created to prescribe the statutory listing requirements, i.e. general principles to be complied with by listed issuers (see **Appendix 1** for details). The general principles are essentially statements of standards expected by the market and the spirit behind the current Listing Rules requirements. They represent the SMLR Amendments (and therefore the equivalent provisions of the Listing Rules) expressed in broad general terms. In other words, these are the fundamental obligations to be complied with by listed issuers in the three areas identified below, with a view to ensuring proper investor protection and maintaining fair and orderly markets. The three areas of listing matters to be covered are –

- Disclosure of price sensitive information

This relates to the obligation of listed issuers to disclose to the public as soon as reasonably practicable any information relating to the issuer which is necessary to enable the public to appraise the position of the issuer or

which might reasonably be expected to have a material effect on the market activity in, or the price or value of, the issuer's securities.

- Disclosure of periodic financial reports

This relates to the obligations of listed issuers to disclose to the public in a timely manner their periodic financial information, i.e. annual reports and interim reports, and the supplemental requirements to be complied with in respect of the periodic financial information.

- Shareholders' approval for certain notifiable transactions and connected transactions

This relates to the protection of minority shareholders from possible abuse and expropriation by insiders through certain notifiable and connected transactions. The requirements include the obligation of listed issuers to obtain prior shareholders' approval for certain notifiable transactions (i.e. major transactions, very substantial acquisitions, very substantial disposals and reverse takeovers) and connected transactions, and to provide all relevant information to shareholders in order to enable them to appraise the transaction and make an informed voting decision. Any shareholder deemed to have a material interest in the transaction is not permitted to vote.

(b) A new Schedule

The statutory listing requirements to be enshrined in the SFO must be prescribed with a reasonable degree of particularity. The Schedule, as part of the legislation, will complete the statutory listing requirements with necessary details, including definitions, factors for consideration to be assessed in determining compliance with the general principles, and additional exemptions. The definitions include the classification of major transactions, very substantial acquisitions, very substantial disposals, reverse takeovers and connected transactions, and the key terms concerning associates and connected persons. The factors for consideration to be assessed in determining compliance with a general principle are the more important disciplines in the Red Book in the three areas to be given statutory backing, such as the voting procedures for obtaining shareholders' approval. There is an exemption from the shareholders' approval requirement in relation to connected transactions of de minimis value. The SFC will be empowered to introduce additional safe harbours and class exemptions into the Schedule in future, in light of market needs.

“Safe harbour” provisions in relation to disclosure of price sensitive information

23. Some of the respondents to our Consultation Paper expressed concerns about making disclosure of price sensitive information a statutory obligation because decisions of this nature can involve a significant element of subjectivity and it would put issuers and directors in an invidious position if a judgment call made in good faith were, potentially, to render them liable to severe sanctions.

24. The SFC notes these concerns. The SFC would like to clarify that, as proposed in the 2005 Government Consultation, the sanctioning regime will include a mens rea test for directors and officers even in civil proceedings such as SFC disciplinary procedures or MMT proceedings. In other words, directors and officers would only be subject to SFC or MMT sanctions if they are knowingly, intentionally or negligently concerned in the breach.
25. In addition, under the Revised Approach, there will be safe harbour provisions under Part IIIA of the SFO to disapply the requirement to disclose price sensitive information in specified circumstances, provided that certain conditions are met. These may include disclosure of information relating to impending developments or matters in the course of negotiation, provided that such omission would not be likely to mislead the public, compliance with the requirement would be detrimental to the commercial interests of the group and strict confidentiality of such information has been maintained. However, where an issuer has reason to believe that confidentiality of such information has not been maintained, and the developments or matters in question are price sensitive information, the issuer will be required as soon as reasonably practicable to disclose the relevant information to the public.
26. There were also comments that an issuer should not be burdened with the need to make specific disclosure of an event which affects the market or a sector of the market generally and is readily observable to the investment public. Additional safe harbour provisions are proposed to deal with these circumstances. These proposed safe harbour provisions, details of which are set out in **Appendix 1**, have been modelled on similar rules adopted in the United Kingdom and Australia.

Non-statutory Listing Code

27. The Listing Code will contain the more detailed and technical provisions in relation to the three areas to be given statutory backing. Additional guidelines may be issued to supplement the interpretation and application of the provisions in the Listing Code. The Code and any such guidelines will be aimed at providing guidance to market participants to facilitate their compliance with the statutory listing requirements, and will be issued under section 399 of the SFO.
28. The Listing Code may be derived from the SMLR Amendments set out in the Consultation Paper (and hence from the existing provisions in the current Red Book). However, some respondents commented that there were differences between the SMLR Amendments and the equivalent Red Book provisions. The SFC takes note of those comments and reiterates its intention not to make any substantive changes to the existing Listing Rules save those pointed out in the Consultation Paper. It will align the provisions to be set out in the Listing Code (which it envisages transplanting from the SMLR Amendments to the extent appropriate) with the equivalent Listing Rules as far as practicable.
29. The SMLR Amendments proposed some changes to the existing provisions of the Red Book, as highlighted in the Consultation Paper. Under the Revised Approach some of these changes cease to be relevant whilst others may not proceed. The SFC clarifies that the provisions to be set out in the Listing Code will be substantially similar to the relevant SMLR Amendments, but with revisions as appropriate to take into account market comments received, keeping in mind the goal of avoiding substantive changes

to the existing Listing Rules where practicable, except as signalled in the Consultation Paper. Further public consultation will be conducted on the Listing Code in due course, subject to the enactment of the legislation.

Summary of revised regime

30. Under the Revised Approach, the statutory regime will comprise a set of general principles to be set out in a new Part IIIA of the SFO and a new Schedule thereto, and will be complemented by a non-statutory Listing Code issued by the SFC. Where relevant, the provisions of Part IIIA, the Schedule and the Listing Code are intended to be transplanted from the SMLR Amendments set out in the Consultation Paper. In other words, the general principles, the Schedule and the Listing Code will fully cover the scope of the SMLR Amendments and accordingly the three areas in the current Red Book. These three areas are (i) periodic financial reporting (Chapter 4, Appendices 15 and 16); (ii) disclosure of price sensitive information (chapter 13); and (iii) certain notifiable transactions and connected transactions which require shareholders approval (Chapters 14 and 14A). Consideration will be given to specific comments received in respect of the SMLR Amendments when transplanting the relevant SMLR Amendments into the general principles, the Schedule and the Listing Code as appropriate.
31. The Government aims to introduce into the Legislative Council as soon as practicable an Amendment Bill setting out the general principles and other important listing disciplines to be enshrined in the new Part IIIA of the SFO and the new Schedule thereto. The SFC will in due course issue the Listing Code in draft form for public consultation. Public comments received during these processes will be taken into account in finalising the statutory provisions and the Listing Code.

ADMINISTRATIVE ISSUES

32. The majority of respondents supported the statutory backing exercise in respect of the three selected areas. Their major concerns were mainly about how these requirements will be applied under the statutory regime because market practitioners are presently reliant on consultation with the Stock Exchange on these matters. They suggested that extensive guidelines should be issued on notifiable transactions and connected transactions to facilitate administration, and that a lengthy transitional period be allowed during which pre-vetting of announcements would continue.
33. The SFC notes the respondents' general support for statutory backing in the three selected areas, and their concerns as to whether there are adequate arrangements to enable the market to move to the new regime in a smooth manner. In this regard, the SFC has discussed with the Stock Exchange regarding possible options to resolve the administrative concerns of the respondents. We set out our initial response and the proposed way forward in paragraphs 50 – 52 below under the heading 'Implementation – Administration Arrangements'. We will continue to liaise closely with the Stock Exchange to put in place the detailed logistics and arrangements.

Minimal duplication with non-statutory Listing Rules

34. Some respondents expressed concerns that the proposals will eventually result in two separate but duplicative regimes operated by the SFC and the Stock Exchange respectively. They feared that the existence of two sets of rules covering essentially

the same matters would lead to burdensome additional compliance requirements and create confusion and uncertainty in interpretation.

35. Divergent views were received regarding the potential roles and responsibilities of the SFC and the Stock Exchange. Some respondents advocated the need for a single disclosure regime, which should be the statutory regime administered by the SFC, for clarity of law and to avoid double jeopardy, while others envisaged that the SFC's role should focus on enforcement action regarding incidents of major misconduct and that the Stock Exchange's frontline role of listing regulation should not be eroded. Some other respondents believed that a parallel regime is feasible and suggested strengthening coordination between the two regulators. There were also views that the dual filing system works smoothly and the two regulators should cooperate closely together so that the rules are administered and interpreted in a consistent manner.
36. In order to remove the risks arising from a parallel regime, it was strongly suggested by a number of respondents that the provisions which are codified in the statutory regime should be deleted from the Listing Rules upon the enactment of the legislation. This will eliminate the risk of potential duplication and inconsistent interpretation arising from the existence of two sets of overlapping rules.
37. To address the risks arising from potential duplication, it has been agreed that the three areas of listing requirements which are to be covered by the statutory provisions of the SFO and the non-statutory Listing Code will be deleted from the Red Book upon the legislation and the Listing Code coming into effect. The remaining Red Book provisions will continue to deal with other listing matters including entry and exit criteria and corporate governance requirements.

Moving away from pre-vetting

38. There was strong market consensus in favour of the move away from pre-vetting. The respondents agreed that moving away from pre-vetting would place responsibility where it should lie. This will expedite the issue of disclosure materials and enhance quality of disclosure over time as issuers and directors are required to think through their disclosure in more depth rather than merely meeting the minimum regulatory requirements imposed. A number of respondents pointed out that in the longer term the statutory regime can only be feasible under a "no pre-vetting" system in order to avoid the situation where the SFC decides to take enforcement action on disclosures that have been pre-vetted.
39. Several respondents agreed that the reduction of pre-vetting is a desirable long-term objective but doubted whether the market in Hong Kong is sufficiently ready for the immediate adoption of a "no pre-vetting" regime. They acknowledged that under the present regime market participants have relied heavily on pre-vetting and close interaction with the Stock Exchange in the preparation of announcements. They commented that market participants need time to familiarise themselves with the new requirements and build up their experience before being exposed to a regime where responsibility is placed entirely on them. In addition, there was also the view that the current system of close interaction between market practitioners and the Exchange has fostered flexibility in the administration of the Listing Rules and efficient operation of the market and so pre-vetting should be maintained.

40. The SFC notes the market's overwhelming support for moving away from frontline pre-vetting to post-vetting. Given the present close interaction between the Stock Exchange and market practitioners, and heavy reliance on pre-vetting, the SFC will ensure that any move away from pre-vetting will be implemented gradually.
41. The SFC would like to clarify that, under the new regime, there will continue to be pre-vetting of shareholders' circulars and certain announcements, similar to the current practice of the Stock Exchange, but on a voluntary basis. Voluntary pre-vetting will become part of a consultation process. This interface will facilitate a smooth transition to the new regime and enable market practitioners to familiarise themselves with its requirements and procedures. However, we will seek gradually to reduce pre-vetting of disclosure materials based on an acceptable timeline taking into account market feedback. The policy intention is to reduce pre-vetting of documents.
42. In line with the general direction of the Stock Exchange's current vetting practice, it is expected that the pre-vetting of documents (until it can be phased out) should as far as practicable be restricted to comments on issues relating to the statutory listing requirements and the Listing Code, and comments on drafting will be avoided. It is anticipated that the commenting process will be shortened and documents will be issued more expeditiously. The SFC believes that the pre-vetting process will facilitate consultation with market participants and their compliance with the statutory listing requirements.

Future rule changes

43. Some respondents queried how future changes to the SMLR Amendments were to be initiated and wondered if the rule making process of the SFC might lead to inflexibility and constraint in interpretation and amendment of the statutory rules in a way that inhibits market activities.
44. Under the Revised Approach, the majority of the specific and detailed provisions will be set out in the new Schedule to the SFO and in the non-statutory Listing Code. The SFC will be responsible for policy review and update of the provisions in the Schedule and the Listing Code in step with market needs. The SFC will need to consult the public in respect of any proposed amendments to the Schedule and the Listing Code and take comments received into account before any changes are made.
45. However, the SFC will be accorded a degree of flexibility in amending the provisions of the Schedule and the Listing Code. Unlike the general legislative process for primary legislation, the amendment of the Schedule will be subject to negative vetting by the Legislature, which is a much shorter process. Amendment of the Listing Code will be capable of being effected even more swiftly. Based on the SFC's experience in making amendments to legislation and codes and guidelines, it is believed that these rule amendment procedures are no lengthier than those for amending the Listing Rules.

Implementation

46. The market responses received highlighted concerns from the market over the implementation of the new statutory regime, particularly the transition and whether issuers and advisers are ready to adapt suddenly to the new regime and the legal consequences without any assistance. Generally the respondents believed that time

would be required to achieve market consensus regarding the application of the new rules and the practical steps for compliance with them.

47. There were mixed views on how to facilitate the necessary adaptation by market practitioners. Some respondents suggested the adoption of a phased approach whereby disclosure of price sensitive information would be codified in a first phase and periodic financial reporting and shareholders' approval for connected transactions and certain notifiable transactions would be deferred to a second and a third phase respectively. Some objected to the idea of a phased approach because this would render the market subject to continuous change throughout a prolonged period, which might be even more confusing and disturbing.
48. A number of respondents expressed concerns over whether the new regime would change the interpretations or treatments previously applied to given situations. Even though the relevant provisions in the Listing Rules are to be codified in substantially similar language in the statutory listing requirements, some respondents still worried that there would be a different interpretation or treatment of essentially the same situation because of a change in regulator. It was also suggested that previous waivers granted by the Stock Exchange should remain valid under the new regime unless the underlying situations have changed.
49. The SFC understands the market concerns about the potential disruption caused by the migration from the present non-statutory regime to the new statutory regime. It is proposed that any waivers and rulings granted by the Stock Exchange in writing within five years prior to the commencement of the statutory regime will be grandfathered and will continue to be valid under the new regime (while the relevant underlying situations remain unchanged). The SFC believes that the provision of a transitional period with appropriate arrangements will resolve the concerns of most respondents. In conjunction with the Stock Exchange, the Government and the SFC have carefully considered a number of options, and as a result of this evaluation it has been decided to pursue the following administration arrangements.

Administration arrangements

50. The market participants' organisations consulted on the Revised Approach generally favoured a move to administration by the SFC, and accordingly it is proposed to pursue implementation of the Revised Approach on this basis. To facilitate compliance and a smooth transition to the new regime, the SFC envisages that there will be a transitional period after the enactment of the statutory regime to enable market participants to familiarise themselves with the requirements and procedures of the new regime. In effecting the transition, the SFC will seek to adopt the present practices of the Stock Exchange, and to work out with the Government and the Stock Exchange the best transitional arrangement, including the frontline interface with market participants during the introduction of the new system, with a view to assisting compliance and smoothing the move to the new regime. The arrangements regarding the frontline interface will seek to address the market's concerns in relation to the administration and implementation of the new statutory regime, and in particular to strike the right balance between achieving a smooth transition and minimizing any period of overlap between the SFC and the Stock Exchange.

51. The SFC will endeavour to ensure consistency and continuity of interpretation of the statutory provisions and the Listing Code in (i) the grant of statutory waivers under the SFO; (ii) the issue of rulings on interpretation which will be binding on the SFC; and (iii) the provision of informal consultation on a non-binding basis in order to assist compliance. Pre-vetting of announcements and circulars will be on a voluntary basis and be part of the informal consultation service to assist listed issuers to comply. Unusual price and volume movements will continue to be monitored in a manner similar to that of the Stock Exchange under the current regime. Close and regular liaison will be maintained between the SFC and the Stock Exchange before and during the transition to ensure consistency of decisions and practices, and that any issues arising are resolved in a timely manner. Written rulings and waivers will (subject to confidentiality considerations) be published to enhance transparency of decisions and provide guidance to the market.
52. In summary, the administration arrangements will aim to provide certainty and clarity to the market in the three selected areas of listing requirements, and ensure timely and coordinated decisions in administration and subsequent enforcement action. The SFC will work closely with the Stock Exchange to put in place measures to achieve efficient and smooth implementation with continuity in decision making and practices. This will facilitate the transition from the present non-statutory regime to the new statutory regime and minimise disruption to the market.

Enforcement principles

53. The SFC will be responsible for investigations and enforcement action in respect of breaches of the statutory listing requirements. The SFC will be able to act of its own volition or upon referral by the Stock Exchange. Any serious breaches of the statutory obligations may potentially be subject to the three-pronged sanctions regime, in accordance with the proportionality principle.
54. The SFC's overall approach will be to encourage and assist compliance. This will be done through education, policy, guidance, rulings and other practical assistance. The SFC will monitor issuers' behaviour and provide warnings or guidance where non-compliance or suspected breaches are detected. In most cases, the SFC will seek remedial action, rectification, or other non-disciplinary measures. The SFC will exercise its discretion carefully in deciding whether to pursue enforcement action and, if so, which of the three-pronged sanctions to pursue. The SFC will publish clear guidelines on the factors to be considered in making such decisions, as well as further guidance regarding its criteria for assessing the significance and seriousness of breaches. In addition, it is envisaged that the SFO will contain the factors that need to be considered before the SFC and the MMT may impose civil fines on directors.

TIMING

55. It is expected that a Securities and Futures (Amendment) Bill will be introduced into the Legislative Council as soon as practicable to implement the proposals detailed in the 2005 Government Consultation as modified by the Revised Approach. The SFC will formally publish the Listing Code in draft form for public consultation in due course subject to the enactment of the legislation.

Indicative summary of general principles proposed for the new Part IIIA¹

Periodic financial reporting

1. A listed issuer shall disclose in a timely manner to the public an annual report which shall include its financial statements, the auditors' report and the directors' report.²

(Source: IOSCO Principle 2)

The listed entity shall disclose ongoing information on a timely basis, which could require disclosure on an:

- (a) *immediate basis for disclosure of material developments, where such a term could be defined as "as soon as possible" or prescribed as a maximum of specified days (such as 2 business days, as proposed in the USA); and*
- (b) *periodic basis, prescribed by law or listing rules, such as quarterly or annual reports. Such information would also include management discussion and analysis (MD&A), where required, which can be disclosed in a separate report or included in a periodic report. The disclosure obligation may require disclosure of relevant information on an immediate basis even when it belongs to periodic reporting.*

(Original text of IOSCO Principle 2)

2. A listed issuer's annual report shall contain all material information relating to the financial condition and operating performance of the issuer in the period to which it relates as well as its future development and prospects.³

(Source: OECD Principle V-A)

Disclosure should include, but not be limited to, material information on:

1. *The financial and operating results of the company.*
2. *Company objectives.*
3. *Major share ownership and voting rights.*
4. *Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.*
5. *Related party transactions.*
6. *Foreseeable risk factors.*
7. *Issues regarding employees and other stakeholders.*
8. *Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.*

(Original text of OECD Principle V-A)

¹ The sources of each proposed general principle are stated in brackets below it. For ease of reference, the relevant parts of the sources are set out below each proposed general principle in italics. Key words and phrases are underlined for ease of reference. The legend for the sources is: IOSCO = International Organisation of Securities Commissions*, OECD = Organisation for Economic Cooperation and Development*, EU Directive = Directive of the European Parliament and of the Council**, ACA 2001 = Australian Corporations Act 2001**, ASX = Australian Stock Exchange Listing Rules*, UK DR = Disclosure Rules of the United Kingdom Listing Authority**, CO = HK Companies Ordinance**, SFO = HK Securities and Futures Ordinance**, LR = HK Main Board Listing Rules*. Principles marked * are non-statutory standards or rules. Principles marked ** are statutory requirements.

² A new SFO Schedule will set out an expected period as a factor for consideration in determining whether the listed issuer has disclosed the annual report to the public in a timely manner.

³ The majority of the detailed disclosure items to be included in an annual report will be set out in the Listing Code.

3. A listed issuer shall ensure that its annual financial statements give a true and fair view of the financial position as at the end of its financial year and of the financial performance for the financial year.

(Sources: OECD Principle V-C, CO s.123(1))

An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

(Original text of OECD Principle V-C)

Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(Original text of CO s.123(1))

4. A listed issuer shall ensure that its financial statements are audited by –

(a) an auditor that is qualified under the Professional Accountants Ordinance (Cap 50) for appointment as an auditor of an issuer; or

(b) a person that has a qualification and registration that is recognized by the Commission for the purposes of this section as equivalent to an auditor,

and that is independent of the listed issuer.

(Sources: OECD Principle V-C, LR19.20)

An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

(Original text of OECD Principle V-C)

The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—

(1) qualified under the Professional Accountants Ordinance for appointment as an auditor of a company; or

(2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.

(Original text of LR 19.20)

5. A listed issuer shall ensure –

(a) that the issuer's financial statements shall contain a statement as to whether the issuer's financial statements have been prepared in accordance with the HKFRS or IFRS;

(b) where the issuer's financial statements have not been prepared in accordance with either HKFRS or IFRS, that –

(i) details of any material departures with the reasons for each such departure;

- and
- (ii) a statement of the financial effect of each such material departure,

are included in the financial statements; and

(Source: LR Appendix 16 para. 2 note 2.1⁴)

Annual accounts of a listed issuer are required, subject to Notes 2.4 and 2.5, to conform with either:—

- (a) *Hong Kong Financial Reporting Standards (“HKFRS”); or*
(b) *International Financial Reporting Standards (“IFRS”). Listed issuers and new applicants, which adopt IFRS, are required:—*

- (i) *to disclose and explain differences of accounting practice between IFRS and HKFRS, which have a significant effect on their financial statements; and*
(ii) *to compile a statement of the financial effect of any such material differences.*

(Original text of LR Appendix 16 para. 2 note 2.1)

- (c) that the same body of financial reporting standards are applied consistently in the preparation of the issuer’s financial statements except where there are reasonable grounds for a change in which case the reasons for such change shall be disclosed in the financial statements.

(Source: LR Appendix 16 para. 2 note 2.2)

An issuer must apply one of the bodies of standards referred to in Note 2.1 consistently and shall not change from one body of standards to the other unless there are reasonable grounds to justify such a change. All reasons for any such change must be disclosed in the annual accounts

(Original text of LR Appendix 16 para. 2 note 2.2)

6. A listed issuer shall keep such accounting records and documents as are necessary –
- (a) in order that financial statements that comply with the requirements can be prepared and audited; and
- (b) to enable its directors to verify that its financial statements comply with the requirements and provide a copy of such accounting records and documents to any director promptly upon request.

(Source: CO s.121(1) to (3))

- (1) *Every company shall cause to be kept proper books of account with respect to-*
- (a) *all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;*
(b) *all sales and purchases of goods by the company;*
(c) *the assets and liabilities of the company.*
- (2) *For the purposes of subsection (1), proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the company’s affairs and to explain its transactions.*

⁴ The Listing Rules require that an issuer’s financial statements shall conform with either HKFRS or IFRS. However if this requirement is turned into statutory form, it might have the effect of giving statutory backing to HKFRS or IFRS which are non-statutory standards published by self regulatory professional bodies. To address this concern, the proposed general principle requires an issuer to disclose whether the financial statements are prepared in accordance with HKFRS or IFRS and, if not, details of any material respects in which the standards adopted depart from HKFRS or IFRS.

- (3) *The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors:*

Provided that if books of account are kept at a place outside Hong Kong there shall be sent to, and kept at a place in, Hong Kong and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with this Ordinance the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Ordinance and is thereby allowed to be so given.

(Original text of CO s.121(1) to (3))

7. Unless its financial year is of 6 months or less, a listed issuer shall disclose to the public an interim report in a timely manner. The interim report shall contain all material information relating to the financial condition and operating performance of the listed issuer in the period to which it relates as well as its future development and prospects.⁵

(Sources: IOSCO Principle 2, OECD Principle V-A)

The listed entity shall disclose ongoing information on a timely basis, which could require disclosure on an:

- (a) immediate basis for disclosure of material developments, where such a term could be defined as "as soon as possible" or prescribed as a maximum of specified days (such as 2 business days, as proposed in the USA); and*
- (b) periodic basis, prescribed by law or listing rules, such as quarterly or annual reports. Such information would also include management discussion and analysis (MD&A), where required, which can be disclosed in a separate report or included in a periodic report. The disclosure obligation may require disclosure of relevant information on an immediate basis even when it belongs to periodic reporting.*

(Original text of IOSCO Principle 2)

Disclosure should include, but not be limited to, material information on:

- 1. The financial and operating results of the company.*
- 2. Company objectives.*
- 3. Major share ownership and voting rights.*
- 4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.*
- 5. Related party transactions.*
- 6. Foreseeable risk factors.*
- 7. Issues regarding employees and other stakeholders.*
- 8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.*

(Original text of OECD Principle V-A)

Disclosure of price sensitive information

8. Subject to general principle 11, a listed issuer shall disclose to the public as soon as reasonably practicable any information relating to the issuer or its subsidiaries that has

⁵ A new SFO Schedule will set out an expected period as a factor for consideration in determining whether the listed issuer has disclosed the interim report to the public in a timely manner. The Listing Code will contain the majority of detailed disclosure items to be included in an interim report.

come to the issuer's knowledge which ⁶–

- (a) is necessary to enable the public to appraise the position of the issuer and its subsidiaries;
- (b) is necessary to avoid the creation or continuation of a false market in the securities of the issuer (false market being defined as an uninformed market or one which is based on incomplete information); or
- (c) might reasonably be expected materially to affect market activity in and the price of its securities of the issuer.

(Sources: LR13.09(1), IOSCO Principle 1, UK DR 2.2.1, EU Directive (market abuse) Article 6 para. 1 and ASX 3.1)

Generally and apart from compliance with all the specific requirements in this Chapter, an issuer shall keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:—

- (a) is necessary to enable them and the public to appraise the position of the group; or*
- (b) is necessary to avoid the establishment of a false market in its securities; or*
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.*

(Original text of LR13.09(1))

Listed entities should have an ongoing disclosure obligation requiring disclosure of all information that would be material to an investor's investment decision.

(Original text of IOSCO Principle 1)

An issuer must notify a RIS as soon as possible of any inside information which directly concerns the issuer unless DR.2.5.1 applies.

(Original text of UK DR 2.2.1)

Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers. ...

(Original text of EU Directive (market abuse) Article 6 para. 1)

Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

(Original text of ASX 3.1)

9. A listed issuer shall ensure that when disclosing information pursuant to general principle 8 above, the means it uses for disseminating information can be reasonably expected to provide for equal, timely and effective access to such information by the holders of the securities of the issuer and the investing public.

(Sources: OECD Principle V-E, IOSCO Principle 4 and EU Directive (transparency) Article 21 para. 1)

Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.

(Original text of OECD principle V-E)

⁶ The proposed general principle follows closely the equivalent Listing Rule 13.09(1) as far as practicable in light of market comments that slight changes proposed would have altered the meaning of the provision in a significant way.

Under the ongoing disclosure obligation listed entities should ensure that full information is promptly made available to the market by using efficient, effective and timely means of dissemination.

(Original text of IOSCO Principle 4)

... The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. ...

(Original text of EU Directive (transparency) Article 21 para. 1)

10. The requirement set out in general principle 8 above does not apply to information that affects the market or a sector of the market generally and is readily observable to the investing public.⁷

(Source: ACA 2001 s.674(2) and s.676)

If (a) this subsection applies to a listed disclosing entity; and (b) the entity has information that those provisions require the entity to notify to the market operator, and (c) that information (i) is not generally available, and (ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity; the entity must notify the market operator of that information in accordance with those provisions.

(Original text of ACA 2001 s.674(2))

(1) This section has effect for the purposes of sections 674 and 675.

(2) Information is generally available if

(a) it consists of readily observable matter; or

(b) without limiting the generality of paragraph (a), both of the following subparagraphs apply:

(i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and

(ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed.

(3) Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

(a) information referred to in paragraph (2)(a);

(b) information made known as mentioned in subparagraph (2)(b)(i).

(Original text of ACA 2001 s.676)

11. Subject to general principle 13, a listed issuer may withhold the public disclosure of any information relating to the issuer or its subsidiaries, provided that:

(a) such omission would not be likely to mislead the public or lead to the creation or continuation of a false market in its securities;

(b) the listed issuer reasonably believes that the information is confidential and has ensured that reasonable precautions are in place to ensure the confidentiality of the information will be preserved until the information is disclosed to the public under paragraph (a);

⁷ In light of market comments, this safe harbour provision is provided in order to avoid imposing an undue burden on an issuer.

- (c) where the information is communicated to advisers and rating agencies in the ordinary course of business, any person receiving the information owes the issuer a duty of confidentiality; and
- (d) one of the following conditions is satisfied:
- (i) the information concerns an incomplete proposal or negotiation;
 - (ii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or
 - (iii) the information is a commercial secret and a reasonable person would consider disclosure to be likely to prejudice seriously the listed issuer's legitimate interests.⁸

(Sources: UK DR2.5.1, IOSCO Principle 2, ASX 3.1A and EU Directive (market abuse) Article 6 para. 2)

An issuer may, under its own responsibility, delay the public disclosure of inside information, such as not to prejudice its legitimate interests provided that:

- (1) *such omission would not be likely to mislead the public;*
- (2) *any person receiving the information owes the issuer a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and*
- (3) *the issuer is able to ensure the confidentiality of that information.*

(Original text of UK DR2.5.1)

Under the general ongoing obligation approach disclosure may be subject to delay, to be granted in some jurisdictions by the competent authority, if:

- (a) *the information is confidential under legislation;*
- (b) *the information concerns an incomplete proposal or negotiations or the disclosure of particular information is such as to prejudice the legitimate interests of the entity'*

(Original text of IOSCO Principle 2)

Listing rule 3.1 does not apply to particular information while all of the following are satisfied:

- 3.1A.1 *A reasonable person would not expect the information to be disclosed.*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential.*
- 3.1A.3 *One or more of the following applies.*
 - *It would be a breach of law to disclose the information.*
 - *The information concerns an incomplete proposal or negotiation*
 - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*
 - *The information is generated for the internal management purposes of the entity.*
 - *The information is a trade secret.*

(Original text of ASX 3.1A)

An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. ...

(Original text of EU Directive (market abuse) Article 6 para. 2)

12. If a listed issuer is listed on a non-Hong Kong stock market, the issuer shall ensure that where information is released to the other market the same information is released in

⁸ In light of market comments, this safe harbour provision is provided in order to avoid hindering legitimate commercial activities.

Hong Kong simultaneously or as soon as practicable thereafter.
(Sources: IOSCO Principle 3, LR13.09(2), UK DR2.4.1 and EU Directive (transparency) Article 19 para. 1)

*If the entity is listed in more than one jurisdiction, the information released under the ongoing disclosure obligation of one jurisdiction where it is listed should be released on an identical basis and simultaneously in all the other jurisdictions where it is listed. This obligation should not be dependent on where the listed entity is principally listed.
(Original text of IOSCO Principle 3)*

*If securities of the issuer are also listed on other stock exchanges, the Exchange must be simultaneously informed of any information released to any of such other exchanges and the issuer must ensure that such information is released to the market in Hong Kong at the same time as it is released to the other markets.
(Original text of LR13.09 (2))*

*Without prejudice to its obligations under DR 2.2.1 R, an issuer must take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible in all jurisdictions in which it has
(1) financial instruments admitted to trading on a regulated market;
(2) requested admission to trading of its financial instruments on a regulated market; or
(3) financial instruments listed on any other overseas stock exchange.
(Original text of UK DR2.4.1)*

*Whenever the issuer, or any person having requested without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the competent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site.
...
(Original text of EU Directive (transparency) Article 19 para. 1)*

13. In the event that the Commission informs a listed issuer that there are unusual movements in the price or trading volume of its listed securities, the listed issuer shall, if requested to make a disclosure, promptly disclose to the public -
- (a) details of any matter or development of which it is aware that is, or may be, relevant to the unusual movements; or
 - (b) if it is not aware of any such matter or development, a statement of that fact.
- (Source: LR13.10)

*An issuer shall respond promptly to any enquiries made of the issuer by the Exchange concerning unusual movements in the price or trading volume of its listed securities or any other matters by giving such relevant information as is available to the issuer or, if appropriate, by issuing a statement to the effect that the issuer is not aware of any matter or development that is or may be relevant to the unusual price movement or trading volume of its listed securities and shall also respond promptly to any other enquiries made of the issuer by the Exchange.
(Original text of LR13.10)*

Certain notifiable transactions and connected transactions which require shareholders approval

14. If a listed issuer enters into a “specified transaction” (i.e. a major transaction, a very substantial acquisition, a very substantial disposal, or a reverse takeover), the listed

issuer shall⁹

- (a) ensure that the specified transaction is conditional on approval by its shareholders;
(Source: LR14.40)

In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 14.34 to 14.39. In addition, a major transaction must be made conditional on approval by shareholders.
(Original text of LR14.40)

- (b) as soon as reasonably practicable after entering into the specified transaction, disclose to the public an announcement containing all relevant information concerning the specified transaction;
(Source: LR14.34(2))

As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalised, the listed issuer must in each case:— send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange’s comments, the listed issuer must cause such announcement to be published in the newspapers on the next business day. See also rule 14.37.
(Original text of LR14.34(2))

- (c) as soon as reasonably practicable after entering into the specified transaction and in any event not later than 21 days after disclosing the announcement pursuant to paragraph (b), disclose to the public a circular containing all information relevant to the shareholders in appraising the transaction and making an informed decision regarding the approval required under paragraph (d);
(Source: LR14.38)

In addition to the requirements for all transactions set out in rule 14.34, a listed issuer which has entered into a discloseable transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules within 21 days after publication of the announcement. The circular must contain the information required under rules 14.63, 14.64, 14.65 (for an acquisition only) and 14.70 (for a disposal only).
(Original text of LR14.38)

- (d) obtain the approval of its shareholders for the specified transaction before completion of the transaction;
(Source: LR14.40)

In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 14.34 to 14.39. In addition, a major transaction must be made conditional on approval by shareholders.
(Original text of LR14.40)

⁹ The new SFO Schedule will set out definitions of terms used in the general principles as necessary. For example, it will define “specified transaction” to mean a major transaction, a very substantial acquisition, a very substantial disposal or a reverse takeover. The Schedule will contain the more important listing disciplines as factors for consideration in determining whether a listed issuer has complied with the general principles as regards the announcements, circulars and voting on a specified transaction. The more detailed and technical provisions to be contained in the circulars will be found in the Listing Code.

- (e) ensure that its shareholders have the opportunity to vote effectively in the general meetings of the shareholders and are informed of the rules, including voting procedures, that govern the general meetings in relation to the specified transaction;

(Source: OECD Principle II-C)

Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings ...

(Original text of OECD principle II-C)

- (f) ensure that any shareholder who has a material interest in a transaction, or any associate of such shareholder, does not vote in the general meetings in relation to that specified transaction.

(Source: LR14.46)

The Exchange will require any shareholder and his associates to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction and will not accept written approval for the transaction. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.

(Original text of LR14.46)

15. If a listed issuer enters into a connected transaction, the listed issuer shall¹⁰

- (a) ensure that the connected transaction is entered into in writing and is conditional on approval by its shareholders;

(Source: LR14A.04 and 14A.52)

Connected transactions may be either one-off transactions (in the case of listed issuers) or continuing transactions (in the case of both listed issuers and new applicants). Different rules apply in each case. A listed issuer must, in respect of all connected transactions, enter into a written agreement with the relevant parties.

(Original text of LR14A.04)

The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders at the time when the listed issuer enters into the transaction. Any vote taken at a meeting held to seek approval of a connected transaction or a continuing connected transaction or associated cap must be taken by poll. The listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).

(Original text of LR14A.52)

- (b) as soon as reasonably practicable after entering into the connected transaction, disclose to the public an announcement containing all relevant information concerning the connected transaction;

(Source: LR 14A.47)

Issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements must:—

¹⁰ The new SFO Schedule will define a “connected transaction”. The Schedule will contain the more important listing disciplines as factors for consideration in determining whether a listed issuer has complied with the general principles as regards the announcements, circulars and voting on a connected transaction. The more detailed and technical provisions to be contained in the circulars will be found in the Listing Code.

(1) notify the Exchange as soon as possible after the terms of the transaction have been agreed;
(2) send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must cause such announcement to be published in the newspapers on the next business day; and
(Original text of LR 14A.47)

(c) establish an independent board committee, and appoint an independent financial adviser, to advise shareholders in relation to the connected transaction;
(Sources: LR14A.21 and 13.39(6))

In relation to a connected transaction that is subject to independent shareholders' approval under this Chapter, the listed issuer must comply with the requirements set out in rules 13.39(6) and 13.39(7).
(Original text of LR14A.21)

In relation to any transactions or arrangements referred to in rules 13.39 (4)(a) and 13.39(4)(b) or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3 (e) of Practice Note 15 of the Exchange Listing Rules,

(a) the issuer shall establish an independent board committee (which shall consist only of independent non-executive directors) to advise shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote, taking into account the recommendations of the independent financial adviser appointed under rule 13.39(6)(b);
(b) the issuer shall appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote; and
(Original text of LR13.39 (6))

(d) as soon as reasonably practicable after entering into the connected transaction and in any event not later than 21 days after disclosing the announcement pursuant to paragraph (b), disclose to the public a circular containing all information relevant to the shareholders in appraising the connected transaction and making an informed decision regarding the approval required under paragraphs (e) and (f);
(Source: LR14A.49)

The listed issuer must also send a circular, which complies with rules 14A.58 to 14A.62, to the shareholders and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules within 21 days after publication of the announcement, unless the Exchange directs otherwise.
(Original text of LR14A.49)

(e) obtain the approval of its shareholders to the connected transaction before completion of the connected transaction;
(Source: LR14A.52)

The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders at the time when the listed issuer enters into the transaction. Any vote taken at a meeting held to seek approval of a connected transaction or a continuing connected transaction or associated cap must be taken by poll. The listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).
(Original text of LR14A.52)

- (f) if the connected transaction is a continuing connected transaction, obtain the approval of its shareholders to the maximum annual value of the connected transaction;

(Source: LR14A.52)

The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders at the time when the listed issuer enters into the transaction. Any vote taken at a meeting held to seek approval of a connected transaction or a continuing connected transaction or associated cap must be taken by poll. The listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).

(Original text of LR14A.52)

- (g) ensure that the shareholders have the opportunity to vote effectively in the general meetings of the shareholders and are informed of the rules (including procedures relating to voting) that apply to the general meetings in relation to the connected transaction; and

(Source: OECD Principle II-C)

Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings ...

(Original text of OECD Principle II-C)

- (h) ensure that any connected person, or shareholder of the issuer, who has a material interest in the connected transaction, or any associate of such connected person or shareholder, does not vote in the general meetings in relation to that connected transaction.

(Source: LR14A.18)

The Exchange will require that connected transactions and continuing connected transactions are made conditional on prior approval by the shareholders of the listed issuer in general meeting. The listed issuer must ensure that the following parties abstain from voting at the relevant meeting on resolution(s) approving the relevant transactions:

(1) any connected person with a material interest in the transaction; and

(2) any person falling within rules 14A.13(1)(b)(i) to (iv) that has a material interest in the transaction and its associates,

and a statement that such persons will not vote must be included in the relevant circular to shareholders. Pursuant to rule 14A.52, any vote at such meeting must be taken by poll.

(Original text of LR14A.18)

General

16. When complying with the relevant listing requirements, a securities issuer that is accepted for listing or a listed issuer shall only disclose to a recognized exchange company, the Commission or the public, information that –

- (a) is fairly presented; and

- (b) is not false or misleading as to a material particular; or false or misleading through the omission of a material particular.

(Sources: IOSCO Principle 5, LR2.13, OECD Principle V-B and SFO s.277(1))

Ongoing disclosure of information should be fairly presented, not be misleading or deceptive and contain no material omission of information.
(Original text of IOSCO Principle 5)

Without prejudice to any specific requirements of the Exchange Listing Rules as to content or responsibility for the document in question, any announcement, listing document or circular required pursuant to the Exchange Listing Rules must be prepared having regard to the following general principles:

- (1) the information contained in the document must be clearly presented and in the plain language format specified or recommended by the Exchange and/or the Commission from time to time; and
- (2) the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:—
 - (a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;
 - (b) present favourable possibilities as certain or as more probable than is likely to be the case;
 - (c) present projections without sufficient qualification or explanation; or
 - (d) present risk factors in a misleading way.

(Original text of LR2.13)

Information should be prepared and disclosed in accordance with high quality of standards of accounting and financial and non-financial disclosure.
(Original text of OECD principle V-B)

Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely-

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong, if-
 - (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - (ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(Original text of SFO s.277(1))

17. In disclosing information to the public, the listed issuer shall promptly supply to the recognized exchange company which operates the stock market on which the securities of the issuer are listed an announcement, report or circular incorporating the information required to be disclosed for publication by the recognized exchange company.¹¹

(Source: LR13.09(1) Note 5)

Any obligation to inform holders of the issuer's securities or the public will be satisfied by the information being published in the newspapers except where this Chapter requires some other form of notification.

(Original text of LR13.09(1) Note 5)

¹¹ The general principle requires public disclosure by way of dissemination via the Stock Exchange's website given that the Stock Exchange has announced the policy initiative to abolish paid announcements.

18. Before publishing the information required to be disclosed under general principles 1 to 15 above, the listed issuer and its directors shall ensure that the information is kept confidential so that -
- (a) when it is disclosed, all members of the public have access to the information at the same time; and
 - (b) no persons are placed in a privileged dealing position in relation to the issuer's securities.

(Source: LR13.05)

*The continuing obligations relating to disclosure set out in this Chapter are designed to ensure the immediate release of information in the circumstances referred to in rule 13.09. The guiding principle is that information which is expected to be price-sensitive should be released immediately it is the subject of a decision. Until that point is reached, it is imperative that the strictest security within the issuer and its advisers is observed.
(Original text of LR13.05)*

19. The information required to be disclosed under this Part shall either be in the English language with a Chinese translation or be in the Chinese language with an English translation.

(Source: CO s.38(1))

*Subject to the provisions of section 38A, every prospectus issued by or on behalf of a company must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation, and must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.
(Original text of CO s.38 (1))*

20. (a) The SFC may exempt any class of listed issuers from compliance with the requirements above if the exemption will not prejudice the interest of the investing public. Such class exemption may be made by the SFC amending the schedule by order published in the Government Gazette after consultation with the public, the Stock Exchange and the Financial Secretary.
- (b) The SFC may, on request of the listed issuer, and subject to such conditions (if any) as the SFC thinks fit, issue a certificate of exemption from compliance with the requirements above if the exemption will not prejudice the interest of the investing public. Particulars of the individual exemption shall be published on-line.

List of respondents

Category A - Commentator has no objection to publication of name and content of submission (in alphabetical order).

- Freshfields Bruckhaus Deringer and Linklaters (representing Citigroup Global Markets Asia Limited, Credit Suisse First Boston (Hong Kong) Limited, Deutsche Bank AG (Hong Kong Branch), Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities (Asia Pacific) Limited, Merrill Lynch (Asia Pacific) Limited, Morgan Stanley Dean Witter Asia Limited, Nomura International (Hong Kong) Limited, UBS AG)
- Dr. Raymond W. So
- Far East Technology International Limited
- Hong Kong Federation of Women Lawyers
- Hong Kong General Chamber of Commerce
- Hong Kong Institute of Certified Public Accountants
- Hong Kong Society of Financial Analysts
- Hopewell Holdings Limited
- P. C. Woo & Co.
- Prudential Asset Management (Hong Kong) Limited
- Quam Capital Limited
- Stephenson Harwood & Lo
- Swire Pacific Limited, Cathay Pacific Airways Limited and Hong Kong Aircraft Engineering Company Limited
- The Association of Chartered Certified Accountants
- The Chamber of Hong Kong Listed Companies
- The Chinese General Chamber of Commerce
- The DTC Association
- The Hong Kong Exchanges and Clearing Limited
- The Hong Kong Institute of Directors
- The Hongkong and Shanghai Banking Corporation Limited
- Vernon Moore
- V-Nee Yeh
- 張志強

Category B - Commentator requested submission to be published on a “no-name” basis.

- 7 submissions

Category C - Commentator requested submission not to be published.

- 2 submissions