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BY EMAIL

February 15, 2011

Re: Joint Consultation Paper on Proposed Changes to Property Valuation Requirements

Hong Kong Stock Exchange
Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Dear Sirs,

We are writing in response to the captioned Consultation Paper. Set out below are our views on the consultation questions:

General — We note that paragraphs 6 and 34 of the consultation paper refer to the concept of "property (or non-property) applicants". This is, however, not used in the rest of the paper or in the draft rules. We understand that the Exchange intends to classify the activities, not the issuer, by the "property" or "non-property" concept, so that one single applicant or issuer may carry out both property and non-property activities. It will help the public if the Exchange could clarify this, perhaps in the consultation conclusions.

Q1. — We agree with this proposal.

Q2. — We agree generally with the proposed definition. As an interpretative aid, we would suggest insertion of the element (perhaps by way of a note to the rule) of the primary intention of the company in relation to the "purpose" of holding the

relevant property, or primary significance of the asset to the company (cf. Rule 14A.59(6)) at the material time. We believe for this purpose the material time would normally be the time of acquisition unless there has been a subsequent clear and documented change of intention, in which case it would be the time when the relevant listing document or circular is issued.

Q3. We agree with this proposal.

Q4. We agree with this proposal. In paragraph 69(g) of the consultation paper, the Exchange may consider any "badging" of the properties with a reasonable associative effect from a third party's point of view – e.g. a project having the same name or same words in their names, although the project is developed in different phases and may encompass mixed usages.

Q5. We are not aware of any.

Q6. We agree with this proposal.

Q7. We believe there is no need for the requirement to appear in the Companies Ordinance. Under the CO Rewrite project, this aspect of regulations should be governed by the Securities and Futures Ordinance and the Listing Rules.

Q8 – 10. We agree with these proposals. However, we have two comments:

(a) The procedure of identifying the carrying amount of each property interest and adding up from the lowest values until the 10% limit is reached, as specified in paragraph 85 of the consultation paper, should be inserted into the Listing Rules. Otherwise it would not be clear how the stacking up and ranking of properties should be carried out in practice.

(b) We note a conceptual difficulty in the following case (by way of example).

The company has four properties, accounting for the following percentages of total assets:

Property A: 2%

Property B: 3%

Property C; 4%

Property D: 4%

Under the proposed rules, Properties C and D both have the potential of crossing the 10% threshold and there is no conceptual justification for choosing one over the other.

To resolve this issue, the Exchange may consider adding a proviso to the effect that any property crossing or exceeding the 10% threshold must be

valued as well as the one immediately preceding it in terms of ranking, if they are both at the same percentage point in relation to total asset (e.g. if one is 4.2% and the other is 4.4%, they should both be valued). Whether there should be rounding up at the 0.5 mid-point is an matter for the Exchange's executive decision.

Q11 – 13. We agree with these proposals.

Q14. We agree that an overview should be required where it would be material to investment decisions. On this basis, however, it seems there is technically no need to spell out this requirement in light of the general disclosure obligation under both law and regulation.

Q15 – 17. We agree with these proposals. As there is no apparent justification for disclosure requirements for unlisted companies to be stricter than those that are applicable to listed companies, the proposed class exemption notice should apply to prospectuses issued by unlisted companies.

Q18. We agree with this proposal.

Q19. We agree with this proposal.

Q20. We agree with this proposal.

Q21. We agree with this proposal.

Q22. We agree with this proposal.

Q23 – 25. We agree with these proposals. Please see our comment in Q15 – 17.

Q26. We agree with this proposal.

Q27. The Exchange has not set out its rationale in detail for this proposal. However, we believe this is the correct approach as it is less essential whether certain parts of a listed company's business is classified as "property" activities and others "non-property" ones, given the company already has a history of publicly disclosing its affairs and financials, and the investing public has relatively easier access to its information.

Q28 – 29. We agree with these proposals.

Q30 – 32. We agree with these proposals, but please note our comment in Q8 – 10.

Q33 – 35. We agree with these proposals, with minor comments as reflected in Q4 above.

Q36 – 37. We agree with the principles behind summary disclosure. However, under the proposal, the full valuation report must be available for public inspection and the rules do not specify what mode of public inspection would be acceptable for this purpose.

For companies that are already listed, under Rule 2.07A corporate communications may be despatched electronically (subject to compliance with relevant company laws and the rules on obtaining or deeming individual shareholder's consent). Noting the current drive for environmental protection and promotion of paperless modes of communication (e.g. under the "Mixed Media Offer" proposals), we suggest that it should be possible for the full valuation report to be displayed electronically, subject to the same consent requirements as those applying to circulars in general.

This means that, if no shareholder actually requests a hard copy circular in a way recognised under the Listing Rules, it should be permissible for the company to fulfill the public display requirement by posting the full valuation report on its own website as well as the Exchange's website.

We believe that shareholders' protection will not be compromised given that if even one single shareholder requests a hard copy circular, a hard copy full valuation report must be displayed in the usual way (e.g. by making it available at the office of the company's legal advisers).

Q38. We agree with this proposal.

Q39. We agree with this proposal.

Q40. We agree with this proposal.

Q41 – 42. We agree and only have the following drafting comment:

As drafted Rule 5.03 operates to exclude connected transaction circulars from the relaxed requirements – (i) exemption from valuation of listed target and (ii) summary disclosure for 5% interests or below. The overriding effect in relation to (i) is clear in the drafting of Rule 5.02A(b), but is not as clear in relation to (ii). To clarify this, we propose adding the words "except for a connected transaction," at the beginning of Rule 5.02B(b)(ii).

Q43. We agree with this proposal.

Q44. We agree with the Exchange's formulation.

Q45. We agree with this proposal.

Q46. We have no comments on this part.

If you require any further information, please contact our

Yours faithfully,

Davis Polk & Wardwell

Davis Polk & Wardwell, Hong Kong Solicitors