CONSULTATION CONCLUSIONS
ON PROPOSALS TO ACCELERATE RIGHTS ISSUES AND OPEN OFFERS

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Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. This paper presents the results of the public consultation on our proposals to accelerate rights issues and open offers.

2. We received general support from the market on our proposals. Taking into careful consideration the respondents' comments, we will implement our proposals with certain amendments:-

   ▪ We will shorten the minimum notice period for book closure for a rights issue from 14 calendar days to six business days (i.e. five clear business days). For the avoidance of doubt, the reduced notice period will <u>not</u> apply to open offers.

   ▪ We will require extension of the notice period by postponing the book closure date, if necessary, to provide the market with two trading days for trading of cum-rights securities during the notice period, on neither of which trading is interrupted by, for examples, a typhoon and/or a black rainstorm warning or trading suspension of the issuer's securities.

   ▪ We will amend the minimum notice period for book closure (in cases other than a rights issue) from 14 calendar days to 10 business days.

   ▪ We will amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days.

   ▪ We will adopt other housekeeping amendments set out in our proposals.

3. It should be noted that the Listing Rule requirements are prescribed minimums only. It remains the issuer's and its underwriter's responsibility to ensure the entire fund raising arrangements and processes are fair and orderly in specific circumstances, which would include developing and ensuring a timetable which is workable with its share registrar.

4. We have finalised the Rule amendments to implement the proposals. They have been approved by the Board of the Stock Exchange of Hong Kong Limited and the Securities and Futures Commission (**SFC**), and will become effective on 1 February 2010.

5. We will conduct further reviews of open offers and of the timing of trading ex-entitlement where the corporate action is subject to general meeting approval.

CHAPTER 1 INTRODUCTION

6. On 31 July 2009, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**), published a Consultation Paper on Proposals to Accelerate Rights Issues and Open Offers.

7. The consultation paper sought views on our proposals to:

   (i) shorten the notice period for book closure for rights issues and open offers from 14 calendar days to five business days with at least two uninterrupted trading days for trading in securities whose holders are entitled to the rights; and

   (ii) amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days.

8. The consultation paper also contained housekeeping amendments relating to notice of book closure and subscription period.

9. The consultation period ended on 30 September 2009. We received a total of 37 submissions from listed issuers, professional and industry associations, market practitioners and individuals. A list of respondents is provided in the **Appendix II**.

10. The full text of all the submissions is available on HKEx website at http://www.hkex.com.hk/consul/response/cp200907r.htm.

11. We received general support from the market on our proposals, with certain recommended amendments. Chapter 2 summarises the major comments of the respondents and our responses. This paper should be read in conjunction with the consultation paper, a copy of which is posted on the HKEx website.

12. The Rule amendments are available on the HKEx website at: http://www.hkex.com.hk/rule/mbrule/mb_ruleupdate.htm and at: http://www.hkex.com.hk/rule/gemrule/gemrule_update.htm. They have been approved by the Board of the Exchange and the SFC, and will become effective on 1 February 2010.

13. We would like to thank all those who shared their views with us during the consultation process.

CHAPTER 2 MARKET FEEDBACK AND CONCLUSIONS

14. We received general support from the market on our proposals. We set out below major comments of the respondents and our responses.

i) <u>Reduction of notice period for book closure with at least two uninterrupted trading days for trading in cum-rights securities</u>

15. We proposed to shorten the notice period for book closure for rights issues and open offers from 14 calendar days to five business days. Under the proposal and the T+2 settlement system in Hong Kong, investors will have at least two business days for trading cum-rights securities before book closure.

16. If cum-rights trading is interrupted due to, for examples, a typhoon and/or a black rainstorm warning or trading suspension of the issuer's securities, and such interruption causes the number of uninterrupted trading days for cum-rights trading fall short of two, we proposed to require postponing the book closure date to provide the market with a minimum of two uninterrupted trading days for cum-rights trading during the extended notice period.

<u>Comments received</u>

17. A majority of the respondents supported our proposal.

18. However, a considerable number of respondents suggested implementing the proposal for rights issues only. They pointed out that a narrowed window for cum-rights trading as a result of our proposal will have a greater adverse impact on investors in an open offer than in a rights issue. In a rights issue, if a non-subscribing shareholder fails to sell his/her cum-rights securities before book closure, he/she will still have another window to sell his/her subscription rights (i.e. the nil-paid rights) during the subscription period. However, in an open offer, the subscription rights are not renounceable. If a shareholder does not want to subscribe but misses the cum-rights trading window to sell the securities, he/she will be unable to realise any value of the offer.

19. Some respondents had the view that a period of two days for cum-rights trading is too short for either a rights issue or an open offer. We noted the following views of different types of market participants:-

(a) Share registrars suggested a notice period of six business days instead of the proposed five. This allows one extra day for cum-rights trading (i.e. three in total) and hence reduces the possibility of amending the original timetable due to typhoon or black rainstorm to make up to the required minimum of two uninterrupted cum-rights trading days. They considered that certainty of timetable is essential for market information and share registrar operations.

(b) Some index tracking portfolio managers also suggested a notice period of six business days. At present they receive advance notice of at least two cum-rights trading days from their index provider to perform related index rebalancing before trading ex-rights. Under our proposal of a five business day notice, an issuer (assuming an index stock) could make a late evening notice shortly before the end of publication window at 11:00 p.m. on Day One (Note: book closure on Day Five). The index provider would take a business day to compile and inform the portfolio managers about the index changes on Day Two. That would leave the portfolio managers with only one day for cum-rights trading (on Day Three), which is considered too short (Note: Day Four and Day Five are ex-rights dates under the Exchange's T+2 settlement system).

(c) Some options and futures market users suggested a longer notice period to allow more time for them to manage their futures and options exposures affected by the proposals, and to prepare their systems for and inform their clients about capital adjustments to the affected stock options and futures by the Exchange. The Exchange's Derivatives Market Division normally will make announcement to inform the options and futures market users on adjustments to the affected stock options and futures within one business day after issuer's notice, but may take longer in complicated corporate action events which require consultation with the SFC. Under a five business day notice and assuming late evening book closure notice (on Day One), options and futures market users might have less than one business day to inform their clients and only one evening batch window to configure their systems before trading ex-rights on Day Four. A longer notice period is desirable.

Other related comments

20. Some respondents observed occasions where rights issues involved no book closure. They pointed out that in this circumstance the Listing Rules do not expressly require any notice period to forewarn investors of the related cum-rights trading period before the ex-rights date. In this connection, the respondents suggested amending the Listing Rules to use record date as the reference point for the notice period for rights issues and open offers without book closure.

21. In addition, some respondents suggested we clarify whether the minimum "two uninterrupted trading days" referred to in the draft Listing Rules must be consecutive.

<u>*Our response*</u>

22. We are encouraged by the general support from the market on our proposal. We believe that the proposal will shorten the execution period of rights issues. This will help reduce underwriting risk and facilitate fund raisings by listed issuers, and in turn benefit shareholders and investors.

Reduce notice period for rights issues only

23. We noted the difference between rights issues and open offers in renounceability of subscription rights, and thus have in our proposal allowed, and suggested measures to guarantee, a minimum of two trading days for non-subscribing shareholders to sell their cum-rights securities to realise value of the offer. Nevertheless, we acknowledge the concerns of some respondents about open offers. We have decided to implement the proposal for rights issues only.

A six-day notice period for book closure

24. With regard to sufficiency of the notice period, we have considered the views of different stakeholders and the implications of our proposal on their operations.

25. On back-tracking Hong Kong Observatory's records for the past 10 years, we noted that there was only one occasion where black rainstorms interrupted two trading days (23rd and 24th August 1999 mornings) within any three consecutive business day period. It should be noted that Listing Rules requirement is a minimum. It remains issuer's responsibility to ensure the entire fund raising arrangement and processes are fair and orderly, which would include a timetable which is workable with its share registrar.

26. We noted that the suggested modification of the proposed notice period from five business days (i.e. four clear business days) to six business days (i.e. five clear business days) is within range of comparable markets, i.e. Australia and Singapore.

27. On balance, we agree to a six business days (i.e. five clear business days) notice. Considering that the revised proposal will apply only on rights issues (in which investors will have another window for trading nil-paid rights during the subscription period), we consider the revised minimum notice period appropriate.

Rights issues without book closure

28. The purpose of the notice requirement for book closure is to forewarn investors of the related cum-rights trading period so that they can plan ahead and execute their trading decisions. There are some issuers who can identify registered shareholders by closing the register just for a single day or by taking a snapshot of its register books at the end of the record date. As set out in the *Guide on Disclosure of Record Date, Book Closure and Latest Time for Lodging Transfers of Shares* published by the Exchange in November 2008, irrespective of whether the issuer has adopted a book closing date or record date to identify shareholders entitled to a corporate action, it must ensure that there is sufficient time shareholders to act so as to take part in its corporate action and must make complete and accurate disclosure of the relevant date. We propose to amend the Listing Rules to codify the requirements where the issuer decides on a record date without book closure.

The minimum two uninterrupted trading days do not need to be consecutive

29. The purpose of the proposed arrangement to postpone the book closure date is to guarantee a minimum of two days for cum-rights trading in the case of any trading interruption during the notice period. Therefore, the required two uninterrupted trading days do not need to be consecutive. We will clarify this in the Listing Rules.

ii) Subscription period and housekeeping amendments

30. We proposed to amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days, and the maximum subscription period (over which the issuer must consult the Exchange) from 21 calendar days to 15 business days.

31. We also proposed other housekeeping amendments relating to notice of book closure. They include re-designation of the notice period for book closure from calendar days to business days, and clarification of the Listing Rules on the notice period of alternation of book closure date.

Comments received

32. We received general consensus from the respondents in support of our proposals.

Our response

33. We will proceed with the proposed amendments.

iii) Other comments received and our responses

34. We have received a number of constructive comments on other aspects of rights issues and open offers.

35. For instance, some respondents suggested restricting the maximum discount of the offer price of open offers, and requiring protection of non-subscribing shareholders by selling their entitlements in the market and compensating them with any premium of the market clearing price over the offer price of the unsubscribed shares. In addition, there is a suggestion to shorten the subscription period of open offers given the absence of nil-paid trading arrangement during the period. With regard to these suggestions, we will conduct an overall review of open offers next year.

36. Some respondents suggested disallowing shares to be traded ex-entitlement before shareholders' approval of the relevant entitlement issue, arguing that the uncertainty of trading ex-entitlement when the entitlements might be voted down may create a risk of disorderly markets. In this respect, we intend to review ex-entitlement arrangements in connection with all types of corporate actions next year.

37. Moreover, some respondents suggested other initiatives to streamline rights issues and open offers, including adopting streamlined prospectuses; introducing the Australian RAPIDS (Renounceable Accelerated Pro-Rata Issue with Dual-bookbuild Structure) model; allowing cum-rights trading after record date until acceptance period; and permitting conditional dealing in rights issues to allow parallel running of the notice period for shareholders' meeting and the subscription period, etc. We appreciate these suggestions and will keep in view for further studies. We are aware that some of these suggestions have been applied in some markets such as the U.K. under their unique market practices and infrastructures,

and their adoption in Hong Kong may involve major changes to existing market practices and infrastructures. Some suggestions are new initiatives in overseas markets, which are currently being debated, explored, or piloted. We will actively monitor developments and welcome further feedback from, and dialogue with, market participants.

CONSULTATION CONCLUSIONS

38. Except for certain changes as discussed above, we have adopted our proposals and the Main Board Rule amendments largely as those proposed in the consultation paper.

39. We have also amended the GEM Listing Rules in line with the changes to the Main Board Rules.

40. It should be noted that the Listing Rule requirements are prescribed minimums only. It remains the issuer's and its underwriter's responsibility to ensure the entire fund raising arrangements and processes are fair and orderly in specific circumstances, which would include developing and ensuring a timetable which is workable with its share registrar.

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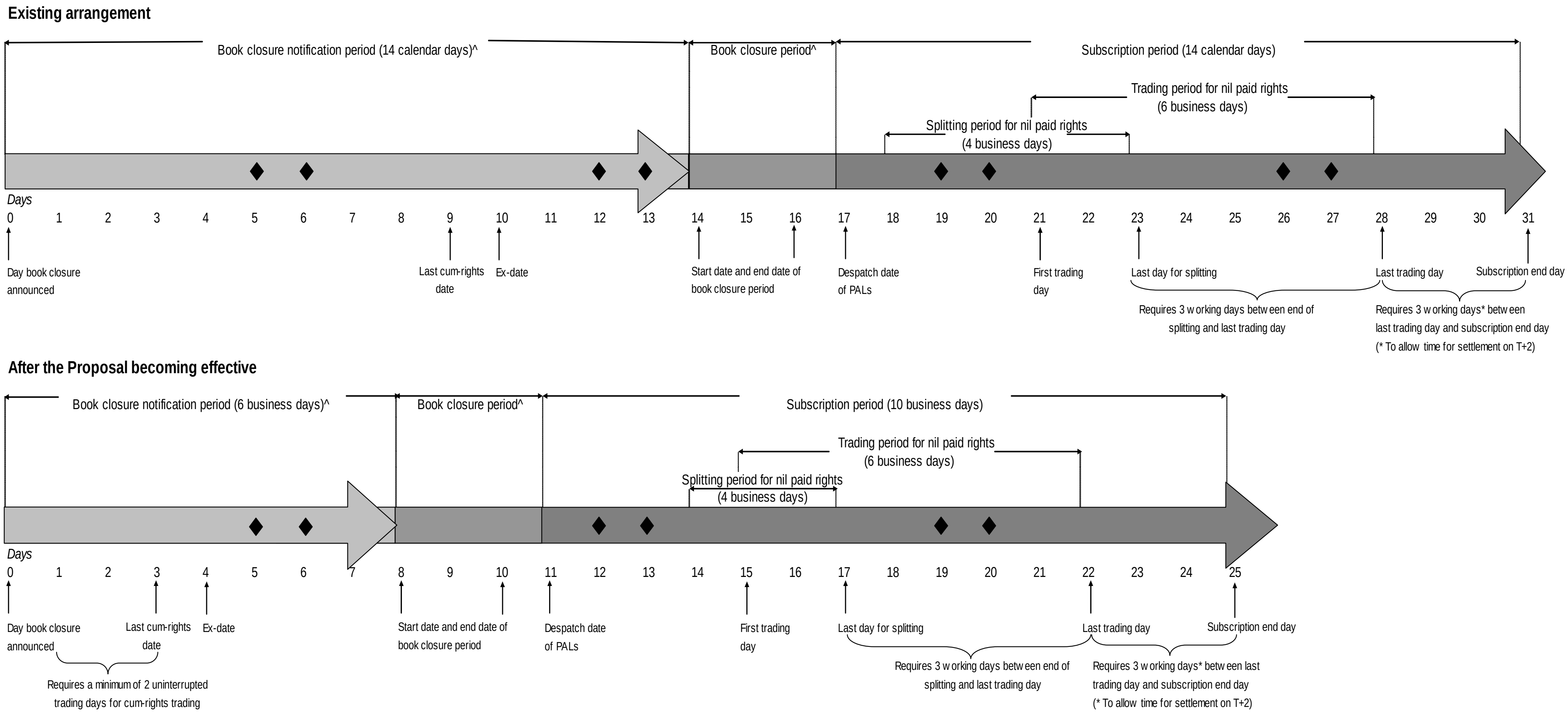
APPENDIX I COMPARISON OF RIGHTS ISSUE TIMETABLE BEFORE & AFTER THE PROPOSAL BECOMES EFFECTIVE

For illustrative purpose



♦ Denotes Saturday/Sunday

^ For illustrative purpose, the timetables assume (1) the issuer provides the shortest notice period for book closure, (2) the register of members is closed for 3 days, and (3) the rights issue does not require any shareholders' approval.

APPENDIX II LIST OF RESPONDENTS

Listed issuers

1. Cheung Kong (Holdings) Limited
2. Cheung Kong Infrastructure Holdings Limited
3. CK Life Sciences Int'l., (Holdings) Inc.
4. CLP Holdings Limited
5. Sino Gold Mining Limited
6. Standard Chartered PLC
7. Main Board issuer 1 (name not disclosed at the respondent's request)
8. Main Board issuer 2 (name not disclosed at the respondent's request)

Professional and industry associations

1. Federation of Share Registrars Limited
2. Hong Kong Institute of Certified Public Accountants
3. Hong Kong Securities Association
4. The Hong Kong Institute of Chartered Secretaries
5. The Law Society of Hong Kong

Market practitioners

1. Baker & McKenzie
2. *Charltons on behalf of:*
   Anglo Chinese Corporate Finance, Limited
   CIMB Securities (HK) Ltd.
   Quam Limited
   Somerley Limited
3. Clifford Chance
4. Computershare Hong Kong Investor Services Limited
5. Hermes Equity Ownership Services
6. Julian Duffy, Eclipse Options
7. Latham & Watkins
8. Mallesons Stephen Jacques
9. Newedge Group (HK Branch)
10. Norton Rose Hong Kong
11. Optiver
12. P.C. Woo & Co
13. Tricor Investor Services Limited
14. Market practitioner 1 (name not disclosed at the respondent's request)
15. Market practitioner 2 (name not disclosed at the respondent's request)
16. Market practitioner 3 (name not disclosed at the respondent's request)

17. Market practitioner 4 (name not disclosed at the respondent's request)
18. Market practitioner 5 (name not disclosed at the respondent's request)
19. Market practitioner 6 (name not disclosed at the respondent's request)
20. Market practitioner 7 (name not disclosed at the respondent's request)
21. Market practitioner 8 (name not disclosed at the respondent's request)

Individuals and retail investor representatives

1. Webb-site.com
2. M Ganglani
3. Paul Mok

Remarks:

1. *One submission is counted as one response.*
2. *One respondent (Webb-site.com) indicated that the submission was made on behalf of 207 respondents in answer to its own on-line surveys.*
3. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*

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